IN THE SUPREME COURT OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25,

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

Supreme Court No. 81604

District Court Case No.
A-19-790150-C

Appeal from the Eighth Judicial District Court, Clark County, Nevada

APPELLANT'S APPENDIX

VOLUME II

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PROOF OF SERVICE

I certify that I electronically filed on the 20th day of January, 2021, the foregoing **APPELLANT'S APPENDIX VOLUME II** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

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

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

/s/Sara Hunsaker
An Employee of ZBS LAW, LLP

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **HEARING REQUESTED** **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC hereby moves for summary judgment against The Bank of New York Mellon FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc., Asset-Backed Certificates Series 2006-25 ("BNYM") and Sables, LLC ("Sables") collectively (the "Bank") pursuant to NRCP 56. This motion is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the declaration of Jacqueline A. Gilbert, Esq. ("Gilbert Decl."), attached as **Exhibit A**, and such evidence and oral argument as may be presented at the time of the hearing on this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from the Bank's failure to accept that the deed of trust is void/extinguished. SFR purchased **4946 Droubay Drive, Las Vegas, Nevada 89122; APN: 161-26-111-133**, (the "Property") at an NRS 116 sale on September 19, 2012. The Bank waited nearly six years to file a "quiet title" action against SFR to challenge the effect of the NRS 116 sale on the deed of trust. In federal district court, the Bank's quiet title claim against SFR was dismissed as time-barred on October 1, 2018.[1] The Bank did not file a timely appeal and ignoring the effect of the NRS 116 sale, proceed to foreclose on the Property. In an effort to prevent the Bank from foreclosing on its presumptively extinguished deed of trust, SFR filed this action and obtained a temporary restraining order and injunction.[2] The deed of trust is void pursuant to NRS 106.240, Nevada's statute of repose. The recorded documents reflect that at a minimum on April 29, 2008—the date the Deed of Trust was recorded—the underlying accelerated, if not sooner. At no time after April 29, 2008, was the loan decelerated, nor did the Bank enforce the deed of trust by way of a sale prior to the expiration of ten years. Thus, on April 29, 2018, the deed of trust became conclusively presumed discharged/terminated. Accordingly, it is proper to grant summary judgment in SFR's favor.

II. SUMMARY OF RELEVANT FACTS

DATE	FACTS
November 22, 2006	Deed of Trust in favor of the Mortgage Electronic Registration Systems, Inc. ("MERS"), acting solely as nominee for Lender and Lender's successors and assigns, as Beneficiary and Countrywide Home Loans, Inc., as Lender ("Deed of Trust"), was recorded as Instrument No. 20061122-0003799.[3] Paragraph 22 of the Deed of Trust states that "Lender shall give notice

[1] *See* Order granting Motion to Dismiss, Case No. 2:18-cv-00599-APG-CWH, attached as **Exhibit A-1** to Gilbert Decl.

[2] *See* Order granting temporary restraining order and preliminary injunction filed with this Court on September 13, 2019.

[3] *See* Deed of Trust attached to Gilbert Decl. as **Exhibit A-2.**

	to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument…The notice shall specify…that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property."[4]
January 2008	Nelson Pritz (Mr. Pritz) and Susan Pritz (Mrs. Pritz) (collectively the "Pritzs") ceased making payments to the Bank.[5]
April 29, 2008	Notice of Default/Election to Sell Under Deed of Trust ("NOD #1") was recorded by ReconTrust Company, N.A., as Instrument No.: 20080429-0004556.[6] The NOD #1 states that the beneficiary "has declared and does hereby declare all sums secured thereby immediately due and payable…"[7]
January 2008 – August 2008	The Pritzs did not cure the default.
August 4, 2008	Nevada Notice of Trustee's Sale was recorded by ReconTrust Company, N.A. as Instrument No. 20080804-0000675 ("NOS").[8] NOS states that the property "will sell on 08/20/2008 at 01:00 PM, At the front entrance to Nevada Legal News…"[9]
November 29, 2011	A document titled "Assignment of Deed of Trust", assigning all beneficial interest under the Deed of Trust from MERS to BNYM, was recorded as Instrument No. 20111129-0000514.[10] The Assignment states that MERS grants, sells, assigns, transfers and conveys all beneficial interest in the Deed of Trust to BNY Mellon as trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-25 (the "Trust"). Upon information and belief, Edward Gallegos, the individual who executed the Assignment was really an employee of BNY Mellon rather than Countrywide or MERS.[11]
September 19, 2012	SFR acquired the Property by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS Chapter 116.[12]

[4] *Id*. at bates stamp BONYM00018.
[5] *See* Notice of Default, attached to Gilbert Decl. as **Exhibit A-3**; *see specifically*, "FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 01/010/2008…"
[6] *Id*.
[7] *Id.*
[8] *See* Notice of Trustee's Sale attached to Gilbert Decl. as **Exhibit A-4**.
[9] *Id*.
[10] *See* Assignment of Deed of Trust, attached to Gilbert Decl. as **Exhibit A-5.**
[11] *Id.*
[12] *See* Foreclosure Deed, attached to Gilbert Decl., **Exhibit A-6**.

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October 9, 2012	Foreclosure Deed ("Foreclosure Deed") vesting title in SFR recorded as Instrument No. 20121009-0001817.[13]
September 24, 2018	Substitution of Trustee, substituting Sables, LLC ("Sables") as Trustee, under the Deed of Trust, recorded as Instrument No. 2018-0002288.[14]
January 16, 2019	Notice of Default/Election to Sell Under Deed of Trust ("NOD #2") was recorded by Sables, LLC, as Instrument No. 20190116-0000389.[15]
April 2008 – April 2018	In the next ten years after acceleration day (April 29, 2008), at no time did the Bank execute the power of sale and foreclose. At no time after April 29, 2008 or before April 29, 2018 did the Bank record any document indicating the loan was decelerated, nor did the Bank introduce any documents whereby the Pritzs were notified the loan was decelerated.

III. LEGAL ARGUMENT

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.'"[16] A principle purpose of summary judgment is "to isolate and dispose of factually unsupported claims."[17] The moving party bears the initial burden of "informing the district court of the basis for its motion" and identifying the evidence and affidavits which demonstrate the absence of a genuine issue of material fact" for trial.[18] No genuine issue of material facts exists for trial when there is insufficient evidence to support the position of the non-moving party.[19] If the moving party meets its initial burden, the burden then

[13] *Id.*
[14] *See* Substitution of Trustee, attached to Gilbert Decl. as **Exhibit A-7.**
[15] *See* Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust, attached to Gilbert Decl. as **Exhibit A-8.**
[16] FRCP 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
[17] *Id.* at 323-24.
[18] *Id.* at 323.
[19] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

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shifts to the opposing party to establish a genuine issue of material fact.[20] The non-moving party must go beyond the assertions and allegations in the pleadings and set forth specific facts by producing competent evidence showing a genuine issue for trial.[21] SFR is entitled to summary judgment because there is no genuine issue of material fact as to SFR' valid title. As set forth below, there is no admissible evidence to rebut the factual presumptions which underlie SFR' quiet title.

B. The Deed of Trust is Terminated Under NRS 106.240.

NRS 106.240 provides in relevant part, a "[t]he lien…created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged or record, shall at the expiration of 10 years after the debt secured by the…deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged."

In *Pro-Max*, the Nevada Supreme Court noted that the statute of repose found under NRS 106.240 "creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due," and ruled that "the conclusive presumption contained in NRS 106.240 clearly and unambiguously applies without limitation to all debts secured by deeds of trust on real property."[22]

On April 29, 2008, a Notice of Default and Election to Sell Under Deed of Trust ("Bank's NOD") (Exhibit A-3) was recorded against the Property. The Bank's NOD is executed by Recontrust Company, as agent for the beneficiary, and states it relates to the obligations that became due on January 1, 2008 for which the deed of trust is security.[23] According to the Bank's NOD, "…the present beneficiary under such deed of trust…**has declared and does hereby declare all sums secured thereby immediately due and payable** and has elected and does

[20] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).
[21] *See* NRCP. 56(e); *Celotex Corp.*, 477 U.S. at 324.
[22] *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 94, 97, 16 P.3d 1074, 1076, 1079 (2001).
[23] *See* Ex. A-3.

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hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby."[24]

Assuming, arguendo, that the recording of the Bank's NOD is the time the Bank accelerated the loan and not some time earlier, then as of April 29, 2018, the DOT was discharged and the purported underlying debt was satisfied. Under *ProMax* and statute the Bank can offer no evidence to dispute these *conclusive* presumptions.[25]

C. BNY Mellon Never Decelerated the Loan.

Discovery has closed and the Bank has not produced any competent evidence that shows timely unequivocal deceleration of the loan. Thus, with evidence of acceleration and zero evidence of timely deceleration, the Deed of Trust has been terminated by operation of NRS 106.240.

IV. CONCLUSION

Under Nevada law and based on the evidence presented in this case, SFR is entitled to judgment as a matter of law that the Deed of Trust was terminated/discharged by operation of the statute of repose in NRS 106.240.

Dated this 23rd day of March, 2020.

KIM GILBERT EBRON

/s/ Karen L. Hanks
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[24] *Id*. (emphasis added).

[25] NRS Chapter 47 distinguishes between conclusive and disputable presumptions where, following the conclusive presumptions set forth in NRS 47.240, NRS 47.250 begins "[a]ll other presumptions are disputable." The only interpretation of this extinguishment is that conclusive presumptions cannot be disputed. The conclusive presumption in NRS 106.240 is included in NRS 47.240(6) which states "[a]ny other presumption which, by statute, is expressly made conclusive."

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2020, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

J. Stephen Dolembo - sdolembo@zbslaw.com

Sara Hunsaker - shunsaker@zbslaw.com

Shadd A. Wade - swade@zbslaw.com

/s/ Karen L. Hanks
an employee of KIM GILBERT EBRON

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EXHIBIT A

Declaration of Jacqueline A. Gilbert

DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **4946 Droubay Drive, Las Vegas, Nevada 89122; APN: 161-26-111-133**, (the "Property"), I reviewed the documents attached hereto as **Exhibits A-1** through **A-8**.

6. On September 19, 2012, SFR acquired the Property by being the highest bidder at the Association foreclosure auction which was conducted by Nevada Association Services, Inc. ("NAS") on behalf of Squire Village at Silver Springs Community Association ("the Association").

7. On June 11, 2018, SFR filed its Motion to Dismiss the Bank's Complaint in Case No. 2:18-cv-00599-APG-CWH [ECF No. 16]. On October 1, 2018, that court granted SFR's Motion to Dismiss, as well as the Association's Motion to Dismiss [ECF No. 25], attached hereto as **Exhibit A-1.**

8. Attached hereto as **Exhibits A-2** through **A-6,** are true and correct copies of exceprts from documents included in The Bank of New York Mellon FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc., Asset-Backed Certificates Series 2006-25 ("BNYM") Initial Disclosures and supplements thereto.

…

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9. Attached hereto as **Exhibits A-7 and Exhibit A-8** are true and correct copies of exceprts from documents included in Sables, LLC Initial Disclosures and supplements thereto.

I declare under penalty of perjury and the laws of the State of Nevada and the United States that the foregoing is true and correct.

DATED this 30th day of January, 2020.

/s/ Jacqueline A. Gilbert
Jacqueline A. Gilbert

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EXHIBIT A-1

Order Granting Motion to Dismiss

Inst #: 20190123-0000186
Fees: $40.00
01/23/2019 08:00:08 AM
Receipt #: 3614543
Requestor:
HOWARD KIM & ASSOCIATES
Recorded By: OSA Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

RECORDING COVER PAGE

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APN# 161-26-111-133

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrealprop/ownr.aspx)

TITLE OF DOCUMENT
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ORDER GRANTING MOTION TO DISMISS

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City/State/Zip Las Vegas, NV 89139

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-25,

Plaintiff

v.

SQUIRE VILLAGE AT SILVER SPRINGS COMMUNITY ASSOCIATION and SFR INVESTMENTS POOL 1, LLC,

Defendants

Case No.: 2:18-cv-00599-APG-CWH

Order Granting Motion to Dismiss

[ECF No.16]

Plaintiff The Bank of New York Mellon (BONY) sues to determine whether a non-judicial foreclosure sale conducted by a homeowners association (HOA) extinguished its deed of trust. Defendant SFR Investments Pool 1, LLC (SFR) purchased the property at the foreclosure sale. SFR moves to dismiss, arguing that BONY's quiet title/declaratory relief claim is untimely because it is really one for liability based on statutory violations and thus is subject to a three-year limitation period. Alternatively, SFR argues that even if the claim is subject to the four-year catchall limitation period, it is still untimely. SFR asserts the unjust enrichment claim is also untimely and fails as a matter of law. According to SFR, BONY has failed to name the borrowers, who are necessary parties. Finally, SFR asserts that BONY failed to notify the Nevada Attorney General of a constitutional challenge as required by Federal Rule of Civil Procedure 5.1.

BONY responds that its quiet title/declaratory relief claim is not dependent on a violation of a statute so the three-year limitation period does not apply. BONY argues both of its claims

are subject to a five-year limitation period that does not begin to run until it discovered the harm. BONY contends it did not discover its harm until the Supreme Court of Nevada issued its decision in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014) (en banc). BONY also argues its quiet title/declaratory relief claim is viable under the Ninth Circuit's decision in *Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016). BONY disputes that the borrowers are necessary parties. BONY asserts it has notified the Nevada Attorney General of the case as required. Finally, BONY requests the motion be denied so that discovery may be conducted.

In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." *Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations in the complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). A plaintiff must make sufficient factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a cause of action." *Id.* at 555.

"A claim may be dismissed as untimely pursuant to a 12(b)(6) motion only when the running of the statute of limitations is apparent on the face of the complaint." *United States ex rel. Air Control Techs., Inc. v. Pre Con Indus., Inc.*, 720 F.3d 1174, 1178 (9th Cir. 2013) (alteration and quotation omitted). A limitation period begins to run "from the day the cause of action accrued." *Clark v. Robison*, 944 P.2d 788, 789 (Nev. 1997). A cause of action generally accrues "when the wrong occurs and a party sustains injuries for which relief could be sought."

Petersen v. Bruen, 792 P.2d 18, 20 (Nev. 1990); *see also State ex rel. Dep't of Transp. v. Pub. Emps.' Ret. Sys. of Nev.*, 83 P.3d 815, 817 (Nev. 2004) (en banc) ("A cause of action 'accrues' when a suit may be maintained thereon." (quotation omitted)). Nevada has adopted the discovery rule, and thus time limits generally "do not commence and the cause of action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 934 P.2d 229, 233 (Nev. 1997).

According to the complaint, the HOA foreclosure sale took place on September 19, 2012. ECF No. 1 at 4. SFR bought the property at the sale and the trustee's deed upon sale was recorded on October 9, 2012. ECF No. 1-4. BONY filed this lawsuit on April 4, 2018. Consequently, it is apparent from the face of the complaint that BONY's claims are time-barred if a statute of limitations of five years or less applies.

A. Quiet Title/Declaratory Relief

I have previously ruled that the four-year catchall limitation in Nevada Revised Statutes § 11.220 applies to claims such as the one BONY asserts in this case. *See Bank of Am., N.A. v. Country Garden Owners Ass'n*, No. 2:17-cv-01850-APG-CWH, 2018 WL 1336721, at *2 (D. Nev. Mar. 14, 2018). I have also previously rejected the argument that lenders like BONY did not know their deeds of trust were in jeopardy until the Supreme Court of Nevada issued the *SFR* decision. *See id.* at *6. "Simply reading the statute that grants HOAs a superpriority lien would have put BONY on notice of the possibility that its deed of trust was in jeopardy." *Id.* Indeed, its own allegations show the *SFR* decision was not unanticipated, nor did banks assume that the superpriority lien was not triggered until the deed of trust holder foreclosed, because BONY alleges that its predecessor attempted to pay off the superpriority amount. ECF No. 1 at 3.

Further, *SFR* "did not create new law or overrule existing precedent; rather, that decision declared what NRS 116.3116 has required since the statute's inception." *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 295 (Nev. 2017) (en banc). The limitation period started running on the date the trustee's deed upon sale was recorded because BONY knew or should have known of its injury at that time. *Job's Peak Ranch Cmty. Ass'n, Inc. v. Douglas Cty.*, No. 55572, 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015) ("If the facts giving rise to the cause of action are matters of public record then the public record gave notice sufficient to start the statute of limitations running." (quotation and alteration omitted)).

Finally, to the extent BONY is asserting the *Bourne Valley* decision somehow makes its claim timely, I disagree. *See Bank of New York for Certificateholders of CWALT, Inc. v. S. Highlands Cmty. Ass'n*, No. 2:17-cv-02699-APG-PAL, 2018 WL 4305761, at *4 (D. Nev. Sept. 7, 2018) ("BONY cites no authority for its argument that if the sale was conducted pursuant to an unconstitutional statute, no limitation period applies."). The Supreme Court of Nevada has applied a statute of limitations to a claim alleging that tax revenues were unevenly distributed pursuant to an unconstitutional statute. *See City of Fernley v. State, Dep't of Tax*, 366 P.3d 699, 707 (Nev. 2016). The Supreme Court of Nevada thus applies statutes of limitations to acts taken pursuant to an allegedly unconstitutional statute. Moreover, *Bourne Valley* is no longer binding authority. *See U.S. Bank National Ass'n v. Saticoy Bay LLC Series 3930 Swenson*, No. 2:17-cv-00463-APG-GWF, 2018 WL 4604455, at *2 (D. Nev. Sept. 25, 2018).

BONY's quiet title/declaratory relief claim is untimely. Consequently, I grant SFR's motion to dismiss this claim.

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B. Unjust Enrichment

BONY did not respond to SFR's motion to dismiss regarding the unjust enrichment claim other than to state that "SFR's Motion to Dismiss must be denied because the five-year statute of limitations has not yet expired on its claims for Quiet Title or Unjust Enrichment." ECF No. 20 at 7. However, the "statute of limitation for an unjust enrichment claim is four years." *In re Amerco Derivative Litig.*, 252 P.3d 681, 703 (Nev. 2011) (en banc) (citing Nev. Rev. Stat. § 11.190(2)(c)). BONY's meager response (and an incorrect one at that) constitutes consent to granting SFR's motion as to untimeliness. LR 7-2(d). To the extent BONY is relying on the same arguments discussed above to contend its unjust enrichment claim is timely, those arguments are unavailing. I therefore grant SFR's motion to dismiss the unjust enrichment claim.[1]

C. Rule 56(d) Request

BONY acknowledges that Federal Rule of Civil Procedure 56(d) does not apply to motions to dismiss but nevertheless requests that SFR's motion be denied so discovery may be conducted. However, BONY does not explain how any of the discovery it wants to conduct would bear on the timeliness of its claims. I therefore deny BONY's request.

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[1] Although I am granting SFR's motion, it appears from SFR's argument in its motion that it did not read the substantive allegations in BONY's unjust enrichment claim. I know these parties have numerous similar cases and so they copy and paste arguments for efficiency's sake. But not all of these cases are identical. The parties must take care to actually read and understand the other side's allegations and arguments and then present developed arguments to this court that are responsive to the other side's papers if they want me to be able to rule on the issues they raise.

D. Conclusion

IT IS THEREFORE ORDERED that defendant SFR Investments Pool 1, LLC's motion to dismiss **(ECF No. 16) is GRANTED**.

DATED this 1st day of October, 2018.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

EXHIBIT A-2

Deed of Trust

20061122-0003799

Assessor's Parcel Number:
16126111133
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
NATALIA GENOV
~~Recording Requested By:~~
I. Sandler

COUNTRYWIDE HOME LOANS, INC.

5613 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE
CO 80111

Fee: $39.00
N/C Fee: $25.00
11/22/2006 14:51:13
T20060206942
Requestor:
FIDELITY NATIONAL TITLE
Charles Harvey BGN
Clark County Recorder Pgs: 26

[redacted] [Space Above This Line For Recording Data]

PRITZ 00015355520211006
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0007499627-9

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

23991

[redacted]01006A

DOC ID #: 00015355520211006

(A) "Security Instrument" means this document, which is dated NOVEMBER 17, 2006 , together with all Riders to this document.
(B) "Borrower" is
NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.
(C) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK . Lender's address is
4500 Park Granada MSN# SVB-314
Calabasas, CA 91302-1613
(D) "Trustee" is
RECON TRUST

225 WEST HILLCREST DRIVE
THOUSAND OAKS, NV 89801
(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 17, 2006 . The Note states that Borrower owes Lender
TWO HUNDRED THIRTY TWO THOUSAND TWO HUNDRED and 00/100

Dollars (U.S. $ 232,200.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2046 .
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[X] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

DOC ID #: 00015355520211006

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

CLARK :

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

4946 DROUBAY DRIVE, LAS VEGAS

[Street/City]

Nevada 89122 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

DOC ID #: 00015355520211006

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums

any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

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Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S.$ 300.00

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

_____(Seal)
NELSON M. PRITZ -Borrower

_____(Seal)
SUSAN PRITZ -Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

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STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 11-17-06 by
Nelson M. Pritz and Susan Pritz

NICOLE PINERO
Notary Public, State of Nevada
Appointment No. 04-86860-1
My Appt. Expires Feb 4, 2008

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

Prepared by: NATALIA GENOV

COUNTRYWIDE HOME LOANS, INC.

Branch #: 0009164
5613 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE, CO 80111
Phone: (720)200-6000
Br Fax No.: (720)200-7217

DATE: 11/17/2006
CASE #:
DOC ID #: 00015355520211006
BORROWER: NELSON M. PRITZ
PROPERTY ADDRESS: 4946 DROUBAY DRIVE
LAS VEGAS, NV 89122

LEGAL DESCRIPTION EXHIBIT A

FHA/VA/CONV
• Legal Description Exhibit A
1D955-NV (07/03)(d)

APN 00242

EXHIBIT "ONE"

Parcel I:

Lot 168 of Final Map Of Silver Springs - Unit A, as shown by map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272, in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress, and enjoyment upon and over that portion of said subdivision delineated on the plat as "Private Street and P.U.E." and "Common Elements Lots" and as further described in the Covenants, Conditions, and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records, and as same may by amended from time to time.

Assessor's Parcel No: 161-26-111-133

DOC ID #: 00015355520211006

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this SEVENTEENTH day of NOVEMBER, 2006 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

4946 DROUBAY DRIVE
LAS VEGAS, NV 89122

[Property Address]

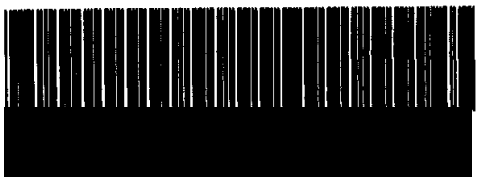
The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as

SILVER SPRINGS

[Name of Planned Unit Development]



APP0002443

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

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E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

_____ (Seal)
NELSON M. PRITZ - Borrower

_____ (Seal)
SUSAN PRITZ - Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

Prepared by: NATALIA GENOV

COUNTRYWIDE HOME LOANS, INC.

Branch #: 0009164
5613 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE, CO 80111
Phone: (720)200-6000
Br Fax No.: (720)200-7217

DATE: 11/17/2006
BORROWER: NELSON M. PRITZ
CASE #:
LOAN #: [redacted]
PROPERTY ADDRESS: 4946 DROUBAY DRIVE
LAS VEGAS, NV 89122

DISCLOSURE STATEMENT ABOUT MERS

Mortgage Electronic Registration Systems, Inc. (MERS) is named on your mortgage as the mortgagee in a nominee capacity for
COUNTRYWIDE HOME LOANS, INC.
(Lender). MERS is a company separate from your lender that operates an electronic tracking system for mortgage rights. MERS is not your lender; it is a company that provides an alternative means of registering the mortgage lien in the public records. MERS maintains a database of all the loans registered with it, including the name of the lender on each loan. Your lender has elected to name MERS as the mortgagee in a nominee capacity and record the mortgage in the public land records to protect its lien against your property.

Naming MERS as the mortgagee and registering the mortgage on the MERS electronic tracking system does not affect your obligation to your Lender, under the Promissory Note.

FHA/VA/CONV
● MERS Disclosure Statement
1D5421US (12/99).01(d)

DOC ID #: 00015355520211006

ADJUSTABLE RATE RIDER
(LIBOR Index - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this SEVENTEENTH day of NOVEMBER, 2006 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

4946 DROUBAY DRIVE, LAS VEGAS, NV 89122

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

DOC ID #: 00015355520211006

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.450 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of DECEMBER, 2008 , and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding SIX & 65/100 percentage point(s) (6.650 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.950 % or less than 8.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE & ONE-HALF percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 15.450 % or less than 8.450 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

CONV
• BC - ARM Rider
1U193-US (12/05)

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

DOC ID #: 00015355520211006

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

NELSON M. PRITZ (Seal) - Borrower

SUSAN PRITZ (Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

CONV
• BC - ARM Rider
1U193-US (12/05)

EXHIBIT A-3

Bank NOD

(2)

20080429-0004556

Fee: $15.00
N/C Fee: $0.00
04/29/2008 13:53:29
T20080074109
Requestor:
FIDELITY NATIONAL DEFAULT SOLUTIONS TL
Debbie Conway JLB
Clark County Recorder Pgs: 2

~~RECORDING REQUESTED BY:~~
WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, RGV-D7-450
Richardson, TX 75082

35

Attn:
TS No. 08-41793
Title Order No. G831827
Investor/Insurer No. 153555202
APN No. 16126111133

NEVADA IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, is acting as an agent for the Beneficiary under a Deed of Trust dated 11/17/2006, executed by NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as beneficiary recorded 11/22/2006, as Instrument No. 0003799 (or Book 20061122, Page) of Official Records in the Office of the County Recorder of Clark County, Nevada. Said obligation including ONE NOTE FOR THE ORIGINAL sum of $232,200.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 01/01/2008 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES, PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY, INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 12/01/2046 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has executed and delivered to RECONTRUST COMPANY a written Declaration of Default and Demand for sale, and has deposited with RECONTRUST COMPANY such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occured. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.
To determine if reinstatement is possible and the amount, if any, to cure the default, contact: Countrywide Home Loans, Inc, c/o RECONTRUST COMPANY, 2380 Performance Dr, RGV-D7-450, Richardson, TX 75082, PHONE: (800) 281-8219

APN 000253

RECONTRUST COMPANY, as agent for the Beneficiary
By: FIS DEFAULT SOLUTIONS, as Agent

By: _____
Jesse Bewley

State of Nevada
County of Clark

On APR 29 2008 before me, Joseph Noel, Notary Public, personally appeared Jesse Bewley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
JOSEPH NOEL
Appt. No. 07-3182-1
My Appt. Expires April 14, 2011

Joseph Noel
Exp - 4-14-2001

APN 00234 APP000234

EXHIBIT A-4

Bank NOS

Ex. A-4

20080804-0000675
Fee: $16.00 RPTT: $0.00
N/C Fee: $0.00
08/04/2008 08:39:14
T20080164898
Requestor:
LSI TITLE AGENCY INC.
Debbie Conway ARO
Clark County Recorder Pgs: 3

WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, RGV-D7-450
Richardson, TX 75082

TS No. 08-41793
Title Order No. G831827

APN No.:161-26-111-133

NEVADA NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 11/17/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that RECONTRUST COMPANY, as duly appointed trustee pursuant to the Deed of Trust executed by NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS, dated 11/17/2006 and recorded 11/22/2006, as Instrument No. 0003799, in Book 20061122, Page , of Official Records in the office of the County Recorder of CLARK County, State of Nevada, will sell on 08/20/2008 at 01:00 PM, at At the front entrance to Nevada Legal News located at 930 S. 4TH Street, Las Vegas, NV. at public auction, to the highest bidder for cash(in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and as more fully described in the above referenced Deed of Trust. The street address and other common designation, if any, of the real property described above is purported to be: 4946 DROUBAY DRIVE, LAS VEGAS, NV 89122. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The total amount of the unpaid balance with interest thereon of the obligation secured by the property to be sold plus reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $248,770.96. It is possible that at the time of sale the opening bid may be less than the total indebtedness due.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter or right. Said sale will be made, in an "AS IS" condition, but without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid principal of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust.

Form nvnos (07/01)

DATED: July 31, 2008
RECONTRUST COMPANY, Trustee
2380 Performance Dr, RGV-D7-450
Richardson, TX 75082
Phone (800) 281-8219
Sale Information (626) 927-4399

By: Sandie Salinas-Martinez
Sandie Salinas-Martinez, Team Member

RECONTRUST COMPANY is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

Form nvnos (07/01)

APN:00257

TS # 08-41793

PUB# 2826483

LOAN TYPE: CONV

"EXHIBIT A"
LEGAL DESCRIPTION

PARCEL I:LOT 168 OF FINAL MAP OF SILVER SPRINGS-UNIT A, AS SHOWN BY MAP TEHREOF ON FILE IN BOOK 91 OF PLATS, PAGE 36, AND AS AMENDED BY CERTIFICATE OF AMENDMENT RECORDED APRIL 27, 2001 IN BOOK 20010427 AS DOCUMENT NO. 00272, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.PARCEL II:A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT UPON AND OVER TAHT PORTION OF SAID SUBDIVISION DELINEATED ON THE PLAT AS "PRIVATE STREET AND P.U.E." AND "COMMON ELEMENTS LOTS" AND AS FURTHER DESCRIBED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS RECORDED SEPTEMBER 17, 2001 IN BOOK 20010917 AS DOCUMENT NO. 01331 OF OFFICIAL RECORDS, AND AS SAME MAY BY AMENDED FROM TIME TO TIME.

APN:161-26-111-133

Form legaldesc (07/01)

EXHIBIT A-5

Assignment

Inst #: 201111290000514
Fees: $18.00
N/C Fee: $25.00
11/29/2011 08:05:59 AM
Receipt #: 990403
Requestor:
CORELOGIC
Recorded By: OSA Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recording Requested By:
Bank of America
Prepared By: **Youda Crain**
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# **20815355520216690**
Tax ID: **161-26-111-133**
Property Address:
4946 Droubay Dr
Las Vegas, NV 89122-8132
NV0-ADT 15718968 11/21/2011

This space for Recorder's use

MIN #: 1000157-0007499627-9 MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474** does hereby grant, sell, assign, transfer and convey unto **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-25** whose address is **101 BARCLAY ST - 4W, NEW YORK ,NY 10286** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:	**MERS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.**
Made By:	**NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS**
Trustee:	**RECON TRUST**

Date of Deed of Trust: **11/17/2006** Original Loan Amount: **$232,200.00**

Recorded in **Clark County,NV** on: **11/22/2006**, book **20061122**, page **0003799** and instrument number **N/A**

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on 11/22/11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____
Edward Gallegos Assistant Secretary

APN 000260

State of **California**
County of **Ventura**

On NOV 22 2011 before me, Roudabeh Beygzadeh-Elias, Notary Public, personally appeared Edward Gallegos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ROUDABEH BEYGZADEH-ELIAS
Commission # 1939621
Notary Public - California
Los Angeles County
My Comm. Expires Jun 4, 2015

Notary Public: Roudabeh Beygzadeh-Elias (Seal)
My Commission Expires: June 4, 2015

DocID# **20815355520216690**

EXHIBIT A-6

Trustee's Deed

Inst #: 201210090001817
Fees: $17.00 N/C Fee: $0.00
RPTT: $28.05 Ex: #
10/09/2012 02:09:10 PM
Receipt #: 1336821
Requestor:
ALESSI & KOENIG LLC
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

(2)
-1

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool I, LLC
2920 N. Green Valley Parkway
Building 5, St 525
Henderson, NV 89014

A.P.N. No.**161-26-111-133** TS No. **13855-4946**

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool I, LLC**
The Foreclosing Beneficiary herein was: **Squire Village at Silver Springs Community Association**
The amount of unpaid debt together with costs: **$5,356.00**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$5,358.00**
The Documentary Transfer Tax: **$28.05**
Property address: **4946 Droubay Dr, Las Vegas, NV 89122**
Said property is in [ ] unincorporated area: City of **Las Vegas**
Trustor (Former Owner that was foreclosed on): **Nelson & Susan Pritz**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 6, 2009** as instrument number **00299**, in **Clark** County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool I, LLC** (Grantee), all its right, title and interest in the property legally described as: **Lot 168**, as per map recorded in Book **91**, Pages **36** as shown in the Office of the County Recorder of **Clark** County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **September 19, 2012** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for **Alessi&Koenig, LLC**

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 09/26, 12

WITNESS my hand and official seal.
(Seal)

(Signature)

MARY INDALECIO
Notary Public-State of Nevada
APPT. NO. 12-8340-1
My App. Expires July 12, 2016

APN 00263

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 161-26-111-133
   b.
   c.
   d.
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 5,358.00
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: $ 5,358.00
d. Real Property Transfer Tax Due $ 28.05

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi&Koenig, LLC	Print Name: SFR Investment Pool I, LLC
Address: 9500 w Flamingo 205	Address: 2920 N. Green Valley P.B5,St525
City: Las Vegas	City: Henderson
State: NV Zip: 89147	State: NV Zip: 89014

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC	Escrow # N/A Foreclosure
Address: 9500 W Flamingo 205	
City: Las Vegas	State:NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

APN 00264

Inst #: 201308280000964
Fees: $17.00
N/C Fee: $0.00
08/28/2013 08:51:36 AM
Receipt #: 1749994
Requestor:
ALESSI & KOENIG LLC
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 161-26-111-133 Trustee Sale # **36526**

A38

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Squire Village at Silver Springs Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **4946 DROUBAY DR, Las Vegas, NV 89122-8132** and more particularly legally described as: **SILVER SPRINGS-UNIT A LOT 168** Book **91** Page **36** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **S F R INVESTMENTS POOL I L L C**

The mailing address(es) is: **5030 PARADISE RD #B-214, LAS VEGAS, NV 89119-1225**

The total amount due through today's date is: **$1,760.14**. Of this total amount **$1,683.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **$77.14** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: AUG 19 2013

By: _____
Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **Squire Village at Silver Springs Community Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN to before me on AUG 22 2013 by Huong Lam.

(Seal)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

(Signature)
NOTARY PUBLIC

APN 000285

EXHIBIT A-7

Substitution of Trustee

Inst #: 20180924-0002288
Fees: $40.00
09/24/2018 03:23:26 PM
Receipt #: 3518821
Requestor:
SERVICELINK TITLE AGENCY IN
Recorded By: CDE Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

APN: 161-26-111-133
Recording Requested By
LSI Title Agency - FIS Default Solutions
Fidelity National Title

When recorded, mail to:
Zieve, Brodnax & Steele, LLP
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

TS No.: 17-49848

SUBSTITUTION OF TRUSTEE

WHEREAS, NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, and **RECON TRUST** was the original Trustee, and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS** was the original Beneficiary under that certain Deed of Trust dated **11/17/2006** and recorded on **11/22/2006,** in book **20061122,** page **0003799** Official Records **of Clark County, Nevada;** and **WHEREAS, The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25** , the undersigned is the present Beneficiary under said Deed of Trust, and **WHEREAS** the undersigned desires to substitute a new Trustee under said Deed of Trust in the place and instead of said original Trustee or previously substituted Trustee;

NOW, THEREFORE, the undersigned hereby substitutes **SABLES, LLC, a Nevada limited liability company,** whose address is **3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169** as Successor Trustee under said Deed of Trust.
Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: DEC 15 2017

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25 by Specialized Loan Servicing LLC, its attorney-in-fact

By: Mark McCloskey
Its: Assistant Vice President

State of Colorado
County of Douglas

The foregoing instrument was acknowledgment before me this DEC 15 2017 by Mark McCloskey Assistant Vice President of Specialized Loan Servicing LLC, a Delaware Limited Liability Company, on behalf of the LLC.

(Notary's official Signature)

12/3/20
(Commission Expiration)

AGNES BRADSHAW
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084040359
MY COMMISSION EXPIRES 12/03/2020

APN 161-26-111-133

EXHIBIT A-8

Bank NOD

Inst #: 20190116-0000389
Fees: $290.00
01/16/2019 08:03:10 AM
Receipt #: 3609639
Requestor:
SERVICELINK TITLE AGENCY IN
Recorded By: OSA Pgs: 9
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

APN: **161-26-111-133**

WHEN RECORDED MAIL TO:
Sables, LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

TS No. : 17-49848

NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is **$248,538.11** as of **1/14/2019** and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: **SABLES, LLC, a Nevada limited liability company** is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated **11/17/2006**, executed by **NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS**, as trustor to secure obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS**, as Beneficiary, recorded **11/22/2006, as Instrument No. 20061122-0003799,** of Official Records in the office of the County recorder of **Clark**, County, **Nevada** securing, among other obligations including

One note(s) for the Original sum of **$232,200.00**, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 5/1/2009, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

T.S. No.: 17-49848

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25
c/o Specialized Loan Servicing LLC
c/o SABLES, LLC, a Nevada limited liability company
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Beneficiary Phone: (800)315-4757
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Loss Mitigation Department
800-306-6059

Property Address: **4946 DROUBAY DRIVE, LAS VEGAS, NV 89122**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

T.S. No.: 17-49848

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: http://portal.hud.gov.

Dated: 1/14/2019

SABLES, LLC, a Nevada limited liability company, as Trustee
Sables, LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Phone: (702) 948-8565

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/14/2019, before me, A.J. Buckelew, Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

Affidavit of Authority
(Nevada Revised Statue § 107.080 as amended effective June 1, 2013)

Re: Borrowers Name: NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT
TENANTS
Property Address: 4946 DROUBAY DRIVE, LAS VEGAS, NV 89122

I, Ami McKernan, am a(n) Second Assistant Vice President of Specialized Loan Servicing LLC ("SLS"), the current loan servicing agent ("Servicer" for the current Beneficiary of the Deed of Trust described in the Notice of Default and Election to Sell to which this affidavit is attached.

SLS maintains records for the Beneficiary in its capacity as Servicer. As part of my job responsibilities for SLS, I am familiar with the type of records maintained by SLS. The information in this affidavit is taken from SLS's business records. I have personal knowledge of SLS's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of SLS's regularly conducted business activities; and (c) it is the regular practice of SLS to make such records.

1. The following facts are based upon my personal review of documents that are of Official Records in the State of Nevada and/or my own personal knowledge that has been acquired by my personal review of the business records of SLS.

1(a). The full name and business address of the current Trustee of record for the Deed of Trust is: **Sables LLC, a Nevada limited liability company, 9435 West Russell Road, Suite 120 Las Vegas, NV 89148**

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is: **The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25 c/o Specialized Loan Servicing LLC, 8742 Lucent Boulevard, Suite 300, Highlands Ranch, CO 80129**

1(c). The full name and business address of the current Beneficiary for the obligation or debt secured by the Deed of Trust is: **The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS,**

Inc., Asset-Backed Certificates, Series 2006-25 c/o Specialized Loan Servicing LLC, 8742 Lucent Boulevard, Suite 300, Highlands Ranch, CO 80129

1(d). The full name and business address of the current Servicer for the obligation or debt secured by the Deed of Trust is: **Specialized Loan Servicing LLC, 8742 Lucent Boulevard, Suite 300, Highlands Ranch, CO 80129**

2. From my review of the documents that are of Official Records in the State of Nevada and/or the business records of SLS and a Title Guaranty or Title Insurance Policy issued by a Title Insurer or Title Agent authorized to do business in the State of Nevada pursuant to Chapter 629A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust is:

	Assign To Name:	Recorded On Date:	Instrument Number:
2(a)	The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25	11/29/2011	201111290000514

3. The current Beneficiary under the Deed of Trust, the successor in interest to the Beneficiary or the current Trustee is in actual or constructive possession of the Note secured by the Deed of Trust.

4. From my review of the documents that are of Official Records in the State of Nevada and/or the business records of SLS, the current Trustee has authority to exercise the power of sale with respect to the property encumbered by the Deed of Trust, pursuant to instruction from the current Beneficiary of record and current holder of the Note secured by the Deed of Trust.

5. From my review of the documents that are of Official Records in the State of Nevada and/or the business records of SLS, the Beneficiary, Servicer of the obligation, or an attorney

representing the Beneficiary or Servicer has sent to NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT

TENANTS a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone numbers that NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT

TENANTS may call to receive the most current amounts due and recitation of the information in this affidavit.

6. The Borrower or Obligor of the loan secured by the Deed of Trust may call Specialized Loan Servicing LLC at 1-800-315-4757 to receive the most current amounts due and recitation of the information contained in this affidavit.

I declare under penalty of perjury of the laws of the State of Colorado that the foregoing is true and correct and that this affidavit was executed on DEC 10 2018.

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25
By: Specialized Loan Servicing LLC, its attorney in fact

By: _____

Name: Ami McKernan

Its: Second Assistant Vice President

State of Colorado
County of Douglas

The foregoing instrument was acknowledged before me this DEC 10 2018 by Ami McKernan Second Assistant Vice President of Specialized Loan Servicing LLC, a Delaware Limited Liability Company, on behalf of the LLC.

_____
(Notary's Official Signature)

10/01/2022
(Commission Expiration)

SHARON LAWFIELD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184038795
MY COMMISSION EXPIRES 10/01/2022

NEVADA DECLARATION OF COMPLIANCE
NV SB 321 (2013) Sec. 11

Borrower(s): NELSON M PRITZ and SUSAN PRITZ
Property Address: 4946 DROUBAY DRIVE
LAS VEGAS, NV 89122
Trustee Sale Number: 17-49848

The undersigned, as authorized agent or employee of the mortgage servicer named below, declares:

That this Declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower(s)' loan status and loan information.

1. [ ] The mortgage servicer has contacted the borrower(s) to assess the borrower(s)' financial situation, provide the toll free number to enable the borrower(s) to find a housing counselor certified by HUD, and explore options for the borrower(s) to avoid foreclosure as required by SB 321 (2013) Sec. 11(2). Initial contact was made on _____, 201___; *or*

2. [✓] The mortgage servicer has tried with due diligence to contact the borrower(s) as required by SB 321 (2013) Sec. 11(5), but has not made contact despite such due diligence. The due diligence efforts were satisfied on 10/1/2018; *or*

3. The requirements of SB 321 (2013) Sec. 11 do not apply, because:

   a. [ ] The mortgage servicer is exempt pursuant to SB 321 (2013) Sec. 7.5 by virtue of being a financial institution as defined in NRS 660.045 that has foreclosed on 100 or fewer owner-occupied real properties (as defined in NRS 107.086) in Nevada in its last annual reporting period.

   b. [ ] The individual(s) do not meet the definition of a "borrower" as set forth in SB 321 (2013) Sec. 3.

   c. [ ] The loan underlying the security interest that is the subject of this foreclosure is not a "residential mortgage loan" (as defined in SB 321 (2013) Sec. 7) which is primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing (as defined in NRS 107.086).

   d. [ ] The mortgage servicer is a signatory to a consent judgment filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361

RMC, as set forth in SB 321 (2013) Sec. 16, and is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower(s) while the consent judgment is in effect.

In light of the foregoing, the mortgage servicer authorizes the trustee to submit the attached Notice of Default to be recorded, and to exercise the power of sale, as all pre-foreclosures notices required by NRS 107.080(2)(c)(3) and SB 321 (2013) Sec. 10(1) were timely sent per statute and (if applicable and the mortgage servicer is not otherwise exempt from said requirements) the mortgage servicer has complied with the requirements set forth in SB 321 (2013) Secs. 12 & 13 regarding the acceptance and processing of foreclosure prevention alternative applications.

Specialized Loan Servicing LLC

Dated: OCT 10 2018

Signature of Agent or Employee

Ami McKernan

Printed Name of Agent or Employee

RECORDING LETTER

Date: January 16, 2019

Zieve, Brodnax, & Steele LLP (fka LAW OFFICES OF LES ZIEVE)
30 Corporate Park, Suite 450
Irvine, CA 92606

Attn:

Your Order No: 17-49848
Our Order No: 170454155
Loan Number: [redacted]7013
TSG Liability: $250,000.00
TSG Premium: $540.00

The following documents in connection with the above referenced order number were recorded:

RECORDS OF CLARK COUNTY

Document	Date	Instrument	Book	Page	Fee
NOD	01/16/19	201901160000389			$290.00
SUB	09/24/18	201809240002288			$40.00

Mailings To Follow.

Sincerely,

Vangie Ortega
Title Officer

OPPM
ZBS LAW, LLP
J. Stephen Dolembo, Esq.
Nevada Bar No. 9795
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148
Tel: (702) 948-8565
Fax: (702) 446-9898
sdolembo@zbslaw.com
Attorneys for Defendants The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25, a national bank; SABLES, LLC, a foreign limited liability company,

Defendants.

CASE NO.: A-19-790150-C
DEPT NO.: XXIX

DEFENDANTS' OPPOSITION TO SFR INVESTMENTS POOL 1, LL'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendants The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC and hereby submit their Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment.

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This Opposition is based on the attached Memorandum of Points and Authorities, the Exhibits and Declaration filed herewith, all papers and pleadings on file herein, all judicially noticed facts, and any oral or documentary evidence that may be submitted at a hearing on this matter.

DATED this 6th day of April, 2020.

ZBS LAW, LLP

/s/J, Stephen Dolembo, Esq.
J. Stephen Dolembo, Esq.
Nevada Bar No. 9795
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
sdolembo@zbslaw.com
Attorneys for Defendants *The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an action for quiet title and declaratory relief concerning real property known as 4946 Droubay Drive, Las Vegas, NV 89122 (APN: 161-26-111-133) (the "Property") following a homeowner association lien foreclosure sale conducted on September 19, 2012 ("Lien Sale"). Non-party Alessi & Koenig, LLC ("A&K") conducted the Lien Sale on behalf of non-party Squire Village Homeowners Association ("HOA" or "Squire Village").

Defendant, The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 ("BNYM" or "Defendant"), is the holder of a first Deed of Trust on the Property and is seeking a declaration that its Deed of Trust was not extinguished by the Lien Sale. Plaintiff SFR Investments Pool 1, LLC ("SFR" or "Plaintiff") purchased the Property at the Lien Sale for just $5,258.00.

On April 4, 2018, BNYM filed a complaint for quiet title in the United States District Court, District of Nevada (Case No. 2:18-cv-00599-APG-CWH). In that matter, SFR moved to dismiss, contending that BNYM's claim was time-barred. The district court ultimately agreed and

on October 1, 2018, issued an order dismissing the action as untimely. *See*, October 1, 2018 Order, attached to BNYM's January 30, 2020 Motion for Summary Judgment as **Exhibit A**. In the order, the district court made no determination as to the effect of the Lien Sale on BNYM's deed of trust.

Following receipt of that order, BNYM commenced foreclosure proceedings through its foreclosure trustee, Sables, LLC ("Sables"), pursuant to the Note and Deed of Trust. BNYM is entitled to do so, because prior to the HOA's Lien Sale, Miles Bauer Bergstrom & Winters, LLP ("MBBW"), counsel for BNYM's predecessor-in-interest, tendered the super-priority portion of the HOA Lien to the HOA's foreclosure trustee, A&K. While A&K wrongfully rejected it, the effect of the tender means that the HOA did not foreclose on a super-priority lien, and thus the Lien Sale did not extinguish the Deed of Trust. In addition to the MBBW tender, the former titleholders made payments to the A&K, on behalf of the HOA, in an amount which exceeded the maximum statutory superpriority lien. After paying its own fees and costs, A&K remitted the excess to the HOA, which applied the funds to the superpriority lien amount.

On February 27, 2019, Plaintiff filed the instant action for: 1) Cancellation of Written Instrument relating to an April 24, 2008 Notice of Default and a January 15, 2019 Notice of Default, both recorded pursuant to the Deed of Trust; 2) Cancellation of Written Instrument as to the Deed of Trust, and 3) Violation of NRS 107.028 as to Sables.[1]

For the reasons set forth below, BNYM respectfully requests that this Court deny SFR's Motion for Summary Judgment and declare that the first Deed of Trust was not extinguished by the Lien Sale.

II. STATEMENT OF UNDISPUTED FACTS

As BNYM's Motion for Summary Judgment filed on January 30, 2020 contains a complete recitation of the undisputed pertinent facts in this matter, BNYM incorporates by reference the facts and supporting exhibits included in the aforementioned motion, as well as BNYM's request for judicial notice ("RFN") also filed on January 30, 2020.

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[1] On May 28, 2019, Sables filed a Declaration of Non-Monetary Status which SFR did not object to. As such, Sables was not required to participate under NRS 107.029 and is entitled to summary judgment as to Plaintiff's claim for alleged violation of NRS 107.028.

III. STANDARD OF REVIEW

In evaluating a motion for summary judgment, courts must view all facts and draw all inferences in the light most favorable to the nonmoving party. *See Amerson v. Clark Cnty*., 995 F. Supp. 2d 1155, 1159 (D. Nev. 2014) (citing *Kaiser Cement Corp. v. Fischbach & Moore, Inc.,* 793 F.2d 1100, 1103 (9th Cir. 1986)). Summary judgment shall be granted if the moving party demonstrates that the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Zoslow v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).

IV. ARGUMENT

A. SFR'S CLAIM FOR CANCELLATION OF INSTRUMENT HAS NO MERIT AND IS NOT CONTEMPLATED UNDER NRS 106.240.

SFR's cause of action for cancellation of written instrument asserts that NRS 106.240 serves to extinguish BNYM's deed of trust because the loan was allegedly accelerated over ten years ago by language contained in the Countrywide Notice of Default. However, as detailed in BNYM's own motion for summary judgment, a plain reading of the statute does not support SFR's contention. NRS 106.240 provides:

> The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

NRS 106.240.

The Nevada Supreme Court has weighed in on this issue in *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074, (2001). In that case, the Nevada Supreme Court considered the effect of this statute on notes executed on May 11, 1982, with a maturity date of May 14, 1984 - two years later. In its ruling, the Court held: "it is undisputed that no written agreements to extend the notes and deeds of trust were ever executed or recorded. Therefore, under the plain language of

the statute, the deeds of trust were conclusively presumed to have been satisfied in 1994, which is ten years after the notes became due." *Id*., at 94, 1077.

The Court ruled that the notes were extinguished by operation of statute on May 14, 1994 – ten years after the maturity date stated in the terms of the note instruments. Importantly, the statute and the Court's holding refer only to "written agreements to extend the maturity of the notes and deed of trust," but the statute is silent as to notice of acceleration outside the loan documents, and the Court did not make any ruling pertaining to notices of acceleration.

In its decision, the Nevada Supreme Court noted, "Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." *Id*., at 95, 1077. Notably, the statute provides for discharge of the debt and lien "at the expiration of 10 years after the debt secured by the mortgage or deed of trust **according to the terms thereof** … become wholly due." (emphasis added). A plain reading of the qualifier "according to the terms thereof" leads one to refer to the loan documents for terms setting the maturity date of the loan. The statute accounts for written extension of the maturity date, but does not refer to anything else outside of the terms of the note or deed of trust. Here, the deed of trust evidences a loan maturity date of December 1, 2046. See, RFN, **Exhibit 1** at p. 2. BNYM has not executed, agreed, or recorded anything to alter the terms of the loan instruments, or the maturity date set forth therein. Therefore, according to the terms of the loan instruments, NRS 106.240 does not serve to extinguish the deed of trust until ten years after the maturity date as set forth in the note – December 1, 2056.

Interestingly, assuming SFR's reading to be the correct one (which it clearly is not), the Borrower's loan balance in this case had not been accelerated as of at least October 19, 2013, as clearly established by documents produced by BNYM during discovery. *See*, Motion for Summary Judgment at **Exhibit H**.

As such, even with SFR's strained reading of NRS 106.240, the debt at issue here would not be presumed to be discharged until October 20, 2023, *at the earliest*. Because SFR improperly attempts to extinguish BNYM's lien without any controlling guidance to support that conclusion, BNYM is entitled to summary judgment as to SFR's cause of action seeking cancellation of the Deed of Trust.

B. THE CONCLUSIVE PRESUMPTION UNDER NRS 106.240 MAY BE CHALLENGED IN EQUITY.

A reasonable interpretation of NRS 106.240 is that it was meant to provide a means to clear old, unreleased liens from title where a debt has been satisfied, or otherwise is not being pursued by a creditor. The provision in the statute for a lien being extinguished ten years after the debt becomes wholly due *according to the terms thereof*, leads to this reasonable interpretation, that the statute is intended as a mechanism for clearing relic liens from title long after a debt was wholly due. Such is not the case at hand, where BNYM can establish that the debt has not been satisfied. BNYM has not been sitting idly, but has been and still is actively pursuing its remedy of foreclosure. In fact, BNYM's predecessor, Countrywide, was pursuing foreclosure in 2009 but was unable to proceed due to the Borrowers' filing for bankruptcy protection.

In its Motion, SFR states that "the Bank has not produced any competent evidence that shows timely unequivocal deceleration of the loan." While deceleration is not a requirement under NRS 106.240, SFR's statement is simply not true. BNYM has produced evidence of an August 25, 2008 loan modification agreement which is proof positive that the loan had been decelerated after the April 24, 2008 notice of default was recorded. *See*, Loan Modification Agreement, attached hereto as **Exhibit 1**. There is no further evidence that the loan balance accelerated until at least October 19, 2013. *See*, Motion for Summary Judgment at **Exhibit H**.

Equity demands that any conclusive presumption under the statute does not apply under these circumstances. The Nevada Supreme Court has held that parties can challenge statutory conclusive presumptions in equity. When analyzing the conclusive presumption of recitals in foreclosure deeds pursuant to NRS Chapters 107 and 116, the Nevada Supreme Court held "the Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals." *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016). In its decision, the Court referred to other case law and noted "cases elsewhere to have addressed comparable conclusive-or presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief in a proper case; rather, such recitals are "conclusive*, in the absence of grounds for equitable relief.*" *Id.* at 1111-12, citing *Holland v. Pendleton Mortg. Co.*, 61

Cal.App.2d 570, 143 P.2d 493, 496 (1943). The same principles should apply to the instant case, especially where the debt has not been satisfied, as it is actively being pursued by BNYM. SFR's motion must be denied accordingly.

C. THE HOA DID NOT FORECLOSE A SUPER-PRIORITY LIEN, SO THE LIEN SALE DID NOT DISTURB THE DEED OF TRUST.

The HOA's pre-sale account ledger for this homeowners association at the time the February 6, 2009 Notice of Lien was recorded, establish that the super-priority portion of the HOA lien was satisfied prior to the Lien Sale.

NRS 116.3116(2) defines the super-priority portion of the HOA lien which is prior to a first deed of trust, providing in relevant part:

> The lien is also prior to all security interest described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budge adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately *preceding the institution of an action to enforce the lien* unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. (emphasis added).

The super-priority lien may consist of up to nine months of assessments prior to the Notice of Lien being recorded, plus maintenance and nuisance abatement charges, but does not include collection costs. The Nevada Supreme Court confirmed this in its decision in *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 67 (Nev., 2016) ("Ikon"), clarifying that "the super-priority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred."

The HOA ledger provides that during the nine months preceding the Notice of Lien, the HOA collected monthly assessments equaling $84.00 per month. *See*, HOA Ledger, attached to BNYM's Motion for Summary Judgment as **Exhibit I**. As a result, 9 months of assessments - the maximum super-priority lien amount – equaled $756.00 in this case. The HOA's pre-sale ledger which provides a breakdown of the amounts constituting the HOA lien, establishes that no nuisance or abatement charges were included in the HOA lien, so the super-priority lien was at most $756.00. *Id.* A&K recorded the Notice of Lien on February 6, 2009, which is the first action

to enforce the lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (Nev., 2017) ("*Saticoy Bay Gray Eagle*"). With a monthly assessment rate of $84.00, or $756.00 per nine months, Miles Bauer's February 18, 2010 tender of $756.00 satisfied the $756.00 super-priority lien accruing immediately prior to the Notice of Lien. *See*, BNYM's Motion for Summary Judgment at **Exhibit C**. As the $756.00 tender towards the HOA lien satisfied the super-priority lien amount of $756.00, no super-priority lien was foreclosed at the Lien Sale.

On September 13, 2018, the Nevada Supreme Court confirmed this conclusion in *Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 134 Nev., Adv. Op 72 (2018). In that case, the court held, "that a first deed of trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust," *Id*. at 2. In reaching this conclusion, the court analyzed the same 9-month calculation by Miles Bauer, the same Miles Bauer cover letter and tender, and the same wrongful rejection as is presented here. The court ultimately found the following:

> Because Bank of America's valid tender discharged the superpriority portion of the HOA's lien, the HOA's foreclosure on the entire lien resulted in a void sale as to the superpriority portion. Accordingly, the HOA could not convey full title to the property, as Bank of America's first deed of trust remained after foreclosure.

Id. at 13-14.

For the reasons set forth above, a declaration that the Deed of Trust was not extinguished by the Lien Sale is warranted under Nevada law and SFR's motion should be denied.

D. THE BORROWERS' POST-NOTICE OF LIEN PAYMENTS TO THE ASSOCIATION WERE SUFFICIENT TO EXTINGUISH THE STATUTORY SUPERPRIORITY LIEN.

1. The Borrowers' Post-Notice of Lien Payments To The Association And Its Agent Satisfied The Maximum Statutory Superpriority Lien Amount.

As detailed above, the Nevada Supreme Court has clarified that an HOA's super-priority lien may consist of up to nine months of assessments prior to the Notice of Lien being recorded, plus maintenance and nuisance abatement charges, but does not include collection costs. *Ikon* at 67.

The Nevada Supreme Court has acknowledged that a lender may preserve its interest by determining "the precise super priority amount" and tendering it "in advance of the sale." *SFR* at 418. The same holds true for payments made by the homeowner in certain situations, as is the case is here. *9352 Cransebill Trust, et al v. Wells Fargo Bank N.A.*, 136 Nev. Adv. Op. 8 at p. 2 (March 5, 2020) ("The homeowner has the ability to cure the default as to the superpriority portion of an HOA lien. Allocating partial payments by a homeowner to her HOA depends on the express or implied intent and actions of the homeowner and the HOA and, if indeterminate, an assessment of the competing equities involved.") ("*Cransebill Trust*"); *See also*, *Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank*, 408 P.3d 558 (Table), 2017 WL 6597154 (Nev. 2017) (Unpublished) ("*Golden Hill*"); *See also*, *SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A.*, 432 P.3d 172 (Table), 2018 WL 6609670 (Nev. 2018) (Unpublished).

There is no dispute that the Association's superpriority lien was limited to nine months of assessments which would have become due preceding the institution of an action to enforce the lien. The Nevada Supreme Court confirmed this, explaining that prior to the 2015 amendments, "[a] super-priority lien pursuant to NRS 116.3116(2) does not include an additional amount for the collection fees and foreclosure costs that an HOA incurs preceding a sale; rather, it is limited to an amount equal to nine months of common expense assessments." *Ikon* at 72.

Here, the Notice of Lien was recorded on February 6, 2009, which is the first action to enforce the lien. *Saticoy Bay Gray Eagle* at 231. Thus, pursuant to NRS 116.3116(2), the nine months of assessments coming due immediately prior to the recording of the Notice of Lien constitute the super-priority lien amount. In this case, during the nine months preceding the Notice of Lien being recorded, the Association's monthly assessments did not exceed $84.00, making the maximum superpriority lien amount $756.00 (9 x $84.00 = $756.00). *See*, BNYM's Motion for Summary Judgment at **Exhibit I**. Moreover, there were no nuisance abatement or maintenance fees for this Property. *Id.*

Once the Notice of Lien was recorded, the Borrower made payments to the Association's agent, A&K in the amount of $3,000.00, which exceeded the maximum superpriority lien amount. *See*, BNYM's Motion for Summary Judgment at **Exhibit D**. Further, the Association did not record a subsequent Notice of Delinquent Assessment Lien, so there could not have been a new

superpriority lien foreclosed upon at the association's Lien Sale. *Bank of America, N.A. v. Thomas Jessup, LLC*, 135 Nev. Adv. Op. 7 (March 7, 2019) at FN 3; *See also*, *Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank*, 408 P.3d 558 (Table), 2017 WL 6597154 (Nev. 2017) (Unpublished) ("Golden Hill").

2. The Borrowers' Post-Notice Of Lien Payments Were Applied By The Association To Past Due Assessments.

After the HOA's Notice of Lien was recorded, the Borrower's made a single payment to A&K in the amount of $3,000. *See*, BNYM's Motion for Summary Judgment at **Exhibit D**. After paying its own fees and costs, A&K remitted the remaining $1,110.00 to the HOA, which applied it to the Borrowers' past due assessments on March 2, 2010. Accordingly, as of the March 2, 2010 application of the Borrowers' payment, the Association's superpriority lien had been extinguished. Further, since the Association did not record a second Notice of Delinquent Assessment Lien, there could not have been a second superpriority lien involved at the Lien Sale. This very premise was considered and affirmed on appeal by the Nevada Supreme Court in *SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A.*, 432 P.3d 172 (Table), 2018 WL 6609670 (Nev. 2018) (Unpublished). In that case, the Nevada Supreme Court held that the homeowner's payments could satisfy the default as to the superpriority portion of an association's lien if the association allocated the homeowner's payments to assessments, which is what happened here.[2]

The Association did not foreclose upon a superpriority lien because such a portion did not exist as of March 2, 2010. Further, the association did not commence a second action to enforce a new defaulted portion of its lien by recording a second Notice of Delinquent Assessment Lien prior to the Lien Sale.

As a result of the payments made by the Borrowers which were applied by the Association to monthly assessments, the Association did not have a super-priority lien to foreclose upon.

[2] The Nevada Supreme Court has recently issued a published decision again confirming that a homeowner's payments can cure the default as to a superpriority lien. *Cranesbill Trust* at p. 2, p. 11. In fact, in *Cransebill Trust*, the Court clarified that the allocation of payment requirement depends on the intent of the parties and where intent could not be determined, an equitable analysis is required. *Id*. at p. 11. Equity clearly weights in favor of BNYM here, as it has been either working with the Borrower to collect on the loan or pursuing foreclosure since 2008.

There is no evidence to the contrary, and as a result, this Court can conclude that: 1) no super-priority lien was foreclosed upon at the Lien Sale; and 2) the first deed of trust was not extinguished by the sub-priority lien foreclosure. Simply put, SFR took title subject to BNYM's deed of trust and SFR is not entitled to summary judgment.

E. THE BORROWERS' PAYMENT OF THE SUPERPRIORITY LIEN AND BNYM'S PRE-LIEN SALE TENDER RENDERS SFR's *BONA FIDE* PURCHASER ARGUMENTS IRRELEVANT.

While not alleged in SFR's complaint, BNYM anticipates SFR will contend that it is a bona fide purchaser of this property. This is not true. BNYM's pre-sale tender satisfied the Association's superpriority lien as a matter of law on February 18, 2010. If there was any doubt, the Borrowers payments satisfied it a second time two weeks later, on March 2, 2010. These undisputable facts render SFR's *bona fide* purchaser claims irrelevant, as confirmed by the Nevada Supreme Court. *Saticoy Bay, LLC Series 2141 Golden Hill v. JPMorgan Chase Bank, N.A.*, No. 71246, 2017 WL 6597154 (Nev. Dec. 22, 2017) (unpublished). There, the Court noted the purchaser had not explained "how its putative BFP status could have revived the already-satisfied component of the HOA's lien." *Id*. at *1.

The *bona fide* purchaser rule is concerned with whether a purchaser takes title unaffected by "latent equity" "of which he has no notice, constructive or actual." *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105, 1116 (Nev. 2016) (quoting *Moore v. De Bernardi*, 220 P. 544, 547 (Nev. 1923)). It has no nexus to this case. BNYM's deed of trust survived because of its pre-Lien Sale tender and because the Borrowers' satisfied the superpriority lien, not because of any principles sounding in equity.

Here, BNYM's tender, in addition to the Borrower's payments, as applied to assessments by the Association, discharged the statutory super-priority lien as a matter of law. Since the default as to the HOA's superpriority lien had been cured prior to the HOA's foreclosure, SFR is not entitled to summary judgment as to any cause of action contained in its complaint. Rather, BNYM is entitled to a declaration that BNYM's deed of trust remains as a valid and enforceable lien on the Property that can be foreclosed up on pursuant to Nevada law.

///

///

V. CONCLUSION

For the reasons set forth above, BNYM respectfully requests that the Court deny SFR's Motion for Summary Judgment and declare that BNYM's Deed of Trust was not extinguished by way of either NRS 106.240 or the HOA's foreclosure.

Dated this 6th day of April, 2020

ZBS LAW, LLP

/s/ J. Stephen Dolembo, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ZBS LAW, LLP, and that on this 6th day of April, 2020, I did cause a true copy of **DEFENDANTS' OPPOSITION TO SFR INVESTMENTS POOL 1, LL'S MOTION FOR SUMMARY JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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Attorneys for Plaintiff SFR Investments Pool 1, LLC

/s/Sara Hunsaker
An employee of ZBS LAW, LLP

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

RECORDING REQUESTED BY:
Countrywide Home Loans Servicing LP

Attn Hope Department: SV-HRD S-L 400
Countrywide Way Simi
Valley, CA 93065

Loan # [redacted]

---FOR INTERNAL USE ONLY---

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), made this 12th day of August 2008, between NELSON M PRITZ, SUSAN PRITZ and Countrywide Home Loans Servicing LP (Lender), amends and supplements (1) the Mortgage, Deed of Trust, or Deed to Secure Debt (the Security Instrument), dated the 17th day of November 2006 and in the amount of $232,200.00 and (2) the Note bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as in the 'Property', located at 4946 DROUBAY DRIVE, LAS VEGAS, NV 89122.

The real property described being set forth as follows:

SAME AS IN SAID SECURITY INSTRUMENT

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND SETS THE MAXIMUM RATE THE BORROWER MUST PAY.

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (not withstanding anything to the contrary contained in the Note or Security Instrument):

1. As of the 1st day of October 2008, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U.S. $248,890.02 consisting of the upaid amount(s) loaned to Borrower by Lender plus any interest and other amounts capitalized.
2. The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of 8.450% from 1st day of September 2008 to 1st day of September 2013. The amount of the monthly payment is changed to $1,825.48 for the first 60 payments, and thereafter will be in an amount as calculated to the original terms of the Note. Borrower will continue to make monthly payments on the same day of each succeeding month until principal and interest are paid in full, except that, if not sooner paid, the final payment of Principal and interest shall be due and payable on the 1st day of December 2046 which is the present or extended Maturity Date. Borrower understands and agrees that Borrower's payment may increase when it begins to amortize in accordance with the note due to the modified amount of my principal balance.
3. If on the Maturity Date, Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date.
4. The Borrower will comply with all other covenants, agreements, stipulations and conditions of the Security Instrument, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are cancelled, null, and void, as of the date specified in paragraph 1 to the extent they are inconsistent with the terms and provisions of this Agreement:
    a. all terms and provisions of the original Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment, in the rate payable under the Note; and
    b. all terms and provisions of any adjustable rate rider or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the original Note or Security Instrument and that contains any such terms and provisions as those referred to in paragraph 2 above.
5. Borrower understands and agrees that
    (a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Security Instrument shall also apply to default in the making of the modified payments hereunder.

(b) All covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect, except as herein modified, and none of the Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Lender' s rights under or remedies on the Note and Security Instrument, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which Lender is presently entitled against any property or any other persons in any way obligated for, or liable on, the Note and Security Instrument are expressly reserved by Lender.

(c) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.

(d) All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.

(e) Borrower agrees to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by Lender, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower.

(f) As part of the consideration for this Agreement, Borrower agrees to release and waive all claims Borrower might assert against the Lender and or its agents and arising from any act or omission to act on the part of the Lender, its agents, officers directors, attorneys, employees and any predecessor-in -interest to the Note and Security Instrument, and which Borrower contends caused the Borrower damage or injury or which the Borrower contends renders the Note or Security Instrument void, voidable, or unenforceable. This release extends to any claims arising from any foreclosure proceedings, if any, conducted prior to the date of this Agreement. Borrower has and claims no defenses, counterclaims or rights to offset of any kind against Lender or agent of Lender.

6: In consideration of this Modification, Borrower agrees that if any document related to the Security Instrument, Note and/or Modification is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan, or is otherwise missing upon the request of the Lender, Borrower(s) will comply with Lender's request to execute acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost misplaced, misstated, inaccurate or otherwise missing document(s). If the original promissory note is replaced the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of borrower(s) shall be referred to as Documents. Borrower agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement.

As evidenced by their signatures below, the Borrower and the Lender agree to the foregoing.

NELSON M PRITZ 8-25-08 Dated

SUSAN PRITZ 8-25-08 Dated

STATE OF Nevada

COUNTY OF Clark

On 8/25/08 before me, Lisa Cantrell

Notary Public, personally appeared Nelson & Susan Pritz

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signatues (s) on the instrument the person (s), or entity upon behalf of which the person (s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Lisa Cantrell

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LISA CANTRELL
No. 06-104136-1
My Appointment Expires March 6, 2010

Countrywide Home Loans Servicing LP

By: _____ Dated _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") hereby opposes Defendant's Motion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Contrary to the Bank's contention this is not a quiet title action arising from the Association sale. The Bank's motion is both procedurally and substantively improper to the extent it seeks a declaration the deed of trust survived the Association foreclosure sale. The validity or invalidity of the sale is not before this Court. The Bank does not have a claim before this Court that would allow it to obtain any declaratory relief regarding the sale. Likewise, SFR's

claims do not give this Court the ability to give such a declaration because SFR did not file any claims with regard to the Association sale. Instead, SFR filed two claims: (1) cancellation of notice of default and notice of sale based on the Bank's lack of authority to foreclosure by virtue of not having possession of the Note; and (2) cancellation of deed of trust based on NRS 106.240. Neither of these claims has anything to do with the Association foreclosure sale. Put another way, the Association foreclosure could be invalid, and SFR's claims would still prevent the Bank from foreclosing.

But even setting aside the procedural infirmity of the Bank's motion, the Bank is equally estopped from asking this Court to adjudicate the validity of the foreclosure sale under the principle of *res judicata*. Specifically, the Bank filed an action to challenge the validity of the sale in federal court, but the federal court dismissed the action based on the statute of limitations. A dismissal based on statute of limitations constitutes an adjudication on the merits such that any subsequent lawsuit raising the same issues will be barred by *res judicata*, more specifically claim and issue preclusion.

The only aspect of the Bank's motion that is proper, although without merit, is sections A and B, which address SFR's second claim for relief, cancellation of deed of trust based on NRS 106.240. However, the Bank's arguments are without merit. The Bank made the debt wholly due on April 29, 2008, and thus under NRS 106.240 the Deed of Trust terminated on April 29, 2018.

II. DISPUTED FACTS

Facts # 1-3: SFR does not dispute these facts.

Fact # 4, the assignment of the deed of trust to the Bank is disputed. Specifically, SFr disputes the Bank has possession of the Note.

Facts #5-20: because these facts relate to the Association foreclosure sale, an issue that is neither procedurally before this Court nor substantively proper, SFR does not address them. This choice, by no means, should be interpreted as a concession to any of the facts. Because SFR takes the position the Bank is collaterally estopped from challenging the foreclosure sale, SFR cannot address these facts for fear of waiving the res judicata argument.

Fact #21: SFR does not dispute this fact.

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III. PROCEDURAL HISTORY

The Bank's entire procedural history is based on another case i.e. a federal case having nothing to do with SFR. The Bank does not provide a case number, so SFR has no idea what this case is about, but it certainly has nothing to do with the instant case. The procedural history of the present case is as follows:

On February 27, 2019, SFR filed a complaint whereby it alleged two causes of action against the Bank: (1) cancellation of notice of default and notice of sale based on the Bank's lack of authority to foreclose by virtue of not possessing the Note; and (2) cancellation of instrument based on NRS 106.240. On May 22, 2019, the Bank filed an answer. The Bank did not plead any counter-claims against SFR or cross-claims against any other parties.

With respect to the federal case that does have bearing on the subject case, on April 4, 2018, the Bank filed an action challenging the foreclosure sale in Case No. 2:18-cv-00599-APG-CWH.[1] In the complaint, the Bank alleged it tendered the super-priority amount. Rather than file an answer, SFR moved to dismiss the complaint based on the statute of limitations. Specifically, SFR argued because the sale occurred in September 2012, the Bank having filed its complaint nearly six (6) years after the foreclosure sale, was time-barred. On October 1, 2018, Judge Gordon granted SFR's motion to dismiss finding the Bank's claims were time-barred.[2]

IV. ARGUMENT

A. By Operation of NRS 106.240, the Deed of Trust Terminated at the Latest on April 29, 2018.

The Bank is not entitled to summary judgment on SFR's second cause of action; instead, SFR is entitled to summary judgment on this claim. To that end, SFR incorporates its motion for summary judgment as though fully stated herein. But to highlight a few points, it is undisputed the Bank (or its predecessor in interest) recorded a Notice of Default against the Property on April 29, 2008.[3] It is further undisputed this Notice of Default stated, the beneficiary "**has**

[1] Attached hereto as Exhibit 1 is a copy of the Complaint.

[2] *See* Exhibit A to Bank's MSJ.

[3] *See* Exhibit B to Bank's MSJ.

declared and does hereby declare all sums secured thereby **immediately due and payable**…"[4]

Again, NRS 106.240 provides that "[t]he lien…created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the…deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." Here, the Bank claims the statute is silent as to notice of accelerations, but it misses the point. Acceleration is just one means by which the lender can make the debt "wholly due." Thus, the question under NRS 106.240 is when did the debt become wholly due. Whatever date that is, is the date upon which the ten years begins to run. Likewise, the Bank's argument regarding the "terms thereof" is misplaced. Paragraph 22 of the Deed of Trust contemplates accelerating the loan maturity date when the borrower defaults, thus when the borrower defaulted, and the Bank made the debt immediately due and payable, as stated in the recorded Notice of Default, it made the loan wholly due by the "terms" of the Deed of Trust. *See generally*, *Boyes v. Valley Bank of Nevada*, 701 P.2d 1008, 1009-10 (Nev. 1985) ("Valley Bank corresponded with the Boyeses and demanded that they pay in full their promissory note in accordance with the 'due-on-sale' clause contained in paragraph 17 of the deed of trust.")

In that regard, the Bank's contention that it never executed, recorded or agreed to alter the terms of the deed of trust is false and contrary to the undisputed evidence in this case. The Notice of Default is the recorded document, that per the terms of the Deed of Trust made the loan wholly due. Again, the Notice of Default states, the beneficiary "**has declared** and does hereby declare all sums secured thereby **immediately due and payable**…"[5] In so doing, the Bank triggered the ten-year time limitation in NRS 106.240. At the latest, the loan was wholly due on April 29, 2008, the date of recording. Counting ten years from that date, the Deed of Trust terminated on April 29, 2018. There being no valid Deed of Trust, SFR is entitled to summary judgment, not the Bank, on SFR's second cause of action. At least three other courts have agreed

[4] *Id.* (emphasis added.)

[5] *Id.* (emphasis added.)

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with SFR's interpretation and application of NRS 106.240, two involving a notice of default which accelerated the loan maturity date, and another which accelerated via letter.[6]

Finally, the 2013 letter does not change the fact that the 2008 notice of default made the loan wholly due. The Bank has not provided any evidence that between 2008 and 2013, it decelerated the loan i.e. put the loan back in its original posture of installment payments. There being no evidence of deceleration, the 2008 notice of default language still controls.

B. Conclusive Presumptions Are not Refutable.

In *Pro-Max*, the Nevada Supreme Court noted NRS 106.240 "creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due," and ruled that "the conclusive presumption contained in NRS 106.240 clearly and unambiguously applies without limitation to all debts secured by deeds of trust on real property." *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 94, 97, 16 P.3d 1074, 1076, 1079 (2001). A conclusive presumption, in contrast to a rebuttal presumption, cannot be refuted. *See* NRS 47.240. While the Nevada Supreme Court chose to overstep the Legislature with respect to the conclusive recitals found in NRS 116.31166, this ruling has no bearing on NRS 106.240.[7] Certainly, the *Shadow Wood* case did not upend every statutory conclusive presumption in Nevada. The case states no such intent, and most importantly, it never states it overrules *Promax*.

But even if *Shadow Wood* does have such a broad reach (which it does not), all this means is the conclusive presumption is refutable by evidence. But the Bank offers not evidence the loan was not made wholly due on April 29, 2008. It offers no affidavit or declaration explaining that after recording the April 29, 2008 notice of default, it rescinded the wholly due language and placed the loan back into an installment contract. Absent this evidence, even if the conclusive presumption found in NRS 16.240 could be refuted (which it cannot), the Bank fails to actually refute it. Thus, the undisputed evidence establishes the loan became wholly due, at the latest, on April 29, 2008, and therefore by operation of NRS 106.240, the Deed of Trust

[6] *See* Orders from Case No. A-14-702456-C; A-13-686522-C; 2:16-cv-01053 attached as Exhibit 2.

[7] *Shadow Wood Homeowners Ass'n v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016).

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terminated in April 29, 2018.

C. The Bank Never Addressed SFR's First Cause of Action.

The Bank never addresses SFR's first cause of action which challenges the Bank's authority to foreclose based on its failure to establish its possession of the original Note. The closest the Bank comes to addressing this claim is in footnote 12 of its Motion. But there is no analysis; just a conclusory statement it is the holder of the Note. Because SFR is not the borrower, before the Bank can foreclose it must show it possesses both the Note and Deed of Trust. *See Edelstein v. Bank of New York Mellon*, 128 Nev. 505 (2012).

D. The Bank Has No Claims in this Matter.

The Bank has zero claims in this matter. It is axiomatic before a court can grant a party affirmative declaratory relief like that requested by the Bank in its Motion, there must be a substantive claim to which that relief can be linked. A "cause of action" has been defined as the "fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief." *See Meech v. Hillhaven West Inc.,* 776 P.2d 488, 497 (Mont. 1989) (A "cause of action" has been defined as the "fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief.") quoting *State v. Preston,* 181 N.E.2d 31, 36 (Ohio 1962). See also, *Velazquez v. Mortg. Elec. Registration Sys.*, 2011 WL 1599595, at *3 (D. Nev. Apr. 27, 2011) (holding that a request for one particular remedy such as "declaratory relief is not a separate substantive claim for relief"). But there is no claim before this Court that raises a challenge to the Association foreclosure sale, either from the Bank or from SFR. Thus, from a pure procedural standpoint the Bank's Motion, to the extent it seeks a declaration the Deed of Trust was not extinguished by the Association foreclosure sale, is improper as there is no claim to tie such relief to.

E. Under the Doctrine of *res judicata* the Bank is Precluded from Challenging the Association Foreclosure Sale.

The doctrine of *res judicata* precludes parties or their privies from relitigating a cause of action that has been fully determined by court of competent jurisdiction. *Paradise Palms Community Ass'n v. Paradise Homes*, 89 Nev. 27, 29, 505 P.2d 596, 598 (1973); *Horvath v.*

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Gladstone, 97 Nev. 594, 597, 637 P.2d 531, 533 (1981); *Gilbert v. Warren,* 95 Nev. 296, 594 P.2d 696 (1979). The doctrine also precludes parties from relitigating issues they could have raised in a prior action concerning the same controversy. *Hulsey v. Koehler,* 218 Cal.App.3d 1150, 267 Cal.Rptr. 523, 526 (Ct.App.1990). Additionally, any issue decided in such litigation is conclusively determined as to the parties and their privies. *Bernhard v. Bank of America Nat. Trust & Sav. Ass'n*, 19 Cal.2d 807, 122 P.2d 892 (1942). As the *Bernhard* Court noted, "[t]he rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy." *Id.* Additionally, "[t]he doctrine also serves to protect persons from being twice vexed for the same cause." *Id.*

There are two different species of *res judicata*: issue preclusion and claim preclusion. Issue preclusion, also known as collateral estoppel, is implicated when one or more of the parties to the earlier suit are involved in a subsequent suit on a different claim. *See University of Nevada v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191-92 (1994). If the issue was decided and necessary to the judgment in the prior suit, its re-litigation will be precluded. *Id. citing* Charles A. Wright, Law of Federal Courts § 100A, at 682 (4th ed. 1983); Restatement (Second) of Judgments § 13 (1982).

Under claim preclusion, "[a] valid and final judgment on a claim precludes a second action on that claim or any part of it." *See Gilbert v. Warren,* 95 Nev. 296, 594 P.2d 696 (1979). Additionally, "[t]he modern view is that claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel. *See Batterman v. Wells Fargo Ag. Credit Corp.,* 802 P.2d 1112 (Colo.Ct.App.1990); *Matter of Herbert M. Dowsett Trust,* 7 Haw.App. 640, 791 P.2d 398 (Ct.1990); *Madsen v. Borthick,* 769 P.2d 245, 247 (Utah 1988).

Res judicata applies when the following three elements are present: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation.

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Horvath, 97 Nev. at 597, 637 P.2d at 531. In the present case, all three elements are met.

First, there is no doubt, in the prior federal action the Bank asked the Court to adjudicate the validity of the sale, and as the basis for challenging the sale, the Bank raised the issue of tender. In this case, the Bank seeks to do the same thing, albeit having never pled a claim. **Second**, the ruling in the prior federal action was on the merits. The federal court dismissed the Bank's claims as time-barred.[8] A dismissal based on the statute of limitations is an adjudication on the merits of the claim. See *Ellingson v. Burlington Northern* Inc., 653 F.2d 1327, 1330 n. 3 (9th Cir.1981)("[a] judgment based on the statute of limitations is 'on the merits' "); *see also Plaut v. Spendthrift Farm,* 514 U.S. 211, 228 (1995)("The rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: as a judgment on the merits.")

While the underlying merits of the substantive claim have not been adjudicated, the running of the statute of limitations precludes testing whether the claim would otherwise have been valid, and thus for *res judicata* purposes a dismissal on statute of limitations is treated as a dismissal on the merits. *See Ellingson v. Burlington Northern Inc.,* 653 F.2d 1327, 1330 (9th Cir.1981); *see also Suckow Borax Mines Consol., Inc. v. Borax Consol., Ltd.,* 185 F.2d 196, 205 (9th Cir.1950). In fact, the Restatement has abandoned the "on the merits" terminology because, as it explains, "[i]ncreasingly ... judgments not passing directly on the substance of the claim have come to operate as a bar." Restatement (Second) of Judgments § 19 cmt. a (1982); *see also* 18 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 4441 (1981); *EFCO Corp. v. U.W. Marx, Inc.,* 124 F.3d 394, 398 (2nd Cir.1997). **Third**, the judgment in the prior federal action was against the Bank.

As all three elements of *res judicata* exist, the Bank is precluded from having this Court adjudicate the issue of tender in relation to the Association foreclosure sale.

[8] *See* Ex. A to Bank's MSJ.

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V. CONCLUSION

For the reasons stated, SFR requests this Court deny the Bank's motion for summary judgment. With respect to SFR's claims, summary judgment in favor of SFR is warranted. Without doubt, this Court has no procedural nor substantive mechanism to grant any declaratory relief in favor of the Bank with respect to the Association foreclosure sale, as there are no claims before this Court on that issue, and even if there were, such claims would be precluded under the doctrine of *res judicata*.

Dated this 6th day of April, 2020.

KIM GILBERT EBRON

/s/ Karen L. Hanks
KAREN L. HANKS, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April, 2020, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing, **OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

J. Stephen Dolembo sdolembo@zbslaw.com

Sara Hunsaker shunsaker@zbslaw.com

Shadd A. Wade swade@zbslaw.com

/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON

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EXHIBIT 1

EXHIBIT 1

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-25, a national bank,

Plaintiff,

vs.

SQUIRE VILLAGE AT SILVER SPRINGS COMMUNITY ASSOCIATION, a Nevada non-profit corporation; SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Defendants.

CASE NO.:

DEPT. NO.:

COMPLAINT FOR QUIET TITLE/DECLARATORY RELIEF [28 U.S.C. §§ 2201, 2202]

Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-25, ("Plaintiff" or "BNYM") alleges and complains as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is and at all times was a national bank headquartered in New York State for diversity purposes.

2. Defendant Squire Village at Silver Springs Community Association ("HOA") is and at all times mentioned herein was a Nevada non-profit corporation.

3. Defendant SFR Investments Pool 1, LLC ("Buyer"), is and at all times mentioned herein was a Nevada limited liability company.

4. The subject matter of this complaint is real property commonly known as 4946 Droubay Drive, Las Vegas, NV 89122 (the "Property"). The Property is located in Clark County, Nevada, and therefore both venue and jurisdiction are appropriate with this court.

FACTS

The Mortgage

1. On or about November 17, 2006, non-parties Nelson and Susan Pritz (collectively "Borrower") executed and delivered to non-party Countrywide Home Loans, Inc. ("Lender"), a promissory note evidencing a $232,200 loan (the "Loan") funded to Borrower to purchase the Property.

2. On or about November 17, 2006, and as part of the same transaction, Borrower executed and delivered to Lender that certain Deed of Trust, which recorded as instrument number 0003799 (the "Deed of Trust") in the Official Records of the Clark County Recorder's Office (the "Official Records") on November 22, 2006. A true and correct copy of the Deed of Trust is attached as **Exhibit 1**. The Deed of Trust encumbers the Property as security to ensure repayment of the Loan.

3. On information and belief, Borrowers subsequently defaulted on the Loan, and also defaulted in payment of the HOA dues.

4. On November 29, 2011, all beneficial interest in the Deed of Trust was assigned to Plaintiff by way of a recorded Assignment of Deed of Trust. *See* **Exhibit 2**.

The Homeowner's Association Foreclosure Sale

5. Plaintiff is informed and believes defendant HOA is a homeowner's association which generally manages and maintains the common unit amenities for the development in which the Property is located.

6. On or about September 19, 2012, HOA, through its agent, Alessi & Koenig, LLC. ("A&K"), sold the Property at auction (the "HOA Sale"), where it was purchased by Defendant SFR, for $5,356.00. *See* Trustee's Deed Upon Sale attached as **Exhibit 3**.

Tender of the Super-Priority Lien Amount

7. In or around January, 2010, MERS as nominee beneficiary of the Deed of Trust, through its attorneys, Miles, Bauer, Bergstrom & Winters, LLP (MBBW), requested a super-priority lien account statement from HOA and , for the express purpose of curing the portion of HOA's lien that may enjoy priority over its first Deed of Trust. *See* **Exhibit 4.**

8. HOA and A&K refused to provide a super-priority lien statement, but instead provided a full lien account statement showing a balance of $4,626.00, indicating a monthly assessment amount of $84.00. *See* **Exhibit 5.**

9. Based on the statement provided, MBBW calculated the super-priority lien amount consisting of nine months of assessments, pursuant to NRS 116.3116.

10. On February 18, 2010, MBBW tendered a cashier's check for the super-priority lien amount of $756.00 (9 x $84.00) to A&K, in order to cure the super-priority lien amount. *See* **Exhibit 6.**

11. The tender of the super-priority lien amount to A&K served to extinguish that portion of HOA's lien, leaving only the portion of HOA's lien which is junior to Plaintiff's first Deed of Trust.

FIRST CLAIM FOR RELIEF
QUIET TITLE / DECLARATORY RELIEF
(Against All Defendants)

12. Plaintiff incorporates all above paragraphs as though fully set forth herein.

13. Pursuant to 28 U.S.C. §§ 2201, 2202, this Court has jurisdiction to declare the rights and interests of Plaintiff and all defendants relative to the Property.

14. Plaintiff is informed and believes SFR asserts that Plaintiff's security interest in the Property as evidenced by the Deed of Trust was extinguished by the HOA Sale.

15. Plaintiff maintains that its first Deed of Trust was *not* extinguished at the Sale. These claims are necessarily adverse.

16. If the sale is declared void, HOA's lien rights will re-attach to the Property, making HOA a necessary party to the action. Plaintiff is not seeking damages from the HOA.

17. NRS Chapter 116 is facially unconstitutional because it fails to provide first mortgagees such as Plaintiff with proper notice prior to extinguishment. The Sale is therefore void.

18. Alternatively, if the HOA Sale is not void entirely, in any event Plaintiff's security interest in the Property as evidenced by the Deed of Trust was not extinguished by the HOA Sale.

19. The HOA Sale is also void as commercially unreasonable because the Property, secured by a Deed of Trust ensuring the repayment of the Loan of $232,200 sold for $5,356.00.

20. Plaintiff is informed and believes the fair-market value of the Property exceeds $180,000.

21. The HOA Sale was commercially unreasonable because the manner in which it was conducted, including the refusal to provide a super-priority lien payoff statement, the legal uncertainty regarding the statute and the effect of the HOA Sale, and other circumstances in which the Sale was conducted, were not calculated to promote an equitable sale price for the Property to attract potential purchasers.

22. The HOA Sale was commercially unreasonable because the lien foreclosure notices provided by HOA and its agent did not provide notice of the super-priority lien amount, making it impossible for a security interest holder such as Plaintiff to calculate and pay the super-priority lien amount in order to protect its interest.

23. The HOA Sale was commercially unreasonable because HOA failed to accurately describe the "deficiency in payment" as required by NRS 116.31162(b) and thereby deprived Plaintiff of any reasonable opportunity to satisfy the super-priority amount to protect its security interest in the Property;

24. The HOA Sale was commercially unreasonable because any notice provided to Plaintiff concerning the HOA Sale was insufficient to provide due process of law.

25. The HOA Sale was commercially unreasonable because HOA and its agents refused to provide an accurate super-priority lien statement, and then refused to accept Plaintiff's predecessor's payment of same.

26. The lien foreclosed at the HOA Sale did not include a super-priority lien because Plaintiff's predecessor tendered nine months of assessments to HOA, and the assessment lien did not contain any costs incurred in abating a nuisance on the Property.

27. The HOA Sale is void because NRS 116.3116 *et seq.* is facially unconstitutional due to the "opt in" provisions first requiring lenders to request notice in order to receive notice of the operative steps in the HOA foreclosure process. As such, the statute of fails to require the HOA to take reasonable steps to ensure that actual notice is provided to interested parties who are reasonably ascertainable and is thus in violation of the Due Process Clause of the United States and Nevada Constitutions.

28. The Nevada legislature's passage of the HOA lien foreclosure statutes constitutes state action, as the HOA's lien foreclosure rights are purely a creation of statute, and not of any contract or agreement between Plaintiff and HOA.

SECOND CLAIM FOR RELIEF
Unjust Enrichment - Assignment of Rents
(Against SFR)

29. Plaintiff incorporates all above paragraphs as though fully set forth herein.

30. Plaintiff's Deed of Trust is an enforceable security instrument creating a security interest as set forth in NRS 107A.160 - 170.

31. Plaintiff is informed and believes that SFR is collecting rents derived from the Property.

32. As a result of its enforceable security instrument, Plaintiff has a statutory assignment of rents derived from the Property, as set forth in NRS Chapter 107A.

33. SFR has been conferred a benefit at Plaintiff's expense due to its retention of any and all rents derived from the Property, which remains subject to Plaintiff's security instrument.

34. SFR's retention of the rents has deprived Plaintiff of the benefit of its security instrument.

35. Plaintiff is entitled to general and special damages in the amount of the retained rents.

36. Plaintiff has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

PRAYER FOR RELIEF

1. An order from this Court declaring the HOA Sale void ab initio, with no legal effect or consequence;

2. Alternatively, an order indicating that Plaintiff's security interest in the Property was not extinguished at the HOA Sale, and remains an enforceable lien on title to the Property;

3. For an order requiring restitution of all rents collected by SFR be paid to Plaintiff.

4. Attorney's fees and costs;

5. Any other relief this court deems just and proper.

DATED: April 4, 2018

ZIEVE, BRODNAX & STEELE, LLP

By: */s/ Shadd A. Wade*

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EXHIBIT LOG

EXHIBIT NO.	DESCRIPTION
1.	Deed of Trust
2.	Assignment of Deed of Trust
3.	Trustee's Deed Upon Sale
4.	MBBW Letter to Alessi & Koenig
5.	Alessi & Koenig Payoff
6.	MBBW priority payment

EXHIBIT 2

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SHAWN LAMPMAN, an individual; and SALLY STORY, as TRUSTEE for the SPL FAMILY TRUST, a Nevada Trust,

Plaintiffs,

vs.

RED ROCK COUNTRY CLUB HOMEOWNERS ASSOCIATION, a Nevada Non-Profit Organization; LJS&G, Ltd, d.b.a LEACH, JOHNSON SONG & GRUCHOW, a Nevada corporation and as AGENT OR TRUSTEE FOR RED ROCK COUNTRY CLUB HOMEOWNERS ASSOCIATION; G.J.L., Incorporated, d.b.a. PRO FORMA LIEN & FORECLOSURE, a collection agency licensed in Clark County and a Nevada corporation; SFR INVESTMENTS POOL 1, LLC; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XX-XXX,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Counter-Claimant,

vs.

SHAWN LAMPMAN, an individual; SPL FAMILY TRUST, a Nevada Trust; DOES 1 10

Case No. A-13-686522-C

Dept. No. XXXII

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

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and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK, as successor trustee to JPMORGAN CHASE BANK, N.A., as Trustee on behalf of Certificateholders of the CWHEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-H,

Plaintiff-in-Intervention,

vs.

SFR INVESTMENTS POOL 1, LLC; SHAWN LAMPMAN, an individual; and SALLY STORY, as Trustee for the SPL FAMILY TRUST, a Nevada Trust, DOES I through X, inclusive, and ROE Business Entities I through X, inclusive,

Defendants-in-Intervention,

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Counter-Claimant,

vs.

THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK, as successor trustee to JPMORGAN CHASE BANK, N.A., as Trustee on behalf of Certificateholders of the CWHEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-H; LIBERTY VILLAGE, LLC, a Delaware limited liability company, DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Counter/Cross-Defendants.

This matter came before the Court for a jury trial on December 9, 2019 through December 20, 2019. Karen L. Hanks, Esq. and Diana S. Ebron, Esq. appeared on behalf of SFR Investments

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Pool 1, LLC's ("SFR"). Ariel Stern, Esq. appeared on behalf of The Bank of New York Mellon fka The Bank of New York as successor trustee to JPMorgan Chase Bank, N.A., as Trustee on behalf of Certificateholders of the CWEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-H's ("BNY Mellon"). At the close of BNY Mellon's case in chief, SFR brought an NRCP 50 motion. Having reviewed and considered the facts, testimony of witnesses, trial exhibits and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:[1]

FINDINGS OF FACT

1. On August 1, 2013, Red Rock Country Club Homeowners Association non-judicially foreclosed on real property located at 2345 Calico Creek Court, Las Vegas, Nevada 89135, APN 164-02-423-004 (the "Property") pursuant to NRS Chapter 116. (Trial Ex. 18.)

2. Prior to the foreclosure, on March 17, 2006 a Deed of Trust was recorded as Instrument No. 20060317-0003158 against the Property. (Trial Ex. 2.)

3. In July 2008, the borrower, Shawn Lampman, made his last payment toward the Note which the Deed of Trust secured. (Trial Testimony of Jessica Woodbridge, December 16 and 17, 2019.)

4. As a result of this default, on October 6, 2008, Countrywide Home Loans, the then servicer of the loan sent a letter titled, "Notice of Intent to Accelerate" to the borrower. (Trial Ex. 194.) The letter, in pertinent part, reads as follows: "To cure the default, on or before November 10, 2008, Countrywide must receive the amount of $11,598.30 plus any additional regularly monthly payment or payments, late charges, fees and charges, which become due on or before November 10, 2008. If the default is not cured on or before November 10, 2008, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time." (*Id.* at 194-1.) (Emphasis in original.)

[1] 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.

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5. The borrower did not cure the default by November 10, 2008, and in fact made no payments whatsoever after July 2008. (Trial Testimony of Jessica Woodbridge, December 16 and 17, 2019.)

6. On January 20, 2009, a Notice of Default and Election to Sell Under Deed of Trust was recorded against the Property. (Trial Ex. 6.) The Notice of Default identifies a default date of August 20, 2008, and reads in pertinent part, "That by reason thereof, the present beneficiary under such deed of trust has executed and delivered to RECONTRUST COMPANY, N.A. a written Declaration of Default and Demand for sale, and has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby." (*Id.*)

7. On February 4, 2009, a Notice of Rescission of Notice of Default was recorded against the Property. (Trial Ex. 8.) The rescission, however, reads "this rescission shall not be construed as waving, curing, extending to, or affecting any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be made..." (*Id.*)

8. BNY Mellon's records contained multiple correspondence post-dating the Rescission that all stated "Your loan is currently in default and has been accelerated." (Trial Ex. 218.)

9. At no time between November 10, 2008 (acceleration date) and November 11, 2018 did BNY Mellon execute the power of sale and foreclose on the deed of trust.

10. At no time between November 10, 2008 (acceleration date) and November 11, 2018 did the Bank record any document or send any document to the borrower indicating the loan was decelerated.

11. On December 12, 2018, a Notice of Rescission of Notice of Default and Election to Sell Under Deed of Trust was recorded against the Property. (Trial Ex. 283.) This Notice reads in pertinent part, "present beneficiary, does hereby rescind, cancel, withdraw and revoke without prejudice the acceleration of the Note, or Deed of Trust, or both as referenced in the Notice of

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Default and Election to See Under Deed of Trust listed above, as well as any prior or concurrent acceleration of the Note or Deed of Trust, whether stated by Beneficiary, Trustee, or any prior Beneficiary or Trustee in correspondence or otherwise." (*Id.* at 282-2.)

CONCLUSIONS OF LAW

12. At the conclusion of BNY Mellon's case in chief, SFR brought a NRCP 50 motion[2] wherein it argued, irrespective of the Association foreclosure sale, the deed of trust was extinguished/terminated under NRS 106.240 by virtue of BNY Mellon accelerating the loan on November 11, 2008, and the expiration of 10 years without BNY Mellon either decelerating the loan or foreclosing on the deed of trust. The Court grants SFR's motion.

13. The Court finds NRS 106.240 is a statute of repose, and the "conclusive presumption contained in NRS 106.240 clearly and unambiguously applies, without limitation, to all debt secured by deeds of trust on real property. *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 94, 16 P.3d 1074, 1076 (2001).

14. NRS 106.240 provides deeds of trust are conclusively presumed to have been satisfied and the notes discharged at the expiration of ten years after the debt secured by the deed of trust becomes wholly due, and the deed of trust is terminated and the lien discharged.

15. Based on the language of NRS 106.240 and the Nevada Supreme Court's interpretation of that language namely "deed of trust according to the terms thereof or any recorded written extension thereof..." there are ways to create an acceleration, but it does not have to be by way of recordation.

16. Here, Trial Exhibit 194, the Notice of Intent to Accelerate Letter, clearly states in bold if the default is not cured on November 10, 2008, the mortgage payment will be accelerated and the full amount due and payable. The Court finds full amount is tantamount to wholly due.

[2] BNY Mellon also brought a counter-Rule 50 motion arguing SFR did not meet its burden in proving NRS 106.240 terminated the deed of trust. For the same reasons the Court grants SFR's motion, it denies BNY Mellon's counter-motion.

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17. The Court further finds this contractual correspondence accelerated the loan on November 10, 2008, based on Lampman's failure to cure the default on this date, and this is exactly what the lender and Lampman agreed to in the contract.

18. The next question under NRS 106.240 is did the ten years run, and the Court finds it did. It ran on November 11, 2018 without BNY Mellon ever having timely decelerated the loan or foreclosing. Thus, under NRS 106.240, the Court finds the deed of trust terminated/expired on November 11, 2018.

19. While BNY Mellon argues the Rescission recorded on December 12, 2018 (Trial Ex. 283) decelerated the loan, this was too late, as the deed of trust already terminated on November 11, 2018.

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ORDER

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Deed of Trust recorded against real property located at 2345 Calico Creek Court, Las Vegas, Nevada 89135, APN 164-02-423-004 recorded in the Official Records of the Clark County Recorder as Instrument No. 20060317-0003158, was terminated/extinguished on November 11, 2018 by operation of NRS 106.240.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that The Bank of New York Mellon fka The Bank of New York as successor trustee to JPMorgan Chase Bank, N.A., as Trustee on behalf of Certificateholders of the CWEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-H their predecessors in interest and successors and assigns, have no further right, title or interest in real property located at 2345 Calico Creek Court, Las Vegas, Nevada 89135, APN 164-02-423-004, and are hereby permanently enjoined from taking any further action to enforce the terminated/extinguished Deed of Trust, including but not limited to, clouding title, initiating or continuing to initiate foreclosure proceedings, or taking any other actions to sell or transfer the Property.

IT IS SO ORDERED.

DATED this 19 day of February, 2020.

DISTRICT COURT JUDGE

Respectfully Submitted by:	Approved as to Form and Content:
KIM GILBERT EBRON	**AKERMAN LLP**
KAREN L. HANKS, ESQ. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 *Attorneys for SFR Investments Pool 1, LLC*	ARIEL E. STERN, ESQ. Nevada Bar No. 8276 1635 Village Center Circle, Ste 200 Las Vegas, Nevada 89134 *Attorneys for The Bank of New York Mellon f/k/a the Bank of New York Mellon,* as *successor trustee to JPMorgan Chase Bank, N.A., as Trustee on behalf of Certificateholders of the CWEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-H*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

*** * ***

BANK OF AMERICA, N.A., FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

v.

MADEIRA CANYON HOMEOWNERS ASSOCATION
SFR INVESTMENTS POOL 1, LLC
NEVADA ASSOCIATION SERVICES, INC,

Defendants.

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

ORDER

I. INTRODUCTION

Before the Court are Plaintiffs Bank of America, N.A ("BANA") and Federal National Mortgage Association's ("Fannie Mae") Motion for Partial Summary Judgment, and Defendant SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment. ECF Nos. 36, 44. For the following reasons, the Court denies BANA and Fannie Mae's Motion for Partial Summary Judgment and grants SFR's Motion for Summary Judgment.

II. PROCEDURAL BACKGROUND

BANA and Fannie Mae sued Defendants Madeira Canyon Homeowners Association ("the HOA"), SFR Investments Pool 1, LLC ("SFR") and Nevada Association Services, Inc. ("NAS") on May 10, 2016. ECF No. 1. Plaintiffs seek declaratory relief that a nonjudicial foreclosure sale conducted in 2013 under Chapter 116 of the Nevada Revised Statutes ("NRS") did not extinguish

Fannie Mae's interest in a Las Vegas property. Id. To obtain the relief, Plaintiffs assert the following claims in the Complaint: (1) declaratory relief under 28 U.S.C. § 2201 against SFR; (2) quiet title against SFR; (3) breach of NRS 116.1113 as against the HOA and NAS; (4) wrongful foreclosure against the HOA and NAS; and (5) injunctive relief against SFR. Id. NAS answered the complaint on June 3, 2016. ECF No. 7. On August 25, 2016, the Court administratively stayed the case pending the mandate of Bourne Valley Court Trust v. Wells Fargo Bank. 832 F.3d 1154 (9th Cir. 2016), cert denied 137 S. Ct. 2296 (2017). On April 8, 2019, the Court lifted the stay. ECF No. 30. SFR filed its answer on July 2, 2019. ECF No. 38.

On June 24, 2019, Plaintiffs moved for summary judgment. ECF No. 36. The motion was fully briefed. ECF Nos. 46, 48. SFR also moved for summary judgment. ECF No. 44. That motion was also fully briefed. ECF Nos. 45, 49.

III. FACTUAL BACKGROUND

The Court makes the following findings of undisputed and disputed facts. [1]

a. Undisputed facts

This matter concerns a nonjudicial foreclosure on a property located at 2673 Rimbaud Street, Henderson, Nevada 89044 (the "property"). The property sits in a community governed by the HOA. The HOA requires the community members to pay community dues.

Nonparty Ronaldo A. Bumbasi borrowed funds from Pulte Mortgage LLC to purchase the property in 2006. To obtain the loan, Bumbasi executed a promissory note and a corresponding deed of trust to secure repayment of the note. The deed of trust, which lists Bumbasi as the borrower, Pulte Mortgage LLC as the lender, Lawyers Title of Nevada as the original trustee, and

[1] The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the foreclosure as well as Fannie Mae's Single-Family Servicing Guide. Fed. R. Evid. 201 (b), (d); Berezovsky v. Moniz, 869 F.3d 923, 932–33 (9th Cir. 2017) (judicially noticing the substantially similar Freddie Mac Guide); Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001) (permitting judicial notice of undisputed matters of public record).

Mortgage Electronic Registration Systems, Inc. ("MERS") as the original beneficiary was recorded on November 30, 2006. MERS substituted nonparty Recontrust Company as trustee under the deed of trust as recorded on October 2, 2008. On July 12, 2010 MERS assigned the Senior Deed of Trust to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing.

Bumbasi failed to pay the required HOA dues or his required loan payments. On October 16, 2008, a notice of default and election to sell under deed of trust was recorded. The notice stated that MERS, as beneficiary of record, had executed and delivered to Recontrust Company a written declaration of default and demand for sale, based on Bumbasi's "failure to pay the installment of principal, interest and impound which became due on 07/01/2008" and "does hereby declare all sums secured thereby immediately due and payable." On November 5, 2010, a rescission of election to declare default was recorded that stated as follows:

> "Recontrust Company, N.A., acting as an agent . . . does hereby rescind, cancel and withdraw the Notice of Default and Election to Sell . . . provided however, that this rescission shall not be construed as waiving, curing, extending to, or affecting any default, either past, present or future . . . and it . . . shall be deemed . . .only an election without prejudice not to cause a sale to be made."

From September 10, 2009 through March 2013, a notice of delinquent assessment lien, a notice of default and election to sell, and a notice of foreclosure sale were all recorded by the HOA. On May 10, 2013 SFR purchased the property for $18,000. On June 4, 2019, a second notice of rescission of notice of default and election to sell under deed of trust was recorded. This rescission notice provided that the present beneficiary "does hereby rescind, cancel, withdraw and revoke without prejudice the acceleration of the Note, or Deed of Trust, or both, as referenced in the Notice of Default and Election to Sell Under Deed of Trust listed above." No payments have been made on the underlying loan since June 1, 2008.

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Federal National Mortgage Association ("Fannie Mae") previously purchased the note and the deed of trust on or about December 1, 2006. While its interest was never recorded under its name, Fannie Mae continued to maintain its ownership of the note and the deed of trust at the time of the foreclosure. BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, which merged with BANA in 2011, serviced the note and was listed as the beneficiary of the deed of trust, on behalf of Fannie Mae, at the time of the foreclosure.

The relationship between Fannie Mae and BANA, as Fannie Mae's servicer, is governed by Fannie Mae's Single-Family Servicing Guide ("the Guide"). The Guide provides that servicers may act as record beneficiaries for deeds of trust owned by Fannie Mae. It also requires that servicers assign the deeds of trust to Fannie Mae on Fannie Mae's demand. The Guide states:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee. In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by [ ] preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and [by] providing recordation information for the affected mortgage loans.

The Guide also allows for a temporary transfer of possession of the note when necessary for servicing activities, including "whenever the servicer, acting in its own name, represents the interests of Fannie Mae in ... legal proceedings." The temporary transfer is automatic and occurs at the commencement of the servicer's representation of Fannie Mae. The Guide also includes a chapter regarding how servicers should manage litigation on behalf of Fannie Mae. But the Guide clarifies that "Fannie Mae is at all times the owner of the mortgage note[.]" Finally, under the Guide, the servicer must "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the mortgage loan."

Finally, the Guide "permits the servicer that has Fannie Mae's [limited power of attorney] to execute certain types of legal documents on Fannie Mae's behalf." The legal documents include full or partial releases or discharges of a mortgage; requests to a trustee for a full or partial reconveyance or discharge of a deed of trust, modification or extensions of a mortgage or deed of trust; subordination of the lien of a mortgage or deed of trust, conveyances of a property to certain entities; and assignments or endorsements of mortgages, deeds of trust, or promissory notes to certain entities.

In 2008, Congress passed the Housing and Economic Recovery Act ("HERA"), 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("the Agency"). HERA gave the Agency the authority to oversee Fannie Mae. In accordance with its authority, the Agency placed Fannie Mae under its conservatorship in 2008. Neither FHFA nor Fannie Mae consented to the foreclosure extinguishing Fannie Mae's interest in the property in this matter.

b. Disputed Facts

The facts in this matter are mostly undisputed. The parties dispute the legal effect of the circumstances.

IV. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering the propriety of summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts…. Where the record taken as

a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

V. DISCUSSION

SFR argues that NRS 106.240 extinguished Plaintiffs' interest in the property prior the foreclosure sale. Nev. Rev. Stat. § 106.240. For the following reasons, the Court agrees.

Section 106.240 provides that:

> The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.
> Id.

The Nevada legislature and the Nevada Supreme Court have not explicitly defined the meaning of the term "wholly due." However the Nevada Supreme Court has endorsed by implication the finding that acceleration of a note serves to make the full amount "wholly due." See First Am. Title Ins. Co. v. Coit, 412 P.3d 1088 n.1 (Nev. 2018) (unpublished). As it is undisputed that the borrower made no payment after 2008, any reinstatement provision of the deed of trust was not honored and so the Court finds that Fannie Mae's interest in the property extinguished on October 16, 2018, ten years after the default instrument was recorded.

BANA and Fannie Mae argue that the rescission recorded on November 5, 2010 served to rescind the acceleration. However nowhere in the document is there any statement that the acceleration of the loan has been rescinded. Rather the notice merely states that the beneficiary

chose not to elect to sell at that time. The rescission notice is also careful to note that the rescission shall not be construed as curing any default or altering any rights, remedies or privileges secured to the beneficiary. The Court thus agrees with SFR that more is required in order to show that deceleration of payment was intended. While the Court agrees with BANA that SFR's reliance on a pre-2016 unpublished Nevada Supreme Court decision is without any precedential or persuasive value, BANA can point to no authority or source to support its argument that the Court find in its favor. Furthermore, the recording of a second rescission in June 2019, in which the language is clear that deceleration is intended, leads the Court to infer that even Fannie Mae and BANA were aware of the insufficiency of the first recorded rescission.

Finally, the Court rejects BANA's request that the Court apply equitable tolling to the ten-year period delineated in NRS 106.240. As a preliminary matter, the Court notes that NRS 106.240 is not a statute of limitation, but a statute of repose. A statute of limitation creates "a time limit for suing in a civil case, based on the date when the claim accrued." CTS Corp. v. Waldburger, 573 U.S. 1, 9 (2014) (internal citations omitted). By contrast, a statute of repose "puts an outer limit on the right to bring a civil action." Id. The statute of limitation and the statute of repose serve different purposes. The statute of limitation requires plaintiffs to "pursue diligent prosecution of known claims," and "promote[s] justice by preventing surprises through . . . revival of claims that have been allowed to slumber." Id. Statutes of repose, however, "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." Id. (internal citations omitted). With a statute of repose, the limit is "measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant." Id. Under section 106.240, the limit on a party's ability to bring the action is dated from the borrower's failure to cure the default. One of the central distinctions between the statute

of limitation and the statute of repose is the applicability of equitable tolling. "Statutes of repose . . . generally may not be tolled, even in cases of extraordinary circumstances beyond the plaintiff's control." Id. Because NRS 106.240 is a statute of repose, equitable tolling is not available, and the Court declines to use it here.

Based on the forgoing, the Court grants summary judgment in favor of SFR and declares that SFR acquired the property free and clear of Fannie Mae's interest, which was extinguished pursuant to NRS 106.240. The Court finds this holding to be decisive as to all claims in this matter and dismisses the remaining claims and counterclaims as a result.

VI. CONCLUSION

IT IS ORDERED that Defendant SFR Investments Pool 1, LLC's Motion for Summary Judgment (ECF No. 44) is GRANTED. The Clerk of the Court is therefore instructed to enter judgment in favor of Defendant SFR Investments Pool 1, LLC. The remaining claims in this matter are dismissed.

IT IS FURTHER ORDERED that Plaintiffs Bank of America, N.A. and Federal National Mortgage Association's Motion for Partial Summary Judgment (ECF No. 36) is denied.

IT IS FURTHER ORDERED that the lis pendens filed in this case (ECF No. 4), is expunged.

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IT IS FURTHER ORDERED that the cash deposit made by Bank of America is returned with interest to the Legal Owner named in the certificate of cash deposit. (ECF No. 19).

DATED: November 12, 2019.

RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

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DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, v. MAUNLAD, LLC, a Nevada limited liability company; MARIA PATROCINIO M. EVANS AKA PAT M. EVANS, an individual; GREEN TREE SERVICING LLC, a foreign limited liability company; DHI MORTGAGE COMPANY, LTD., a foreign limited partnership; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive, Defendants.	Case No. A-14-702456-C Dept. No. XXX **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
GREEN TREE SERVICING LLC, a foreign limited liability company; Counterclaimant, v. ALESSI & KOENIG, a Nevada limited liability company; LOG CABIN MANOR HOMEOWNERS ASSOCIATION, a domestic	

non-profit cooperative corporation; SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1-10, inclusive;

Counter-Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter-Defendant/Cross-Complainant,

v.

GREEN TREE SERVICING LLC, a foreign limited liability company; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as nominee beneficiary for DHI MORTGAGE COMPANY, LTD; MAUNLAD, LLC; MARIA PATROCINIO M. EVANS, aka PAT M. EVANS, an individual; DOE INDIVIDUALS, I through X, inclusive; and ROE CORPORATIONS, I THROUGH X, inclusive,

Counter/Cross Defendants.

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This matter came for hearing before Judge Jerry Wiese on Wednesday, May 8, 2019, with regard to SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment and Ditech Financial, LLC's ("Ditech") Motion for Summary Judgment. The Court took the matter under advisement and then issued a minute order on May 16, 2019 finding the following:

FINDINGS OF FACT[1]

1. On January 11, 2006, Log Cabin Manor Homeowners Association (the "Association") perfected and gave notice of its lien by recording the Supplemental Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Log Cabin Manor, as Instrument No. 20060111-0003312 ("**CC&Rs**").

2. On September 28, 2006, a Grant, Bargain, Sale Deed, transferring the Property from

[1] 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.

D.R. Horton, Inc., to Maria Patrocinio M. Evans, an unmarried woman ("**Evans**"), was recorded as Instrument No. 20060928-0008261.

3. On September 28, 2006, a document titled "Deed of Trust" ("**DOT**") securing a mortgage in the amount of $332,000, stating that DHI Mortgage Company, Ltd. ("**DHI**") is the Lender, that Mortgage Electronic Registration System, Inc. ("**MERS**") is the beneficiary, and that Evans is the Borrower, was recorded as Instrument No. 20060928-0008262.

4. The DOT contained a Planned Unit Development Rider that allowed the Lender to pay the Borrowers' Association dues and assessments and add that amount to the Borrower's debt to Lender.

5. Paragraph 3 of the DOT allowed the lender to escrow funds for "(a) taxes and assessments and other items which can attain priority over [the DOT] as a lien or encumbrance on the Property ....", and obligate the Borrower to pay such amounts.

6. Paragraph 9 of the DOT included language that "[i]f (a) Borrower fails to perform the covenants and agreements contained in [the DOT], (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under [the DOT] (such as a proceeding ... for enforcement of a lien which may attain priority over [the DOT] ... then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under [the DOT] .... Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b) appearing in court; and (c) paying reasonable attorney's fees to protect its interest in the Property and/or rights under [the DOT] *** Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by [the DOT]."

7. On September 28, 2006, a document titled Deed of Trust ("**SDOT**") stating that DHI is the Lender, that MERS is the beneficiary, and that Evans is the Borrower, was recorded as Instrument No. 20060928-0008263.

8. On October 18, 2006, a Quitclaim Deed transferring the Property from Evans to Maunlad, LLC ("**Maunlad**") was recorded as Instrument No. 20061018-0004398.

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9. Evans became delinquent on the DOT payments and on June 4, 2008, a Notice of Default/Election to Sell Under Deed of Trust ("**Bank's NOD**") signed by Gary Trafford of FIS Default Solutions, as Agent of LSI Title Company, as Agent of Recontrust Company, N.A. ("**Recontrust**"), as agent for the MERS as beneficiary under the DOT, for amounts that became due on February 1, 2008, was recorded as Instrument No. 20080604-0002737.

10. The Bank's NOD stated that " ... the present beneficiary under such deed of trust ... has declared and **does declare all sums secured thereby immediately due and payable** and has elected and does elect to cause the trust property to be sold to satisfy the obligations secured thereby."

11. Based thereon, the underlying debt secured by the Deed of Trust was accelerated on June 4, 2008, at the latest.

12. No rescission of the Bank's NOD has been recorded.

13. No written extension of the debt purportedly secured by the DOT has been recorded.

14. On June 9, 2012, Maunlad became delinquent as to Association assessments, and the Association, through Alessi & Koenig, LLC, the Association's agent, recorded a Notice of Delinquent Assessment (Lien) ("**NODA**") as Instrument No. 201207090002343.

15. The NODA was mailed to Maunlad.

16. On October 31, 2012, after more than 30 days elapsed from the date of mailing of the NODA, a Notice of Default and Election to Sell Under Homeowners Association Lien ("**NOD**") was recorded by A&K on behalf of the Association as Instrument No. 201210310000604.

17. Within 10 days of recordation, A&K mailed copies of the NOD to, *inter alia*, Maunlad, DHI, MERS, and Recontrust, via first class and certified mail.

18. On May 16, 2013, a document entitled Corporate Assignment of Deed of Trust, signed by Nadine Homan as "Asst. Secretary" of MERS as Nominee for DHI, its Successors and Assigns, purporting to assign all beneficial interest under the DOT, to the Bank, recorded as

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Instrument No. 201305160001632.

19. On July 15, 2013, after more than 90 days elapsed from the date of the mailing of the NOD, a Notice of Trustee's Sale ("**NOTS**") was recorded by A&K on behalf of the Association as Instrument No. 201307150002503.

20. A&K mailed copies of the NOTS to, *inter alia*, Maunlad, DHI, MERS, Recontrust, the Ombudsman's Office, and the Bank via certified mail.

21. The Bank actually received the NOTS prior to the Association's sale.

22. The NOTS was served on Maunlad at the Property, and posted at three public places within Clark County and North Las Vegas for 20 consecutive days.

23. The NOTS was published in the Clark County Legal News for three consecutive weeks.

24. The Association authorized A&K to carry out a non-judicial foreclosure of the Property.

25. On January 14, 2014, the Association's foreclosure sale took place and SFR placed the winning bid of $37,000.00. This amount was paid by SFR.

26. There were multiple bidders in attendance at the sale.

27. No one acting on behalf of the Bank attended the sale.

28. Prior to the sale, the Bank knew about the Association's lien and the sale.

29. Neither the Association nor the A&K prevented the Bank from attending the Association foreclosure sale.

30. The Bank had no communications with the Borrower about the delinquencies to the Association before the foreclosure sale.

31. The Bank has no evidence to dispute that Evans was delinquent to the Association at the time of sale.

32. The Bank was aware the DOT contained the planned unit development rider, and believed the original lender was aware that the Property was located within a homeowners association when it originated the loan.

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33. Neither the Bank nor any entity with an interest in the DOT or related note paid or attempted to pay any portion of the NODA, NOD, or NOTS before the foreclosure sale.

34. There was no presale dispute between the beneficiary of the DOT and the Association or A&K.

35. Neither the Bank nor anyone else representing the beneficiary of the DOT did anything to let the general public know whether there was any attempt to pay the Association.

36. No one representing the beneficiary of the DOT ever requested a copy of the Association's annual budget.

37. The Bank has no evidence in its records to dispute that the borrower was delinquent to the Association at the time of the notice of sale and at the time of sale.

38. The Bank did not record any document against the Property indicating that any super-priority portion of the Association's lien had been satisfied.

39. The Bank did not file any civil or administrative action challenging the Association lien or Association foreclosure sale before the sale.

40. The Bank did not file a lis pendens against the Property before the date of the sale.

41. On January 22, 2014, the Foreclosure Deed vesting title in SFR was recorded as Instrument No. 201401220000123.

42. As recited in the foreclosure deed, "All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with."

43. SFR has no reason to doubt the recitals in the foreclosure deed.

44. If there were any issues with delinquency or noticing, none of these were communicated to SFR.

45. SFR was not aware of any release of the super-priority portion of the Association's lien recorded against the Property prior to the foreclosure sale.

46. SFR had no knowledge of any attempted or actual payments towards the Association's lien prior to the Association foreclosure sale.

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47. SFR does not recall any announcement at the Association sale regarding payments of any kind towards the Association's lien prior to the Association foreclosure sale.

48. SFR was not aware of any attempted or actual payment towards the Association's lien prior to the Association foreclosure sale.

49. SFR was not aware of any bank attempting to make payment or making any payment toward the delinquency owed to any association at any foreclosure sale, as no bank was making this argument in litigation.

50. Further, neither SFR, nor its agent, have any relationship with or interest in the Association, apart from owning property within the Association.

51. Similarly, neither SFR, nor its agent, have any relationship with or interest in A&K, outside of attending auctions, bidding and occasionally, purchasing properties at these publicly-held auctions or having purchased some reverted properties through arm's-length negotiations.

52. On November 30, 2018, Default was entered by the Clerk against Evans and Maunlad on behalf of SFR.

53. On February 20, 2019, a Substitution of Trustee and Deed of Reconveyance executed by MERS, reconveying all interest under the SDOT recorded September 28, 2008, is recorded as Instrument No. 20190220-0001761.

54. On April 3, 2019, a Notice of Voluntary Dismissal of MERS was filed.

CONCLUSIONS OF LAW

A. Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) *quoting Coray v. Hom*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or

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otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit Mart,* 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

SFR Claims Against Evans and Maunlad

B. While the moving party generally bears the burden of proving there is no genuine issue of material fact, in this case, there are a number of rebuttable presumptions that this Court must consider in deciding the issues, including:

1. Recorded title is presumed valid. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the record titleholder.")

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

3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es] compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns and all other persons" unless a party like the Bank can establish that it is entitled to

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equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)) ("*SFR*").

4. That "[i]f the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th 822, 831-32, 30 Cal. Rptr. 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).

C. These presumptions "not only fix[] the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d 1093, 1095 (1995)(*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)). "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.* at 842 (*citing* NRS 47.180).

D. Evans and Maunlad failed to rebut the presumptions laid out above. Therefore, Evans and Maunlad failed to meet its burden of proving it was more probable than not that the Association sale and the resulting Foreclosure Deed were invalid.

E. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

F. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-NRS 116.31168, like all foreclosure sales, extinguishes the title owner's interest in real property and all junior liens and encumbrances, including deeds of trust.

G. The Association foreclosure sale vested title in SFR "without equity or right of redemption." *SFR*, 334 P.3d at 412 (*citing* NRS 116.31166(3)).

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H. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209 (Bankr. D. Nev. 2003).

I. As such, as a result of the Association foreclosure sale, any interest claimed by Evans and Maunlad was extinguished.

J. Accordingly, SFR is entitled to summary judgment against Evans and Maunlad.

K. Alternatively, Evans and Maunlad all failed to file any opposition to SFR's Motion for Summary Judgment. Based thereon, pursuant to EDCR 2.20, SFR's Motion should also be granted.

The Deed of Trust is Extinguished Pursuant to NRS 106.240

L. SFR argues that NRS 106.240 requires dismissal of the case, because more than 10 years elapsed since the time the debt because due and payable.

M. NRS 106.240 reads as follows:

> **NRS 106.240 Extinguishment of lien created by mortgage or deed of trust upon real property.** The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.
> [2:37:1917; 1919 RL p. 3352; NCL 9410] (NRS A 1965, 1229)

N. SFR contends that NRS 106.240 applies to this case, and that the Deed of Trust was discharged due to acceleration of the underlying debt which was memorialized by the recordation of a Notice of Default on or about June 4, 2008.

O. The Notice of Default and Election to Sell contains the following language:

> That by reason thereof, the present beneficiary under such deed of trust has executed and delivered ... a written Declaration of Default and Demand for sale ... and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby. (See Notice of Default and Election to Sell, dated 05/04/2008, recorded number 20080604-0002737, emphasis added).

P. Ditech argues that SFR has no case law to support the contention that "accelerating

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the debt secured by a Deed of Trust would somehow transmute a 30-year debt into a debt that can be extinguished pursuant to [NRS] 106.240."

Q. In *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), the Nevada Supreme Court considered the scope of NRS 106.240 "which extinguishes certain real property debts ten years after they become due absent recorded extensions." In *Pro-Max*, the notes were executed on May 11, 1982 and became due two years later on May 14, 1984, and consequently, pursuant to NRS 106.240, "the notes were extinguished by operation of the statute on May 1, 1994." The Court held that the language of the statute was "clear and unambiguous," and consequently, "no interpretation is required or permissible."

R. There are no reported appellate cases in which the Court has addressed the issue of whether the lender's acceleration of the debt makes the entire amount "wholly due," such that NRS 106.240 would apply. The only guidance this Court could find is a Trial Order authored by Judge Cadish in 2018. In the case of *Hofele v. Deutsche Bank National Trust* (2018 WL 4760698 [Nev.Dist.Ct.] [Trial Order], the Court noted that the provisions in the Deed of Trust stated that the "beneficial holder at its option may accelerate the amount due under the debt." In *Hofele*, the Court undertook the following analysis:

> As noted, Plaintiff argues that his act of failing to pay his mortgage payments caused the amounts due under the debt to become immediately due in December of 2007, the date the Plaintiff claims he first missed a mortgage payment. The Court rejects Plaintiff's argument based on the following four reasons, all of which independently refute Plaintiff's argument. First, Plaintiff incorrectly assumes that a missed payment automatically accelerates the amounts due under the Deed of Trust. However, the plain meaning of the language in the Deed of Trust explains an acceleration of the amounts due under the debt only occurs at the beneficial holder's option. Second, the First Notice clearly states that the amounts due under the Deed of Trust are due, payable, and accelerated. However, the First Notice was recorded in November of 2008, since ten (10) years has not elapsed since that date, NRS 106.240 does not apply. Third, while the First Notice may have accelerated the amounts due under the Deed of Trust, that notice and all of the subsequent notices, with the exception of the Fourth Notice, were rescinded thereby restoring the original terms of the Note and Deed of Trust back to a due date of October 1, 2035. Fourth, even assuming that the amounts due under the Note and Deed of Trust were accelerated the moment Plaintiff missed the first payment, any time barring statute applicable in preventing a beneficial holder from foreclosing under the Deed of Trust was tolled for three (3) years, one (1) month and eight (8) days; See NRS

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11.3560. Therefore, after applying the tolling period, NRS 106.240 will not apply until February of 2021.

S. However, if this Court undertakes the same analysis as Judge Cadish, this Court must find that the Deed of Trust is extinguished by operation of NRS 106.240.

T. First, the beneficial holder in the present case did opt to accelerate the amounts due under the loan, pursuant to the language contained in the Notice of Default and Election to Sell.

U. Second, the Notice of Default and Election to Sell, wherein the beneficiary declared all sums immediately due and payable, thereby accelerating the debt, was filed on June 4, 2008, and more than 10 years have now passed since that date.

V. Third, in *Hofele*, the Notices were rescinded, but in the present case, there is no evidence that the Notice of Default and Election to Sell was rescinded.

W. Fourth, there is no evidence that a time-barring statute tolled the running of NRS 106.240 in this case.

X. Consequently, this Court must find that the beneficiary's acceleration of the debt made the entire amount of the loan wholly due as of June 4, 2008, at the latest, when the Notice of Default was recorded.

Y. As ten years have passed since June 4, 2008, i.e. acceleration and the debt becoming wholly due, the Deed of Trust is extinguished by operation of law, pursuant to NRS 106.240.

Z. There was an issue raised in the pleadings that the Federal Foreclosure Bar prevented the extinguishment of the Deed of Trust, because allegedly Fannie Mae obtained an interest in the Loan and Deed of Trust as of 2006. While this Court routinely finds that Fannie Mae or Freddie Mac's ownership interest in a loan is an issue of fact, in the present case, no such factual issue remains, because the Court finds that 12 U.S.C. § 4617(j)(3) does not apply here.

AA. 12 U.S.C. § 4617(j)(3) indicates that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale, without the consent of the Agency."

BB. The Federal Foreclosure Bar argument usually arises in cases involving mortgage foreclosures and/or sale of a property, and NRS Chapter 116's super-priority lien analysis. In the

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present case, however, the Deed of Trust is not extinguished by levy, attachment, garnishment, foreclosure or sale, but due to the passage of time, and pursuant to statute. (NRS 106.240).

CC. In other words, because operation of NRS 106.240 is not based on "levy, attachment, garnishment, foreclosure, or sale," 12 U.S.C. § 4617(j)(3) cannot possibly preempt NRS 106.240.

DD. Based upon the foregoing, the Court finds that no genuine issue of material fact remains, the Deed of Trust was extinguished by operation of law pursuant to NRS 106.240, and that SFR is entitled to summary judgment against Ditech.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that SFR's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ditech's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's non-judicial foreclosure sale relating to real property located at 8333 Jeremiahs Lodge Ave., Las Vegas, NV 89131, APN 125-04-212-072 extinguished the Second DOT recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20060928-0008263. Independently, the Court finds that the Second DOT was reconveyed on February 20, 2019 via Instrument No. 20190220-0001761, no longer encumbering the Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Deed of Trust recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20060928-0008262 is extinguished as a result of NRS 106.240.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Ditech, its predecessors in interest and its successors and assigns, have no further right, title, or interest in real property located at 8333 Jeremiahs Lodge Ave., Las Vegas, NV 89131, APN 125-04-212-072, and are hereby permanently enjoined from taking any further action to cloud SFR's title to the Property or enforce the extinguished DOT, including but not limited to initiating, or continuing

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to initiate, foreclosure proceedings and from selling or transferring the Property due to the applicability of NRS 106.240.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to EDCR 2.20 and the merits, Maria Patrocinio M. Evans aka Pat M. Evans, his predecessors in interest, successors, assigns, and heirs have no further right, title, or interest in real property located at 8333 Jeremiahs Lodge Ave., Las Vegas, NV 89131, APN 125-04-212-072 and are hereby permanently enjoined from taking any further action against the Property, including but not limited to, attempting to take possession of, selling, or transferring the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to EDCR 2.20 and the merits, Maunlad, LLC, its predecessors in interest, successors, assigns, and heirs have no further right, title, or interest in real property located at 8333 Jeremiahs Lodge Ave., Las Vegas, NV 89131, APN 125-04-212-072 and are hereby permanently enjoined from taking any further action against the Property, including but not limited to, attempting to take possession of, selling, or transferring the Property.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property located at 8333 Jeremiahs Lodge Ave., Las Vegas, NV 89131, APN 125-04-212-072 is hereby quieted in favor of SFR.

IT IS FURTHER ORDERED, ADJUDED, AND DECREED that JUDGMENT be entered in favor of SFR pursuant to this ORDER.

IT IS SO ORDERED.

DATED this 13 day of June, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted By:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **Date of Hearing: April 29, 2020** **Time of Hearing: 9 a.m.** **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") hereby submits its reply in support of its motion for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Bank's Opposition is a mirror image of its motion for summary judgment. As such, SFR's Opposition to the Bank's motion for summary judgment already addresses every point argued by the Bank. While this Reply largely replicates SFR's Opposition, SFR tailors it to support its own motion for summary judgment.

Contrary to the Bank's contention this is not a quiet title action arising from the

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Association sale. The Bank's opposition is both procedurally and substantively improper to the extent it seeks a declaration the deed of trust survived the Association foreclosure sale. The validity or invalidity of the sale is not before this Court. The Bank does not have a claim before this Court that would allow it to obtain any declaratory relief regarding the sale. Likewise, SFR's claims do not give this Court the ability to give such a declaration because SFR did not file any claims with regard to the Association sale. Instead, SFR filed two claims: (1) cancellation of notice of default and notice of sale based on the Bank's lack of authority to foreclosure by virtue of not having possession of the Note; and (2) cancellation of deed of trust based on NRS 106.240. Neither of these claims has anything to do with the Association foreclosure sale. Put another way, the Association foreclosure could be invalid, and SFR's claims would still prevent the Bank from foreclosing.

The Bank is equally estopped from asking this Court to adjudicate the validity of the foreclosure sale under the principle of *res judicata*. Specifically, the Bank filed an action to challenge the validity of the sale in federal court, but the federal court dismissed the action based on the statute of limitations. A dismissal based on statute of limitations constitutes an adjudication on the merits such that any subsequent lawsuit raising the same issues will be barred by *res judicata*, more specifically claim and issue preclusion.

Because it is undisputed the Bank made the debt, which the deed of trust secured, wholly due on April 29, 2008, under NRS 106.240 the Deed of Trust terminated on April 29, 2018, and therefore summary judgment in favor of SFR, on its second claim, is appropriate.

II. UNDISPUTED FACTS

While the Bank claims its motion for summary judgment recites the undisputed facts in the case, SFR opposed Facts 4 through 20 in its opposition. Additionally, SFR's motion contains additional facts. The Bank never disputes these facts. Specifically, the following are now undisputed and support granting summary judgment in favor of SFR:

- In January 2008, the borrowers ceased making payments to the Bank.
- The Bank recorded a Notice of Default on April 29, 2008 and it stated the beneficiary "has declared and does hereby declare all sums secured thereby

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immediately due and payable…"

- The borrowers did not cure the default.
- On November 29, 2011, the Assignment from MERS to the Bank was signed by Edward Gallegos, but this person was really an employee of the Bank, not MERS or Countrywide, the party who had to sign it.
- At no time after making the loan wholly due on April 29, 2008, did the Bank execute the power of sale and foreclose. Additionally, at no time after making the loan wholly due on April 29, 2008 did the Bank decelerate the loan.

III. ARGUMENT

A. By Operation of NRS 106.240, the Deed of Trust Terminated at the Latest on April 29, 2018.

SFR is entitled to summary judgment on its second cause of action. It is undisputed the Bank (or its predecessor in interest) recorded a Notice of Default against the Property on April 29, 2008.[1] It is further undisputed this Notice of Default stated, the beneficiary "**has declared** and does hereby declare all sums secured thereby **immediately due and payable**…"[2]

Again, NRS 106.240 provides that "[t]he lien…created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the…deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." Here, the Bank claims the statute is silent as to notice of accelerations, but it misses the point. Acceleration is just one means by which the lender can make the debt "wholly due." Thus, the question under NRS 106.240 is when did the debt become wholly due. Whatever date that is, is the date upon which the ten years begins to run. Likewise, the Bank's argument regarding the "terms thereof" is misplaced. Paragraph 22 of the Deed of Trust contemplates accelerating the loan maturity date when the borrower defaults, thus when the borrower

[1] *See* Exhibit A-3 to SFR's MSJ.

[2] *Id.* (emphasis added.)

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defaulted, and the Bank made the debt immediately due and payable, as stated in the recorded Notice of Default, it made the loan wholly due by the "terms" of the Deed of Trust. *See generally*, *Boyes v. Valley Bank of Nevada*, 701 P.2d 1008, 1009-10 (Nev. 1985) ("Valley Bank corresponded with the Boyeses and demanded that they pay in full their promissory note in accordance with the 'due-on-sale' clause contained in paragraph 17 of the deed of trust.")

In that regard, the Bank's contention that it never executed, recorded or agreed to alter the terms of the deed of trust is false and contrary to the undisputed evidence in this case. The Notice of Default is the recorded document, that per the terms of the Deed of Trust made the loan wholly due. Again, the Notice of Default states, the beneficiary "**has declared** and does hereby declare all sums secured thereby **immediately due and payable**…"[3] In so doing, the Bank triggered the ten-year time limitation in NRS 106.240. At the latest, the loan was wholly due on April 29, 2008, the date of recording. Counting ten years from that date, the Deed of Trust terminated on April 29, 2018. There being no valid Deed of Trust, SFR is entitled to summary judgment on its second cause of action. At least three other courts have agreed with SFR's interpretation and application of NRS 106.240, two involving a notice of default which accelerated the loan maturity date, and another which accelerated via letter.[4]

Finally, the 2013 letter does not change the fact that the 2008 notice of default made the loan wholly due. The Bank has not provided any evidence that between 2008 and 2013, it decelerated the loan i.e. put the loan back in its original posture of installment payments. There being no evidence of deceleration, the 2008 notice of default language still controls.

B. Conclusive Presumptions Are not Refutable.

In *Pro-Max*, the Nevada Supreme Court noted NRS 106.240 "creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due," and ruled that "the conclusive presumption contained in NRS 106.240 clearly and unambiguously applies without limitation to all debts secured by deeds of trust on real property."

[3] *Id.* (emphasis added.)

[4] *See* Orders from Case No. A-14-702456-C; A-13-686522-C; 2:16-cv-01053 attached as Exhibit 2 to SFR's Opposition to the Bank's motion for summary judgment.

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Pro-Max Corp. v. Feenstra, 117 Nev. 90, 94, 97, 16 P.3d 1074, 1076, 1079 (2001). A conclusive presumption, in contrast to a rebuttal presumption, cannot be refuted. *See* NRS 47.240. While the Nevada Supreme Court chose to overstep the Legislature with respect to the conclusive recitals found in NRS 116.31166, this ruling has no bearing on NRS 106.240.[5] Certainly, the *Shadow Wood* case did not upend every statutory conclusive presumption in Nevada. The case states no such intent, and most importantly, it never states it overrules *Promax*.

But even if *Shadow Wood* does have such a broad reach (which it does not), all this means is the conclusive presumption is refutable by evidence. But the Bank offers no evidence the loan was not made wholly due on April 29, 2008. It offers no affidavit or declaration explaining that after recording the April 29, 2008 notice of default, it rescinded the wholly due language and placed the loan back into an installment contract. Absent this evidence, even if the conclusive presumption found in NRS 106.240 could be refuted (which it cannot), the Bank fails to actually refute it. Thus, the undisputed evidence establishes the loan became wholly due, at the latest, on April 29, 2008, and therefore by operation of NRS 106.240, the Deed of Trust terminated on April 29, 2018.

C. The Bank Has No Claims in this Matter.

The Bank has zero claims in this matter. It is axiomatic before a court can grant a party affirmative declaratory relief like that requested by the Bank in its Motion, there must be a substantive claim to which that relief can be linked. A "cause of action" has been defined as the "fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief." *See Meech v. Hillhaven West Inc.,* 776 P.2d 488, 497 (Mont. 1989) (A "cause of action" has been defined as the "fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief.") quoting *State v. Preston,* 181 N.E.2d 31, 36 (Ohio 1962). See also, *Velazquez v. Mortg. Elec. Registration Sys.*, 2011 WL 1599595, at *3 (D. Nev. Apr. 27, 2011) (holding that a request for one particular remedy such as "declaratory relief is not a separate substantive claim for relief"). But there is no

[5] *Shadow Wood Homeowners Ass'n v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016).

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claim before this Court that raises a challenge to the Association foreclosure sale, either from the Bank or from SFR. Thus, from a pure procedural standpoint the Bank's Opposition, to the extent it seeks a declaration the Deed of Trust was not extinguished by the Association foreclosure sale, is improper as there is no claim to tie such relief to.

D. Under the Doctrine of *res judicata* the Bank is Precluded from Challenging the Association Foreclosure Sale.

The doctrine of *res judicata* precludes parties or their privies from relitigating a cause of action that has been fully determined by court of competent jurisdiction. *Paradise Palms Community Ass'n v. Paradise Homes*, 89 Nev. 27, 29, 505 P.2d 596, 598 (1973); *Horvath v. Gladstone,* 97 Nev. 594, 597, 637 P.2d 531, 533 (1981); *Gilbert v. Warren,* 95 Nev. 296, 594 P.2d 696 (1979). The doctrine also precludes parties from relitigating issues they could have raised in a prior action concerning the same controversy. *Hulsey v. Koehler,* 218 Cal.App.3d 1150, 267 Cal.Rptr. 523, 526 (Ct.App.1990). Additionally, any issue decided in such litigation is conclusively determined as to the parties and their privies. *Bernhard v. Bank of America Nat. Trust & Sav. Ass'n*, 19 Cal.2d 807, 122 P.2d 892 (1942). As the *Bernhard* Court noted, "[t]he rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy." *Id.* Additionally, "[t]he doctrine also serves to protect persons from being twice vexed for the same cause." *Id.*

There are two different species of *res judicata*: issue preclusion and claim preclusion. Issue preclusion, also known as collateral estoppel, is implicated when one or more of the parties to the earlier suit are involved in a subsequent suit on a different claim. *See University of Nevada v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191-92 (1994). If the issue was decided and necessary to the judgment in the prior suit, its re-litigation will be precluded. *Id. citing* Charles A. Wright, Law of Federal Courts § 100A, at 682 (4th ed. 1983); Restatement (Second) of Judgments § 13 (1982).

Under claim preclusion, "[a] valid and final judgment on a claim precludes a second action on that claim or any part of it." *See Gilbert v. Warren,* 95 Nev. 296, 594 P.2d 696 (1979). Additionally, "[t]he modern view is that claim preclusion embraces all grounds of recovery that

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were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel. *See Batterman v. Wells Fargo Ag. Credit Corp.,* 802 P.2d 1112 (Colo.Ct.App.1990); *Matter of Herbert M. Dowsett Trust,* 7 Haw.App. 640, 791 P.2d 398 (Ct.1990); *Madsen v. Borthick,* 769 P.2d 245, 247 (Utah 1988).

Res judicata applies when the following three elements are present: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation. *Horvath,* 97 Nev. at 597, 637 P.2d at 531. In the present case, all three elements are met.

First, there is no doubt, in the prior federal action the Bank asked the Court to adjudicate the validity of the sale, and as the basis for challenging the sale, the Bank raised the issue of tender. In this case, the Bank seeks to do the same thing, albeit having never pled a claim. **Second**, the ruling in the prior federal action was on the merits. The federal court dismissed the Bank's claims as time-barred.[6] A dismissal based on the statute of limitations is an adjudication on the merits of the claim. See *Ellingson v. Burlington Northern* Inc., 653 F.2d 1327, 1330 n. 3 (9th Cir.1981)("[a] judgment based on the statute of limitations is 'on the merits' "); *see also Plaut v. Spendthrift Farm,* 514 U.S. 211, 228 (1995)("The rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: as a judgment on the merits.")

While the underlying merits of the substantive claim have not been adjudicated, the running of the statute of limitations precludes testing whether the claim would otherwise have been valid, and thus for *res judicata* purposes a dismissal on statute of limitations is treated as a dismissal on the merits. *See Ellingson v. Burlington Northern Inc.,* 653 F.2d 1327, 1330 (9th Cir.1981); *see also Suckow Borax Mines Consol., Inc. v. Borax Consol., Ltd.,* 185 F.2d 196, 205

[6] *See* Ex. A to Bank's MSJ.

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(9th Cir.1950). In fact, the Restatement has abandoned the "on the merits" terminology because, as it explains, "[i]ncreasingly ... judgments not passing directly on the substance of the claim have come to operate as a bar." Restatement (Second) of Judgments § 19 cmt. a (1982); *see also* 18 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 4441 (1981); *EFCO Corp. v. U.W. Marx, Inc.,* 124 F.3d 394, 398 (2nd Cir.1997). **Third**, the judgment in the prior federal action was against the Bank.

As all three elements of *res judicata* exist, the Bank is precluded from having this Court adjudicate the issue of tender in relation to the Association foreclosure sale.

IV. CONCLUSION

For the reasons stated, SFR requests this Court grant SFR's motion for summary judgment. Without doubt, this Court has no procedural nor substantive mechanism to grant any declaratory relief in favor of the Bank with respect to the Association foreclosure sale, as there are no claims before this Court on that issue, and even if there were, such claims would be precluded under the doctrine of *res judicata*.

Dated this 20th day of April, 2020.

KIM GILBERT EBRON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2020, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing, **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT,** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

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An employee of KIM GILBERT EBRON

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Attorneys for Defendant The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25, a national bank; SABLES, LLC, a foreign limited liability company,

Defendants.

CASE NO.: A-19-790150-C
DEPT NO.: XXIX

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendants The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC, and hereby submits their Reply in Support of Motion for Summary Judgment as to Plaintiff's Complaint.

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This Reply is based on the underlying Motion, the attached Memorandum of Points and Authorities, the Exhibits and Declaration filed herewith, all papers and pleadings on file herein, all judicially noticed facts, and any oral or documentary evidence that may be submitted at a hearing on this matter.

DATED this 22nd day of April, 2020.

ZBS LAW, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an action for cancellation of instrument concerning a first position deed of trust encumbering real property known as 4946 Droubay Drive, Las Vegas, NV 89122 (APN: 161-26-111-133) (the "Property") following a homeowner association lien foreclosure sale conducted on September 19, 2012 ("Lien Sale"). Non-party Alessi & Koenig, LLC ("A&K") conducted the Lien Sale on behalf of non-party Squire Village Homeowners Association ("HOA" or "Squire Village").

Defendant, The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 ("BNYM" or "Defendant"), is the holder of the first Deed of Trust on the Property which was purchased by Plaintiff SFR Investments Pool 1, LLC ("SFR" or "Plaintiff") at the Lien Sale for just $5,258.00.

On January 30, 2020, BNYM filed a Motion for Summary Judgment as to Plaintiff's two causes of action for cancellation of instrument. As to the first cause of action regarding

cancellation of two Notices of Default recorded on behalf of the deed of trust beneficiary, BNYM cited well-established caselaw holding that it has the authority to enforce the terms of the Note and Deed of Trust, as it is in possession of both. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 521 (2012). Accordingly, there is no legal basis for SFR's first cause of action and BNYM is entitled to summary judgment as to this cause of action.

As to SFR's second cause of action for cancellation of written instrument regarding the deed of trust under NRS 106.240, BNYM's argument is twofold. First, SFR's argument is based upon a misreading of statutory language and the presumption that a debt has been satisfied does not occur until ten years after the debt is due per the terms of the instrument. In this case, the presumption under NRS 106.240 would not come into play until December 1, 2056. Second, even if SFR's reading is correct, BNYM produced uncontroverted evidence that it has not been ten years since the loan balance was accelerated.

As to SFR's third cause of action for violation of NRS 107.028 as against Sables, Sables filed a Declaration of Non-Monetary Status under NRS 107.029 which SFR did not object to. Accordingly, Sables is entitled to summary judgment as to SFR's third cause of action.

In its Opposition, SFR contends as follows; 1) BNYM's deed of trust terminated ten years after the first Notice of Default was recorded on April 29, 2008, pursuant to its strained interpretation of NRS 106.240; 2) BNYM did not address SFR's first cause of action, even though BNYM cited to *Edelstein* as binding authority supporting its ability to enforce the Deed of Trust, and; 3) BNYM is not entitled to a declaration from this Court that its Deed of Trust remains valid and enforceable under the doctrine of res judicata, despite the fact that BNYM's earlier federal court case did not involve the claims brought by SFR in the instant matter.

For the reasons set forth below, BNYM's motion for summary judgment should be granted.

II. ARGUMENT

A. SFR LACKS STANDING TO CHALLENGE THE VALIDITIY OF THE DEED OF TRUST OR ANY ASSIGNMENTS THERETO.

In its Opposition, SFR asserts that BNYM cannot pursue foreclosure because it has not demonstrated that it is the holder of original promissory note. The fact that SFR has not seen the

original note is irrelevant to BNYM's standing to enforce the Deed of Trust. Further, the mere conjecture and speculation presented by SFR are not sufficient to raise a genuine issue of material fact in this case, as SFR "must do more than simply show that there is some metaphysical doubt as to the material facts." *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005), at FN 13. Public record, of which this Court can take judicial notice, establishes that BNYM is the beneficiary of the Deed of Trust.

Moreover, SFR lacks standing to challenge the validity of the Deed of Trust or any assignments thereto as it was not a party to the loan documents. In any case, holding the Note is irrelevant since BNYM is the record beneficiary under the Assignment of Deed of Trust, and as such is entitled to enforce the Deed of Trust. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012).[1]

B. A PLAIN READING OF NRS 106.240 DOES NOT SERVE TO EXTINGUISH BNYM'S DEED OF TRUST.

SFR's argument in support of its second cause of action for cancellation of instrument under NRS 106.240 is that the loan became wholly due on April 29, 2008 – the date the first Notice of Default was recorded on behalf of BNYM's predecessor-in-interest. SFR contends that "[t]here being no evidence of deceleration, the 2008 notice of default language still controls." *See*, Opposition at p. 6, line 6.

First, the Nevada Supreme Court has weighed in on this issue in *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074, (2001). In that case, the Nevada Supreme Court considered the effect of this statute on notes executed on May 11, 1982, with a maturity date of May 14, 1984 - two years later. In its ruling, the Court held: "it is undisputed that no written agreements to extend the notes and deeds of trust were ever executed or recorded. Therefore, under the plain language of the statute, the deeds of trust were conclusively presumed to have been satisfied in 1994, which is ten years after the notes became due." *Id*., at 94, 1077. Simply put, NRS 106.240 is silent as to notice of acceleration outside the loan documents, and the Court did not make any ruling pertaining to notices of acceleration.

[1] It is important to note that BNYM did, in fact, produce a copy of the Note at issue during discovery. A copy of the Note, endorsed to blank, is attached hereto as **Exhibit J**.

Notably, the statute provides for discharge of the debt and lien "at the expiration of 10 years after the debt secured by the mortgage or deed of trust **according to the terms thereof** … become wholly due." NRS 106.240 (emphasis added). A plain reading of the qualifier "according to the terms thereof" leads one to refer to the loan documents for terms setting the maturity date of the loan. Here, the deed of trust evidences a loan maturity date of December 1, 2046. *See*, BNYM's Request for Judicial Notice ("RFN"), **Exhibit 1** at p. 2. SFR has produced no evidence that BNYM executed, agreed, or recorded anything to alter the terms of the loan instruments, or the maturity date set forth therein. Therefore, according to the terms of the loan instruments, NRS 106.240 does not serve to extinguish the deed of trust until ten years after the maturity date as set forth in the note – December 1, 2056.

SFR next argues that "[T]he Bank has not provided any evidence that between 2008 and 2013, it decelerated the loan i.e. put the loan back in its original posture of installment payments." First, SFR cites to no legal authority requiring BNYM to produce evidence of deceleration for purposes of NRS 106.240. Second, BNYM produced a fully executed loan modification agreement that post-dated the April 29, 2008 Notice of Default., which was produced during discovery. *See*, BNYM's Opposition to SFR's Motion for Summary Judgment at **Exhibit 1** (BONYM00632-633). This document flies in stark contrast to SFR's contention that the loan was never put back in its "original posture of installment payments." Moreover, there is no evidence whatsoever that the loan balance had accelerated until at least October, 2013.[2] *See*, BNYM's Motion for Summary Judgment at **Exhibit H.**

Because SFR improperly attempts to extinguish BNYM's lien without any controlling guidance to support that conclusion, BNYM is entitled to summary judgment as to SFR's cause of action seeking cancellation of the Deed of Trust.

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[2] Paragraph 22 of the Deed of Trust requires the lender to provide notice of acceleration to the Borrower. *See*, RFN at **Exhibit 1**, p. 14. Here, the lender's Notice of Acceleration is dated September 17, 2013. *See*, BNYM's Motion for Summary Judgment at **Exhibit H**. BNYM also notes that the Borrowers also filed for Chapter 7 bankruptcy protection on October 15, 2010. This act alone would have automatically decelerated the loan, as any efforts to foreclose or collect would have violated the automatic stay. The bankruptcy would have also served to toll any statutory time periods relating to the loan.

C. SFR CONCEDES THAT ANY PRESUMPTION UNDER NRS 106.240 IS REFUTABLE, AND BNYM HAS PRODUCED EVIDENCE ESTABLISHING THAT THE LOAN WAS NOT ACCELRATED AS SFR CONTENDS.

In its Motion, BNYM argued that the conclusive presumption contained in NRS 106.240 may be challenged in equity. Here, BNYM or its predecessor(s) in interest have not been sitting idly, but have either been working with the Borrowers to modify the terms of their loan, or actively pursuing the remedy of foreclosure. Moreover, BNYM tendered the superpriority portion of the HOA lien in order to protect its interest in the property. The superpriority portion of the lien was also paid by the borrowers prior to the sale, which cured the default as to the superpriority portion of the HOA lien. BNYM has done everything in its power to work with the Borrowers, preserve its lien interest, and rightfully foreclose under its deed of trust.

While SFR disagrees that the presumption in NRS 106.240 may be challenged in equity, SFR does concede that the presumption is refutable based on evidence before the Court. Here, BNYM has demonstrated that there was a post-Notice of Default loan modification finalized on August 25, 2008. This document clearly establishes that the loan had been put "back in its original posture of installment payments…" as SFR contends is required. BNYM has also established that the Borrowers filed for Chapter 7 bankruptcy on October 15, 2010, which necessarily decelerated the loan. Finally, BNYM has established that as of September 2013, the loan balance had not yet re-accelerated, as evidenced by the Notice of Acceleration sent to the Borrowers pursuant to Paragraph 22 of the Deed of Trust.

D. BNYM'S DEFENSES ARE NOT BARRED BY THE DOCTRINE OF CLAIM PRECLUSION.

Finally, SFR contends that BNYM is not entitled to a declaration that its Deed of Trust survived the HOA foreclosure under the doctrine of res judicata. Res judicata, a term which has been disavowed by the Nevada Supreme Court, precludes parties from re-litigating a cause of action previously determined by a court. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 712-713 (2008).[3] The Court in *Five Star* broke the concept of res judicata into two modern components: a) claim preclusion, and; b) issue preclusion. Issue preclusion requires that

[3] SFR's Opposition is devoid of any reference to or analysis under *Five Star*, the controlling decision in Nevada regarding claim and issue preclusion.

"the issue decided in the prior litigation must be identical to the issue presented in the current action … [and] the issue was actually and necessarily litigated. *Five Star* at 1054-55. Conversely, claim preclusion simply requires the involvement of the same parties, a valid judgment, and that "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Id*. Issue preclusion necessarily does not apply here because no issues relating to NRS 106.240 were "actually and necessarily litigated" in the earlier federal court action as BNYM's claim was one for quiet title, and SFR's claim here is for cancellation of instrument under NRS 106.240 which was not even raised as a defense in the earlier action.

As to the concept of claim preclusion, the *Five Star* Court set forth the following three-part test for determining whether it should apply: 1) The parties or their privies are the same; 2) the final judgment is valid, and; 3) the subsequent action is based on the same claim or any part of them that were or could have been brought in the first case. *Five Star* at 1054.

In that decision, the Court noted that "[w]hile the requirement of a valid final judgment does not necessarily require a determination on the merits, it does not include a case that was dismissed without prejudice or for some reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive effect. *Id*. at FN 27, citing Moore's Federal Practice § 131.30[3][a] (3d ed. 2008); Restatement (Second) of Judgments § 19 cmt. a, § 20 (1982); NRCP 41(b).

In determining whether the subsequent action is based on the same claim that was brought in the first case, the prevailing view is that "claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted…" *University of Nevada v. Tarkanian*, 110 Nev. 581, 600, 879 P.2d 1180, 1191 (1994). *See also*, *Burrell v. Southern Pacific Co.*, 13 Ariz.App. 107, 474 P.2d 466 (Ct.1970); *B & E Installers v. Mabie & Mintz*, 25 Cal.App.3d 491, 101 Cal.Rptr. 919 (Ct.App.1972); *Gies v. Nissan Corp*., 57 Wis.2d 371, 204 N.W.2d 519, 523 (1973).

SFR's claim in this case – cancellation of instrument under NRS 106.240 – has no nexus whatsoever to the quiet title/declaratory relief claim brought by BNYM in the dismissed federal court case. Moreover, in the federal court case, SFR made no argument regarding the validity of BNYM's deed of trust based on the purported running of the 10-year statute of repose, as it did here. SFR made no claim for quiet title in this action, and in the federal court case, BNYM surely

did not assert that its deed of trust was extinguished by operation of NRS 106.240. As set forth in prior pleadings, the only defense SFR raised in the federal court case was that BNYM's complaint was time-barred under the 3, 4, or 5-year statutes of limitations. Ultimately, the court agreed and dismissed BNYM's complaint without making a judicial determination as to the effect of an HOA foreclosure that did not contain a superpriority portion on BNYM's first position deed of trust.

BNYM does not dispute that the first two prongs for claim preclusion set forth in *Five Star* have been met here, namely that the parties are the same and the final judgment was valid. That said, the third and final prong of the *Five Star* test – that the subsequent action is based on the same claim or any part of them that were or could have been brought in the first case – has not been met by any stretch of the imagination. *Five Star* at 1054. As a result, BNYM is not precluded from raising payment as an affirmative defense in this case, which it did. *See*, Complaint on file herein at Affirmative Defense No. 12. BNYM is therefore entitled to summary judgment as to SFR's complaint, and is likewise entitled to a declaration that it's Deed of Trust remains an enforceable lien, as BNYM's pre-sale tender and the Borrower's payments cured any default as to the superpriority portion of the HOA's lien prior to the foreclosure.

E. CONCLUSION

For the reasons set forth above, BNYM respectfully requests that the Court grant Summary Judgment in its favor and declare that the Lien Sale did not extinguish the Deed of Trust and that the Deed of Trust continues to encumber the Property as an enforceable lien.

Dated this _22nd__ day of April, 2020

ZBS LAW, LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ZBS LAW, LLP, and that on this 22nd day of April, 2020, I did cause a true copy of **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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/s/Sara Hunsaker
An employee of ZBS LAW, LLP

EXHIBIT “J”

EXHIBIT “J”

EXHIBIT “J”

Prepared by: NATALIA GENOV

[redacted]

ADJUSTABLE RATE NOTE
(LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

NOVEMBER 17, 2006	LAS VEGAS	NEVADA
[Date]	[City]	[State]

4946 DROUBAY DRIVE, LAS VEGAS, NV 89122
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 232,200.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is
COUNTRYWIDE HOME LOANS, INC.
I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.450 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on JANUARY 01, 2007 . I will make these payments every month until I have paid all of the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2046 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 1,693.42 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of DECEMBER, 2008 , and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before the Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding SIX & 65/100 percentage point(s) (6.650 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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[redacted]

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.950 % or less than 8.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE & ONE-HALF percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 15.450 % or less than 8.450 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid Principal is known as a "Full Prepayment." A prepayment of only part of the unpaid Principal is known as a "Partial Prepayment." When I make a Partial or Full Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under this Note.

Subject to the Prepayment Penalty specified below, I may make a Full Prepayment or Partial Prepayments of my obligation. The Note Holder will use all of my prepayments to reduce the amount of Principal that I owe under the Note. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

☐ **I may prepay this Note in full at any time without penalty.**

☒ **If within the first** TWENTY FOUR **months after the execution of the Note, I make any prepayment(s) within any 12-month period, the total of which exceeds 20 percent (20%) of the original principal amount of this loan, I will pay a prepayment penalty in an amount equal to the payment of six (6) months' advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds 20 percent (20%) of the original principal amount of the loan.**

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a Partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

[redacted]

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

NELSON M. PRITZ -Borrower

SUSAN PRITZ -Borrower

-Borrower

-Borrower

PAY TO THE ORDER OF

WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC.
BY: Michele Sjolander
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

[Sign Original Only]

SUPP

ZBS LAW, LLP
J. Stephen Dolembo, Esq.
Nevada Bar No. 9795
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148
Tel: (702) 948-8565
Fax: (702) 446-9898
sdolembo@zbslaw.com
Attorneys for Defendant The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25, a national bank; SABLES, LLC, a foreign limited liability company,

Defendants.

CASE NO.: A-19-790150-C
DEPT NO.: XXIX

SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC, and hereby submits supplemental points and authorities in support of its Motion for Summary Judgment as to Plaintiff's Complaint.

DATED this 13th day of May, 2020.

ZBS LAW, LLP

/s/J, Stephen Dolembo, Esq.
J. Stephen Dolembo, Esq.

Nevada Bar No. 9795
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
sdolembo@zbslaw.com
Attorneys for Defendant The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an action for cancellation of instrument concerning a first position deed of trust encumbering real property known as 4946 Droubay Drive, Las Vegas, NV 89122 (APN: 161-26-111-133) (the "Property") following a homeowner association lien foreclosure sale conducted on September 19, 2012 ("Lien Sale"). Non-party Alessi & Koenig, LLC ("A&K") conducted the Lien Sale on behalf of non-party Squire Village Homeowners Association ("HOA" or "Squire Village").

Defendant, The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 ("BNYM" or "Defendant"), is the holder of a first Deed of Trust on the Property and is seeking a declaration that its Deed of Trust was not extinguished by the Lien Sale. Plaintiff SFR Investments Pool 1, LLC ("SFR" or "Plaintiff") purchased the Property at the Lien Sale for just $5,258.00 and contends that the debt underlying BNYM's deed of trust is presumed satisfied under NRS 106.240 because over ten years passed since BNYM recorded its first Notice of Default in April 2008.[1]

On January 30, 2020, BNYM filed a Motion for Summary Judgment as to Plaintiff's two causes of action for cancellation of instrument. During the hearing on April 29, 2020, this Court requested supplemental briefing as to SFR's second cause of action for cancellation of instrument under NRS 106.240 relating to BNYM's deed of trust. Specifically, this court requested additional information regarding the completed loan modification agreement dated August 25, 2008, and

[1] BNYM continues to assert that the statutory presumption under NRS 106.240 is only triggered ten years after the maturity date of the note or any written extensions thereto. *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074, (2001).

whether any payments were made pursuant to that modification agreement. A true and correct copy of the August 25, 2008 loan modification is attached hereto as **Exhibit 1**. During the April 29, 2020 hearing, counsel for SFR contended that no payments had been made on the loan since the April 29, 2008 Notice of Default had been recorded and therefore, the debt underlying BNYM's deed of trust was presumed extinguished on April 29, 2008 pursuant to NRS 106.240. Accordingly, this Court requested supplemental information regarding whether payments had, in fact, been made by Nelson and Susan Pritz (the "Borrowers) after the August 2008 loan modification agreement was executed.

Upon further review of documents produced during discovery and deposition testimony of BNYM's N.R.C.P. 30(b)(6) witness, it is clear that multiple payments were made that post-dated the August 2008 loan modification agreement and in fact, the loan was current up to and including April 1, 2009. First, **Exhibit H** to BNYM's Motion for Summary Judgment is a September 17, 2013 Notice of Acceleration sent to the borrowers by BNYM's loan servicer, Specialized Loan Servicing LLC ("SLS").[2] In this letter, the borrowers were advised that "[t]he Note on the above-referenced loan is now in default as a result of your failure to pay the 05/01/09 payment and the payments due each month thereafter, as provided for in said Note." This letter clearly demonstrates that the August 2008 loan modification put the loan back in its original posture of installment payments, and that the borrowers continued to make payments for eight months after August 2008.

Second, on May 12, 2016, SLS provided the borrowers with a reinstatement notice which again confirms that "[the date through which the account is paid is April 1, 2009." See, May 12, 2016 reinstatement notice attached hereto as **Exhibit 3**. Moreover – contrary to the assertions made by SFR's counsel during the April 29, 2020 hearing – the January 16, 2019 Notice of Default recorded on behalf of BNYM also states that the current amount in default includes "[t]he monthly installment which became due on 5/1/2009, along with late charges, and all subsequent monthly installments." *See*, January 16, 2019 Notice of Default, attached hereto as **Exhibit 4**. Simply put, the loan modification was completed in August 2008, the loan balance had been decelerated at that time, and the Borrowers kept their account current up to and including April 1, 2009.

[2] A copy of this letter is attached hereto as **Exhibit 2** for the Court's convenience.

BNYM's N.R.C.P. 30(b)(6) witness, Annette Heebner, further confirmed this during Volume 2 of her deposition on February 20, 2020. Ms. Heebner testified that the August 2008 loan modification was completed, and then a second modification was completed in 2009. Ms. Heebner continued by testifying that a trial modification was given to the borrowers in 2010 prior to their filing for bankruptcy. *See*, deposition transcript of Annette Heebner, attached hereto as **Exhibit 5**, at p. 12, line 22 through p. 14, line 17. With respect to the paid-through date, Ms. Heebner offered the following testimony.

Q: Can you tell me what the different transaction types are on that BONYM 00252?

A: I do not have the transaction codes memorized. I do know that some of those, the E90s and E10s, have to do with your impound account, taxes and insurance.

Q: Am I correct to understand that the paid-through date column would list the date that the loan was currently paid through?

A: That is what it appears on these documents, yes.

Q: Based on this document, can you tell me what the paid-through date is for this loan?

A: It looks like it is showing paid through April 1st, 2009.

Q: Am I correct to understand that this payment history goes through the end of September of 2019?

A: That is correct.

Q: Does this payment history start from the date that SLS began servicing?

A: That is correct. 12/23/2011.

Q: And you see that date on BONYM 00251; is that correct?

A: Yes.

Q: Can you tell from this document when the last payment was made by the borrower?

A: Are you talking about this page?

Q: Sorry. The payment history from SLS.

A: Okay. When it came over to SLS, it is showing that it was paid through April 1st, 2009.

See, **Exhibit 5** at p. 20, line 16 through p. 21, line 20. See also, BONYM00252, attached hereto as **Exhibit 6**.

Simply put, the evidence establishes that any default in the loan that existed as of April 2008 had been cured, payments had been made pursuant to the August 2008 loan modification, and the loan had been paid current through April 2009. Accordingly, the September 17, 2013 notice of acceleration, sent pursuant to Paragraph 22 of the deed of trust, is the only evidence before the Court that as of that date, the loan had not yet been accelerated. *See*, **Exhibit 2**. In fact, according to the terms of **Exhibit 2**, "[f]ailure to pay the total amount due under the terms and conditions of [the Borrowers'] Deed of Trust/Mortgage by 10/20/13 may result in acceleration of the entire balance outstanding under the Note including, but not limited to, the principal, interest, and all other outstanding charges and costs, and commencement of foreclosure of the Trust Deed/Mortgage which is security for [the Borrowers'] Note." *Id*.

Accordingly, even through SFR's strained interpretation of NRS 106.240, the debt underlying BNYM's deed of trust has not been presumably satisfied because it has not been ten years since October, 2013 – the earliest possible date the loan was accelerated. Moreover, even if this Court recognizes the account's paid-through date of April 1, 2009 as the trigger date for purposes of NRS 106.240, BNYM's January 16, 2019 Notice of Default was recorded within ten years of that date. SFR's complaint – being filed on February 27, 2019 – also falls within the ten year timeframe of loan's paid-through date and therefore, BNYM is entitled to an entry of summary judgment in its favor.

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II. CONCLUSION

For the reasons set forth above, BNYM respectfully requests that the Court grant Summary Judgment in its favor and declare that the Lien Sale did not extinguish the Deed of Trust and that the Deed of Trust continues to encumber the Property as an enforceable lien.

Dated this 13th day of May, 2020

ZBS LAW, LLP

/s/ J. Stephen Dolembo, Esq.

J. Stephen Dolembo, Esq.
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9435 West Russell Road, Suite 120
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ZBS LAW, LLP, and that on this 13th day of May, 2020, I did cause a true copy of **SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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

Attorneys for Plaintiff SFR Investments Pool 1, LLC

/s/Sara Hunsaker
An employee of ZBS LAW, LLP

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

RECORDING REQUESTED BY:
Countrywide Home Loans Servicing LP

Attn Hope Department: SV-HRD S-L 400
Countrywide Way Simi
Valley, CA 93065

Loan # [redacted]

FOR INTERNAL USE ONLY

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), made this 12th day of August 2008, between NELSON M PRITZ, SUSAN PRITZ and Countrywide Home Loans Servicing LP (Lender), amends and supplements (1) the Mortgage, Deed of Trust, or Deed to Secure Debt (the Security Instrument), dated the 17th day of November 2006 and in the amount of $232,200.00 and (2) the Note bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as in the 'Property', located at 4946 DROUBAY DRIVE, LAS VEGAS, NV 89122.

The real property described being set forth as follows:

SAME AS IN SAID SECURITY INSTRUMENT

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND SETS THE MAXIMUM RATE THE BORROWER MUST PAY.

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (not withstanding anything to the contrary contained in the Note or Security Instrument):

1. As of the 1st day of October 2008, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U.S. $248,890.02 consisting of the upaid amount(s) loaned to Borrower by Lender plus any interest and other amounts capitalized.
2. The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of 8.450% from 1st day of September 2008 to 1st day of September 2013. The amount of the monthly payment is changed to $1,825.48 for the first 60 payments, and thereafter will be in an amount as calculated to the original terms of the Note. Borrower will continue to make monthly payments on the same day of each succeeding month until principal and interest are paid in full, except that, if not sooner paid, the final payment of Principal and interest shall be due and payable on the 1st day of December 2046 which is the present or extended Maturity Date. Borrower understands and agrees that Borrower's payment may increase when it begins to amortize in accordance with the note due to the modified amount of my principal balance.
3. If on the Maturity Date, Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date.
4. The Borrower will comply with all other covenants, agreements, stipulations and conditions of the Security Instrument, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are cancelled, null, and void, as of the date specified in paragraph 1 to the extent they are inconsistent with the terms and provisions of this Agreement:
    a. all terms and provisions of the original Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment, in the rate payable under the Note; and
    b. all terms and provisions of any adjustable rate rider or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the original Note or Security Instrument and that contains any such terms and provisions as those referred to in paragraph 2 above.
5. Borrower understands and agrees that
    (a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Security Instrument shall also apply to default in the making of the modified payments hereunder.

(b) All covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect, except as herein modified, and none of the Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Lender' s rights under or remedies on the Note and Security Instrument, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which Lender is presently entitled against any property or any other persons in any way obligated for, or liable on, the Note and Security Instrument are expressly reserved by Lender.

(c) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.

(d) All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.

(e) Borrower agrees to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by Lender, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower.

(f) As part of the consideration for this Agreement, Borrower agrees to release and waive all claims Borrower might assert against the Lender and or its agents and arising from any act or omission to act on the part of the Lender, its agents, officers directors, attorneys, employees and any predecessor-in -interest to the Note and Security Instrument, and which Borrower contends caused the Borrower damage or injury or which the Borrower contends renders the Note or Security Instrument void, voidable, or unenforceable. This release extends to any claims arising from any foreclosure proceedings, if any, conducted prior to the date of this Agreement. Borrower has and claims no defenses, counterclaims or rights to offset of any kind against Lender or agent of Lender.

6: In consideration of this Modification, Borrower agrees that if any document related to the Security Instrument, Note and/or Modification is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan, or is otherwise missing upon the request of the Lender, Borrower(s) will comply with Lender's request to execute acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost misplaced, misstated, inaccurate or otherwise missing document(s). If the original promissory note is replaced the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of borrower(s) shall be referred to as Documents. Borrower agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement.

As evidenced by their signatures below, the Borrower and the Lender agree to the foregoing.

NELSON M PRITZ 8-25-08 Dated

SUSAN PRITZ 8-25-08 Dated

STATE OF Nevada

COUNTY OF Clark

On 8/25/08 before me, Lisa Cantrell

Notary Public, personally appeared Nelson & Susan Pritz

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signatues (s) on the instrument the person (s), or entity upon behalf of which the person (s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Lisa Cantrell

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LISA CANTRELL
No. 06-104136-1
My Appointment Expires March 6, 2010

Countrywide Home Loans Servicing LP

By: _____ Dated _____

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

SLS
P.O. Box 636005
Littleton, CO 80163-6005
1-800-315-4SLS (4757)

+ 0446024 000006320 09SFC2 0068404
NELSON M PRITZ
SUSAN PRITZ
3118 BELVEDERE DR
HENDERSON NV 89014-3126

September 17, 2013

Re: SLS Loan Number: [redacted]7013
Property Address: 4946 Droubay Dr
Las Vegas, NV 89122

Notice of Default and Notice of Intent to Foreclose

Dear Nelson M Pritz & Susan Pritz,

The Note on the above referenced loan is now in default as a result of your failure to pay the 05/01/09 payment and the payments due each month thereafter, as provided for in said Note. You are hereby notified that to cure such default you are required to pay to this office all past due payments plus late charges and any payments that may become due between the date of this notice and the date the default is cured. The amount required to cure the arrears as of 09/17/13 is $113,902.34. You have thirty-three (33) days from the date of this letter to cure the default. We urge you to immediately upon receipt of this letter contact our Customer Assistance Department at the number provided below to obtain the amount required to reinstate your loan.

Failure to pay the total amount due under the terms and conditions of your Deed of Trust/Mortgage by 10/20/13 may result in acceleration of the entire balance outstanding under the Note including, but not limited to, the principal, interest and all other outstanding charges and costs, and commencement of foreclosure of the Trust Deed/Mortgage which is security for your Note. Please be advised that any extension of time or forbearance in the exercising of any right or remedy as provided for in the Deed of Trust/Mortgage shall not constitute a waiver of or preclude the exercising of any right or remedy.

K00380

You have the right to reinstate the Note after acceleration as provided by law and you have the right to bring court action to assert the nonexistence of default or any other defense you have to acceleration and sale.

If your loan is not brought current, inspections of your property will be made and you will be assessed fees for that purpose as permitted under state law. Additionally, if your property is found to be vacant and unsecured, the mortgage holder will have it secured and will charge you for the cost of securing. You may also be liable for reasonable attorney fees and costs incurred in connection with any proceedings on the Note and Trust Deed and such other costs as may be allowed by law. In addition, you may be liable for any deficiency that may be established as a result of the foreclosure action unless precluded by a bankruptcy discharge.

APN 000379

In accordance with the Fair Debt Collection Practices Act, you are hereby given notice of the following:

1. **Although you are not required to pay the total debt (or balance) of the Account prior to its maturity or acceleration, federal law requires Specialized Loan Servicing to provide you with the amount of the debt. As of 09/17/13, the amount of the unpaid principal balance is $248,180.44. This letter is in no way intended as a payoff statement and you must not rely upon this letter for purposes of paying off your mortgage.**

2. **Specialized Loan Servicing LLC is the current creditor to whom the debt is owed. If you request in writing within 30 days after you receive this notice, we will provide you with the name and address of the original creditor if different than the current creditor.**

3. **Unless within 30 days after you receive this notice you dispute the validity of the debt or a portion thereof, the debt will be assumed to be valid. If you notify us in writing within 30 days after you receive this notice that you dispute the debt or a portion thereof, we will obtain and mail to you verification of the debt.**

4. **Please be advised that we are attempting to collect a debt and any information obtained will be used for that purpose.**

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised that this letter constitutes neither a demand for payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code.

If you believe that you are entitled to the benefits as outlined in the Servicemembers' Civil Relief Act, you should promptly provide us with evidence of your active duty status.

Specialized would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. Please contact the HUD toll free number (800-569-4287) to obtain a list of HUD approved nonprofit organizations serving your area.

If you have any questions, regarding this letter, please contact Specialized Loan Servicing, LLC at 800-306-6062 Monday through Friday, from 6:00 a.m. to 6:00 p.m. (MT). TDD number - 800-268-9419 Monday through Friday, from 8:00 a.m. to 5:00 p.m. (MT).

4003O2

Specialized requests that all payments be made in **certified funds, cashier's check or money order(s)** payable to and mailed to Specialized Loan Servicing LLC, **Attention: Customer Assistance Department** to one of the below addresses **(always include Loan Number with your payment)** :

VIA Regular Mail	**VIA Over Night Address**	**VIA Western Union Quick Collect**
Specialized Loan Servicing, LLC	Specialized Loan Servicing, LLC	Code City: PAYSLS
PO Box 105219	8742 Lucent Blvd, Suite 300	Code State: CO
Atlanta, GA 30348-5219	Highlands Ranch, CO 80129	Reference: Loan Number

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention. It is the practice and policy of SLS is to work with customers that have experienced a hardship. We have many alternative programs available to assist customers in avoiding a foreclosure action. Please visit our website address www.sls.net for options or feel free to contact our Customer Assistance area at 800-306-6062 where one of our experienced and skilled Agents may assist you. Do not delay. There is help available for most customers. We cannot assist you if you do not contact us. We are committed to providing you with professional and courteous service. We respect our customers, especially those that are having difficulties and will always strive to treat you with the dignity you deserve.

SPECIALIZED LOAN SERVICING, LLC
Customer Assistance Department

APNP000320

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

SLS

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Notice Date: May 12, 2016

NELSON M PRITZ
3118 BELVEDERE DR
HENDERSON, NV 89014-3126

RE: **Loan Number:** [redacted]7013
Property Address: 4946 DROUBAY DR
LAS VEGAS, NV 89122

Notice Pursuant to Nevada Statute

Dear NELSON M PRITZ:

This communication is regarding your loan originated on 11/17/2006 and secured by the property located at 4946 DROUBAY DR , LAS VEGAS, NV 89122, which is being serviced by Specialized Loan Servicing LLC ("SLS"). SLS is the current servicer for the current Beneficiary The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., ASSET-BACKED CERTIFICATES, SERIES 2006-25 of the deed of trust. The Beneficiary is the current owner of the loan and holder of the note.

Pursuant to Nevada Revised Statute, the following information is provided to you:

The total amount needed to reinstate or bring the account current is $174503.98. Please note this amount is subject to change. Please contact us at 1-800-306-6062 for the most current amount.

The amount of the principal obligation under the mortgage is: $248180.44.

The date through which the account is paid is 04/01/2009.

The date of the last full payment was received on 07/09/2010.

The current interest rate in effect for the loan is 08.45%.

The date on which the interest rate may next reset or adjust is not applicable.

The amount of any prepayment fee (not included in the reinstatement amount) to be charged, if any, is $0.00.

The amount of late payment fees included in the above reinstatement amount is $0.00.

Monthly late payment fee charged under the residential mortgage loan: $0.00.

Federal programs may be of assistance, including the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program if the investor of your loan participates in these programs. Additionally, SLS may have other in-house foreclosure prevention alternatives such as proprietary modifications, short sales, or deed-in-lieu programs available. Please visit our website www.sls.net for options or contact Customer Assistance at 1-800-306-6062 for alternative programs available to assist in avoiding a foreclosure action.

Upon written request, you are entitled to the following information:

- A copy of your payment history from the period the mortgage loan was last less than 60 days delinquent to present
- A copy of the Deed of Trust
- A copy of the promissory note or lost note affidavit where applicable
- The name of the current Noteholder (investor that holds the loan)
- If we have initiated foreclosure or filed a Proof of Claim, you may obtain copies of any assignments of mortgage or deed of trust required to demonstrate our right to foreclose under applicable state law.

Submit a written request to:

Specialized Loan Servicing LLC
P.O. Box 636005
Littleton, CO 80129

Counseling is available through a variety of nonprofit organizations that are approved by the U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 1-800-569-4287.

MILITARY PERSONNEL/SERVICEMEMBERS: If you are a Servicemember or dependent of a Servicemember, the federal Servicemembers Civil Relief Act ("SCRA") and comparable state laws afford significant protections and benefits to eligible military service personnel and their dependents, including protections from foreclosure as well as interest rate relief. Counseling for covered Servicemembers is available. You may obtain information about the SCRA and available counseling through Military OneSource, the U.S. Department of Defense's information resource. Please visit its website at www.militaryonesource.com/scra or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website. Additionally, Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at http://legalassistance.law.af.mil/content/locator.php. If you are a Servicemember or dependent of a Servicemember, please contact SLS immediately at 1-800-315-4757.

We understand that this may be a difficult time for you and that you may have questions about the foreclosure process. If you have questions, or to obtain information regarding your mortgage, please call us at 1-800-306-6062 Monday through Friday, from 6:00 a.m. to 9:00 p.m. (MT) and Saturday, from 6:00 a.m. to 12:00 p.m. (MT).

Customer Assistance Department
Specialized Loan Servicing LLC

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY LAW TO INFORM YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR. HOWEVER, THE PURPOSE OF THIS COMMUNICATION IS TO COMPLY WITH NEVADA STATE LAW AND TO OFFER YOU LOSS MITIGATION ASSISTANCE THAT MAY HELP YOU BRING OR KEEP YOUR LOAN CURRENT THROUGH AFFORDABLE PAYMENTS. IF YOU ARE CURRENTLY IN A BANKRUPTCY PROCEEDING, OR HAVE PREVIOUSLY OBTAINED A DISCHARGE OF THIS DEBT UNDER APPLICABLE BANKRUPTCY LAW, THIS NOTICE IS FOR INFORMATION ONLY AND IS NOT AN ATTEMPT TO COLLECT THE DEBT, A DEMAND FOR PAYMENT, OR AN ATTEMPT TO IMPOSE PERSONAL LIABILITY FOR THAT DEBT. YOU ARE NOT OBLIGATED TO DISCUSS YOUR HOME LOAN WITH US OR ENTER INTO A LOAN MODIFICATION OR OTHER LOAN-ASSISTANCE PROGRAM. YOU SHOULD CONSULT WITH YOUR BANKRUPTCY ATTORNEY OR OTHER ADVISOR ABOUT YOUR LEGAL RIGHTS AND OPTIONS.

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

Inst #: 20190116-0000389
Fees: $290.00
01/16/2019 08:03:10 AM
Receipt #: 3609639
Requestor:
SERVICELINK TITLE AGENCY IN
Recorded By: OSA Pgs: 9
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

APN: **161-26-111-133**

WHEN RECORDED MAIL TO:
Sables, LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

TS No. : 17-49848

NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is **$248,538.11** as of **1/14/2019** and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: **SABLES, LLC, a Nevada limited liability company** is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated **11/17/2006**, executed by **NELSON M PRITZ, AND SUSAN PRITZ, HUSBAND AND WIFE AS JOINT TENANTS**, as trustor to secure obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS**, as Beneficiary, recorded **11/22/2006, as Instrument No. 20061122-0003799,** of Official Records in the office of the County recorder of **Clark**, County, **Nevada** securing, among other obligations including

One note(s) for the Original sum of **$232,200.00**, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 5/1/2009, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

T.S. No.: 17-49848

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-25
c/o Specialized Loan Servicing LLC
c/o SABLES, LLC, a Nevada limited liability company
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Beneficiary Phone: (800)315-4757
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Loss Mitigation Department
800-306-6059

Property Address: **4946 DROUBAY DRIVE, LAS VEGAS, NV 89122**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,	)	
Plaintiff,	)	
vs.	)	Case No. A-19-790150-C
THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC,	)	
Defendants.	)	

DEPOSITION OF ANNETTE HEEBNER

FOR THE BANK OF NEW YORK MELLON,

FKA THE BANK OF NEW YORK, AS TRUSTEE FOR

THE CERTIFICATE HOLDERS OF CWABS, INC.

ASSET-BACKED CERTIFICATES, SERIES 2006-25

Taken at the Offices of Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada

On Thursday, February 20, 2020
At 2:08 p.m.

Reported by: Jane V. Efaw, CCR #601, RPR

Appearances:

For the Plaintiff:

DIANA S. EBRON, ESQ.
CARYN SCHIFFMAN, ESQ.
Kim Gilbert Ebron
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139
(702) 485-3300

For the Defendant:

J. STEPHEN DOLEMBO, ESQ.
ZBS Law, LLP
9435 West Russell Road
Suite 120
Las Vegas, Nevada 89148
(702) 948-8565

* * * * * * * * *

cannot proceed with any foreclosures. If we did, first of all, we would be sanctioned. There would be bad-faith hearings. They would file for dual tracking. I mean, there's just all kinds of things that we would be subject to or any servicer would be subject to.

So we know that since everything comes to a stop until that foreclosure is pretty much released or discharged, we cannot move forward on anything until after that point in time.

Q. Okay. So once the bankruptcy is discharged, then normal servicing practices would take over again?

A. Correct.

Q. But they had been on hold because of the automatic stay in the bankruptcy?

A. Correct.

Q. Okay. Do you know if the borrowers had surrendered the property in bankruptcy? Is there any indication about that?

A. I did not look specifically for that information.

Q. Do you know if there were any communications with the borrower that came after the discharge?

A. I'm trying to think when the bankruptcy was

specifically, and I don't have that date memorized.

Q. If I represented to you that the bankruptcy discharge would have been in -- I think it was March 2011 -- do you know if there were any communications with the borrower after March of 2011?

A. When you say "communication," can you be more specific?

Q. Any letters or telephone calls either to or from the borrower.

A. I believe there were some letters that were sent out, but it would have indicated that due to a bankruptcy, there are certain things we cannot do. It would have that special wording in there if there was a bankruptcy, but there would not have been phone calls because of the bankruptcy.

In fact, I do know that there was the required solicitation for any kind of work-out solution because that is something that is required from CFPB guidelines. We want to make sure we're moving forward and trying to assist borrowers in any work-out solutions.

Q. Am I correct to understand there was a loan modification in 2008?

A. Yes, that is correct.

Q. Were there any other completed loan

modifications?

A. Yes.

Q. When?

A. In 2009.

Q. When in 2009?

A. I don't remember the date specifically. I just remember that it was one year and then the next year. I wasn't memorizing the month.

Q. We'll come back to that one. Do you know if there are any other loan modifications after the 2009?

A. There was nothing ever finalized, but there was a trial offer that was given to the borrower. And I do believe that a portion of those payments were made.

Q. When was that?

A. I think that was in 2010.

Q. When in 2010?

A. I would have to look to see when the last payment received was. That would indicate the month in which they were trying to make those payments.

Q. Where would you look to find that information?

A. On Fiserv. That's to show that it was received. And then pulling up the actual

modification itself or the trial offer indicated when those payments were due.

Q. Did the bank file for an automatic stay while the borrowers were in bankruptcy?

A. First of all, you're saying "the bank." I don't know specifically what you're referring to.

Q. Did someone representing the beneficiary of the deed of trust, like whoever the servicer was at the time, have someone file a motion to lift the automatic stay while the borrowers were in bankruptcy?

A. I am not aware of any. I just know that by bankruptcy standards, it has to stay. It's a requirement.

Q. Do you know when there's a payment due for?

A. I believe it is due for 2009, and I'm not certain on the date.

Q. Where would you look to find that information?

A. Fiserv.

Q. Is there another document that would have that information?

A. The pay history, I believe, from a prior servicer would have that. But all of that information would have been uploaded and compiled

Q. Do you recognize this document?
A. I do not.
Q. How about the next page, BONYM 00247?
A. Yes.
Q. And what is that?
A. This is a partial page of a pay history.
Q. Do you know where this payment history came from?
A. This particular one came from SLS's business records.
Q. And that is within Fiserv?
A. It's a report that holds the data from Fiserv, yes.
Q. So is this where the loan servicer would keep track of any payments made by the borrower and any amounts that were paid out by the servicer?
A. Yes. You would see that in this report.
Q. So am I correct to understand that the left-hand column that says "Account Number" is basically just the account number for this particular loan?
A. It says "Account Number," yes.
Q. And what's the difference between the transaction date and the effective date?
A. The transaction date is when something was

actually done. The effective date is what it was effective for. So depending on if you had seen payments made, you would have seen an effective date for that payment. And I do not see any transaction amount that came in towards a payment.
Q. Does the payment history have additional columns that aren't showing up on this page, BONYM 00247?
A. Yes.
Q. Where did those additional columns start within this document?
A. It looks like the additional -- keep moving over where it says "transaction amount" on the right-hand column on the page that's 247 and go to 252, and that is where it extends.
Q. Can you tell me what the different transaction types are on that BONYM 00252?
A. I do not have the transaction codes memorized. I do know that some of those, the E90s and E10s, have to do with your impound account, taxes and insurance.
Q. Am I correct to understand that the paid-through date column would list the date that the loan was currently paid through?
A. That is what it appears on these documents,

yes.
Q. Based on this document, can you tell me what the paid-through date is for this loan?
A. It looks like it is showing paid through April 1st, 2009.
Q. Am I correct to understand that this payment history goes through the end of September of 2019?
A. That is correct.
Q. Does this payment history start from the date that SLS began servicing?
A. That is correct. 12/23/2011.
Q. And you see that date on BONYM 00251; is that correct?
A. Yes.
Q. Can you tell from this document when the last payment was made by the borrower?
A. Are you talking about this page?
Q. Sorry. The payment history from SLS.
A. Okay. When it came over to SLS, it is showing that it was paid through April 1st, 2009.
Q. Would you need to look at a different document besides the payment history from SLS to determine when the borrowers actually gave their last payment?
A. Yes. I would have to look at a different

document.
Q. Is that starting on BONYM 00257?
MR. DOLEMBO: I'm sorry, Diana. What was that number?
THE WITNESS: Yes.
MS. EBRON: 257.
BY MS. EBRON:
Q. What is this document?
A. This looks like a payment history from the prior servicer. And it takes it from the transaction due date. And it shows January 1st, 2007, on the page that says 00257. And it takes it over to April 1st, 2009, which is listed on 00258.
Q. When you look in Fiserv, is this what the payment history from the previous loan servicer would look like, or in Global Viewpoint?
A. Yes, Global Viewpoint.
Q. Did you review the payment history in Global Viewpoint?
A. I did not.
Q. Do you know if you can tell what account number this is for?
A. I cannot.
Q. Because it's all redacted; right?
A. That is correct.

EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

Transaction Type	Balance Principal	Balance Escrow	Paid Through Date	Transaction Code	Transaction Desc	User ID	Trans Batch #
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
E90	248180.44	-21437.50	04/01/2009			32687	1
E10	248180.44	-21241.63	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
E10	248180.44	-21112.88	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
E90	248180.44	-20984.13	04/01/2009			32687	1
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
E10	248180.44	-20786.51	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
E10	248180.44	-20657.76	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
FB	N/A	N/A	04/01/2009	40	EXPENSE ADVANCES	32551	0
R90	248180.44	-20529.01	04/01/2009			26137	2
E10	248180.44	-20715.91	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
E10	248180.44	-20587.16	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
E10	248180.44	-20458.41	04/01/2009			32022	1
FB	N/A	N/A	04/01/2009	11	PROP INSPECTION FEE	32506	1
M90	248180.44	-20329.66	04/01/2009			24300	1

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Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **SUR-REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") hereby submits its sur-reply in support of its motion for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Bankruptcy Filing Does Not Serve as The Date of Acceleration, Although in Other Cases It Might.

After further review of the bankruptcy issue in this case, the filling date of the petition was October 15, 2010. While a bankruptcy filing could serve as a date of acceleration (assuming the debt was never made wholly due prior to the petition date), here that date is not in play. This

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is so because the Bank made the debt wholly due well before the homeowner/borrower filed bankruptcy, as discussed in more detail in Section B.

B. The Loan Became Wholly Due on April 29, 2008; The Modification Agreement Pre-Dates this Acceleration Date, Thus it is Nothing But a Red-Herring.

Again, the debt became wholly due on April 29, 2008 when the Bank recorded a Notice of Default. The Bank attaches a modification agreement dated August 25, 2008 to its Sur-Reply, which is the same one attached to its Opposition to SFR's MSJ.[1] But this agreement was never signed by Countrywide, and therefore there is no evidence this agreement was ever effective.[2] Additionally, this was not the agreement SFR was referring to at the hearing. Subsequent to this agreement, another modification agreement was entered into dated March 13, 2009, and provides an effective date of April 1, 2009.[3] This is the agreement SFR was referring to at the hearing. This further supports the fact that the unsigned August 2008 agreement was never effective because the borrower was entering into a modification agreement just seven (7) months later. The April 2009 agreement provides the first installment would be due May 1, 2009, but the borrower never performed as evidenced by both the subsequent Notice of Default recorded on January 6, 2019 and the September 17, 2013 letter, which both indicate a default date of May 1, 2009.[4]

While SFR submits the August 2008 agreement is irrelevant as there is no evidence it was ever entered into by Countrywide, tellingly, the Bank does not point to any payment history that shows the borrower made any payments after August 2008 toward the modification agreement. Instead, the Bank relies on a characterization of the loan as "date through which account is paid is 4/01/2009." But this date matches with the April 2009 agreement's effective date. This loan was not current through April 1, 2009 by any stretch of the imagination. Instead,

[1] *See* Ex. 1 to Bank's Sur-Reply.

[2] *Id.* at BONYM00633

[3] *See* BONYM634-636 attached hereto as Exhibit 1.

[4] *See* Ex. 2 and 4 to Bank's Sur-Reply.

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the borrower was in default as far back as January 1, 2008 as evidenced by the April 29, 2008 Notice of Default. The person deposed on behalf of the Bank was employed by the current servicer SLS, who did not begin servicing until 2011.[5] Tellingly, when asked question about the prior servicer's payment history, Ms. Heebner could not answer any questions.[6] Thus the Bank's reliance on how the loan was categorized when it was transferred to SLS is not evidence any payments were actually made or that the loan was converted back into an installment loan after the Bank accelerated the loan in April 2008.

The Bank never refutes no payments were made toward the April 2009 modification agreement, which is exactly what SFR was referring to at the hearing. All told, the August 2008 modification agreement is a red-herring, as is the April 2009 agreement. Because there is no evidence the August 2008 agreement was entered into by the Bank or that any payments were made toward it, coupled with the April 2009 agreement which the borrower never consummated with any payments, the Bank never decelerated the loan. Therefore, after the Bank accelerated the loan on April 29, 2008, under NRS 106.240 the deed of trust terminated on April 29, 2018.

C. The Bank Never Timely Challenged the Association Sale, Thus the Presumption of Extinguishment Remains Unrebutted.

Irrespective of the NRS 106.240 issue, the primary reason this Court should find the Deed of Trust is extinguished/invalid and therefore the Bank cannot foreclose, is the Bank failed to timely challenge the Association foreclosure sale. Moreover, because of *res judicata* principles, the Bank is precluded from adjudicating the validity of the sale in this forum. This is key because this means the presumption of extinguishment remains unrebutted and the conclusive recital of default of the super-priority remains unchallenged. Neither the Bank nor this Court can ignore the fact that an Association sale occurred with respect to the subject property. This sale presumptively extinguished the Deed of Trust.

Recall, the Nevada Supreme Court held "NRS 116.3116(2) gives an HOA a true

[5] *See* Ex. 5 to Bank's Sur-Reply at 21:9-11.

[6] *Id.* at 22:8-22.

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superpriority lien, proper foreclosure of which will extinguish a first deed of trust."[7] Additionally, NRS 116.31166(1)(a) provides default is conclusive. Because of the split nature of the Association's lien, default includes both the super-priority and sub-priority portion. Ordinarily, this means default cannot be rebutted, but the Nevada Supreme Court in *Shadow Wood*, held the conclusive recital of default could be challenged in equity.[8] This is key because the only way to invoke the Court's jurisdiction to sit in equity is through a lawsuit. Of course there are additional conclusive recitals as well regarding certain steps in the foreclosure process having been followed.[9]

Further, NRS 47.250(16) provides a presumption that the Association foreclosure sale complied with NRS Chapter 116.[10] There is also "a presumption in favor of the record titleholder."[11] With respect to tender, the Nevada Supreme Court set certain parameters for a valid tender in Nevada, those being (1) payment in full; and (2) unconditional or conditions upon which can be insisted.[12] Finally, the Nevada Supreme Court established "the burden of demonstrating that [a] delinquency was cured presale, rendering the sale void, was on the party challenging the foreclosure…"[13]

In light of this statutory construct and prior precedent, in order to alter an otherwise presumptively valid sale, a party (like the Bank here) must timely and successfully challenge the conclusive recitals, rebut the presumptions and prove valid tender (or any other fact that might affect the validity of the sale), and it must do so through a timely lawsuit in order to invoke the Court's equitable powers.

---

[7] *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014).

[8] *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (Nev. 2016).

[9] *See* NRS 116.31166(1-2).

[10] *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 746, 405 P.3d 641, 646 (2017) citing NRS 47.250(16).

[11] *Id.* citing *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

[12] *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 606, 427 P.3d 113, 117 (2018).

[13] *Resources Group, LLC v. Nevada Association Services, Inc.*, 135 Nev. 48, 48, 437 P.3d 154, 156 (2019).

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Here, this means the following:

- The presumptive extinguishment of the Deed of Trust remains unrebutted and can never be rebutted by the Bank because its claim was dismissed with prejudice.
- The conclusive recital of default of the super-priority remains unchallenged and can never be challenged by the Bank because its claim was dismissed with prejudice.
- The allegation of tender remains unproven and can never be proven because the Bank's claim was dismissed with prejudice.

In short, the Association sale extinguished the Deed of Trust, this is yet another reason why this Court should grant summary judgment in favor of SFR and find the Deed of Trust is invalid/unenforceable.

CONCLUSION

For the reasons stated, SFR requests this Court grant SFR's motion for summary judgment.

Dated this 13th day of May, 2020.

KIM GILBERT EBRON

/s/ Karen L. Hanks
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2020, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing, **SUR-REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT,** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

J. Stephen Dolembo sdolembo@zbslaw.com

Sara Hunsaker shunsaker@zbslaw.com

Shadd A. Wade swade@zbslaw.com

/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

This matter came before the Court for a hearing on competing motions for summary judgment on April 29, 2020. Karen L. Hanks, Esq. appeared on behalf of SFR Investments Pool 1, LLC's ("SFR"). J. Stephen Dolembo, Esq. appeared on behalf of The Bank of New York Mellon fka The Bank of New York as successor trustee for the Certificatesholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC ("BNY Mellon"). Having reviewed and considered the motions, oppositions, replies and sur-replies, and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:[1]

[1] Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any

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FINDINGS OF FACT

1. On September 19, 2012, Squire Village Homeowners Association non-judicially foreclosed on real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133 (the "Property") pursuant to NRS Chapter 116. At the sale, SFR placed the highest bid and a Forelosure Deed transferring the Property to SFR recorded as Instrument No. 20121009-0001817 on October 9, 2012.

2. Prior to the foreclosure, on November, 22, 2006, a Deed of Trust was recorded as Instrument No. 20061122-0003799 against the Property.

3. In January 2008, the borrowers, Nelson and Susan Pritz stopped making payments toward the Note which the Deed of Trust secured.

4. On April 29, 2008, a Notice of Default and Election to Sell Under Deed of Trust was recorded against the Property. The Notice of Default reads in pertinent part, "That by reason thereof, the present beneficiary under such deed of trust has executed and delivered to RECONTRUST COMPANY, N.A. a written Declaration of Default and Demand for sale, and has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby."

5. The Court finds the language in the Notice of Default clearly and unequivocally made the loan wholly due as contemplated by NRS 106.240 at the latest on April 29, 2008.

6. On November 29, 2011, an Assignment of Deed of Trust was recorded against the Property as Instrument No. 201111129-0000514 wherein all beneficial interest under the Deed of Trust was purportedly transferred from MERS to BNY Mellon.

7. While BNY Mellon's file contains a modification agreement dated August 25, 2008, the agreement is not signed by Countrywide.

(continued)
conclusions of law that are more appropriately findings of fact shall be so deemed.

8. Likewise, there is a subsequent modification agreement in BNY Mellon's file dated March 13, 2009, with the first payment becoming due on April 1, 2009. But the evidence establishes the borrowers never performed under this agreement.

9. In its briefing, BNY Mellon asked this Court to give weight to how the loan was categorized i.e. "date through which account is paid is 4/01/2009" when it was transferred to Specialized Loan Servicing, LLC ("SLS") in 2011. But testimony from BNY Mellon's 30(b)(6) witness, an employee of SLS, revealed SLS did not have any knowledge or information about the prior servicer's payment history.

10. At no time between April 29, 2008 (wholly due date) and April 29, 2018 did BNY Mellon execute the power of sale and foreclose on the deed of trust.

11. At no time between April 29, 2008 (wholly due date) and April 29, 2018 did BNY Mellon or its predecessor record a rescission of the April 29, 2008 Notice of Default.

12. Over five years after the Association sale, BNY Mellon filed a quiet title action against SFR in federal court as Case No. 2:18-cv-00599. SFR moved to dismiss the complaint based on the statute of limitations, and on October 1, 2018 Judge Gordon granted SFR's motion.

13. Thereafter, and despite this dismissal, BNY Mellon attempted to non-judicially foreclose on the Property. As a result, on February 27, 2019, SFR filed a complaint, and as one of its causes of action sought cancellation of the Deed of Trust based on NRS 106.240.

14. On May 28, 2019, Sables filed a Declaration of Non-Monetary Status which SFR did not object to. As such, Sables is not required to participate under NRS 107.029.

CONCLUSIONS OF LAW

15. The Court grants SFR's motion for summary judgment pursuant to NRS 106.240.

16. The Court finds NRS 106.240 is a statute of repose, and the "conclusive presumption contained in NRS 106.240 clearly and unambiguously applies, without limitation, to all debt secured by deeds of trust on real property. *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 94, 16 P.3d 1074, 1076 (2001).

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17. NRS 106.240 provides deeds of trust are conclusively presumed to have been satisfied and the notes discharged at the expiration of ten years after the debt secured by the deed of trust becomes wholly due, and the deed of trust is terminated and the lien discharged.

18. Based on the language of NRS 106.240 and the Nevada Supreme Court's interpretation of that language namely "deed of trust according to the terms thereof or any recorded written extension thereof..." the Court finds BNY Mellon and/or its predecessor made the loan wholly due by virtue of the Notice of Default recorded on April 29, 2008.

19. The Notice of Default clearly and unequivocally states in relevant part, "present beneficiary...has declared and does declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby."

20. The Court further concludes that at no time after April 29, 2008, did the borrowers cure the default nor did BNY Mellon reinstate the loan as an installment loan.

21. Thus, under NRS 106.240 the ten years ran from April 29, 2008 to April 29, 2018, and therefore, the deed of trust terminated/expired on April 29, 2018.

22. Pursuant to NRS 107.029, the Court further grants summary judgment in favor of Sables only as to SFR's third cause of action against Sables.

ORDER

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Deed of Trust recorded against real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133 (the "Property") recorded in the Official Records of the Clark County Recorder as Instrument No. 20121009-0001817, was terminated/extinguished on April 29, 2018 by operation of NRS 106.240.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that The Bank of New York Mellon fka The Bank of New York as successor trustee for the Certificatesholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25, its predecessors in interest and successors and assigns, have no further right, title or interest in the real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133, and are hereby permanently

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enjoined from taking any further action to enforce the terminated/extinguished Deed of Trust, including but not limited to, clouding title, initiating or continuing to initiate foreclosure proceedings, or taking any other actions to sell or transfer the Property.

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the preliminary injunction bond in the amount of $1,500.00 posted by SFR on or about September 30, 2019 with the Clerk of Court shall be released to SFR.

IT IS SO ORDERED.

DATED this 22nd day of July, 2020.

DISTRICT ~~COURT~~ JUDGE

Respectfully Submitted by:	Approved as to Form and Content:
KIM GILBERT EBRON	**ZBS LAW, LLP**
/s/ Karen L. Hanks KAREN L. HANKS, ESQ. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 *Attorneys for SFR Investments Pool 1, LLC*	*/s/ J. Stephen Dolembo* J. STEPHEN DOLEMBO, ESQ. Nevada Bar No. 9795 9435 West Russell Road, Ste 120 Las Vegas, Nevada 89148 *Attorneys for The Bank of New York Mellon*

RE: Case No. A-19-790150-C/Droubay

Stephen Dolembo

10:48 AM

Thanks Karen,

You may e-sign for me.

Steve

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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC,

Defendants.

Case No.: A-19-790150-C

Dept. No.: XXIX

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

PLEASE TAKE NOTICE that on July 22, 2020, the **Findings of Fact and Conclusions of Law and Judgment** was entered**.** A copy of said Order is attached hereto.

DATED this 5th day of August, 2020.

KIM GILBERT EBRON

/s/ Karen L. Hanks
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Attorney for SFR Investments Pool 1, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to the following parties:

J. Stephen Dolembo	sdolembo@zbslaw.com
Sara Hunsaker	shunsaker@zbslaw.com
Shadd A. Wade	swade@zbslaw.com

/s/ Diane L. DeWalt
An Employee of KIM GILBERT EBRON

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25; SABLES, LLC, Defendants.	Case No.: A-19-790150-C Dept. No.: XXIX **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

This matter came before the Court for a hearing on competing motions for summary judgment on April 29, 2020. Karen L. Hanks, Esq. appeared on behalf of SFR Investments Pool 1, LLC's ("SFR"). J. Stephen Dolembo, Esq. appeared on behalf of The Bank of New York Mellon fka The Bank of New York as successor trustee for the Certificatesholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC ("BNY Mellon"). Having reviewed and considered the motions, oppositions, replies and sur-replies, and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:[1]

[1] Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any

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FINDINGS OF FACT

1. On September 19, 2012, Squire Village Homeowners Association non-judicially foreclosed on real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133 (the "Property") pursuant to NRS Chapter 116. At the sale, SFR placed the highest bid and a Forelosure Deed transferring the Property to SFR recorded as Instrument No. 20121009-0001817 on October 9, 2012.

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5. The Court finds the language in the Notice of Default clearly and unequivocally made the loan wholly due as contemplated by NRS 106.240 at the latest on April 29, 2008.

6. On November 29, 2011, an Assignment of Deed of Trust was recorded against the Property as Instrument No. 201111129-0000514 wherein all beneficial interest under the Deed of Trust was purportedly transferred from MERS to BNY Mellon.

7. While BNY Mellon's file contains a modification agreement dated August 25, 2008, the agreement is not signed by Countrywide.

(continued)
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8. Likewise, there is a subsequent modification agreement in BNY Mellon's file dated March 13, 2009, with the first payment becoming due on April 1, 2009. But the evidence establishes the borrowers never performed under this agreement.

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13. Thereafter, and despite this dismissal, BNY Mellon attempted to non-judicially foreclose on the Property. As a result, on February 27, 2019, SFR filed a complaint, and as one of its causes of action sought cancellation of the Deed of Trust based on NRS 106.240.

14. On May 28, 2019, Sables filed a Declaration of Non-Monetary Status which SFR did not object to. As such, Sables is not required to participate under NRS 107.029.

CONCLUSIONS OF LAW

15. The Court grants SFR's motion for summary judgment pursuant to NRS 106.240.

16. The Court finds NRS 106.240 is a statute of repose, and the "conclusive presumption contained in NRS 106.240 clearly and unambiguously applies, without limitation, to all debt secured by deeds of trust on real property. *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 94, 16 P.3d 1074, 1076 (2001).

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18. Based on the language of NRS 106.240 and the Nevada Supreme Court's interpretation of that language namely "deed of trust according to the terms thereof or any recorded written extension thereof..." the Court finds BNY Mellon and/or its predecessor made the loan wholly due by virtue of the Notice of Default recorded on April 29, 2008.

19. The Notice of Default clearly and unequivocally states in relevant part, "present beneficiary...has declared and does declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby."

20. The Court further concludes that at no time after April 29, 2008, did the borrowers cure the default nor did BNY Mellon reinstate the loan as an installment loan.

21. Thus, under NRS 106.240 the ten years ran from April 29, 2008 to April 29, 2018, and therefore, the deed of trust terminated/expired on April 29, 2018.

22. Pursuant to NRS 107.029, the Court further grants summary judgment in favor of Sables only as to SFR's third cause of action against Sables.

ORDER

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Deed of Trust recorded against real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133 (the "Property") recorded in the Official Records of the Clark County Recorder as Instrument No. 20121009-0001817, was terminated/extinguished on April 29, 2018 by operation of NRS 106.240.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that The Bank of New York Mellon fka The Bank of New York as successor trustee for the Certificatesholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25, its predecessors in interest and successors and assigns, have no further right, title or interest in the real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133, and are hereby permanently

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enjoined from taking any further action to enforce the terminated/extinguished Deed of Trust, including but not limited to, clouding title, initiating or continuing to initiate foreclosure proceedings, or taking any other actions to sell or transfer the Property.

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the preliminary injunction bond in the amount of $1,500.00 posted by SFR on or about September 30, 2019 with the Clerk of Court shall be released to SFR.

IT IS SO ORDERED.

DATED this 22nd day of July, 2020.

DISTRICT ~~COURT~~ JUDGE

Respectfully Submitted by:	Approved as to Form and Content:
KIM GILBERT EBRON	**ZBS LAW, LLP**
/s/ Karen L. Hanks KAREN L. HANKS, ESQ. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 *Attorneys for SFR Investments Pool 1, LLC*	*/s/ J. Stephen Dolembo* J. STEPHEN DOLEMBO, ESQ. Nevada Bar No. 9795 9435 West Russell Road, Ste 120 Las Vegas, Nevada 89148 *Attorneys for The Bank of New York Mellon*

RE: Case No. A-19-790150-C/Droubay

Stephen Dolembo

10:48 AM

Thanks Karen,

You may e-sign for me.

Steve

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Attorneys for Defendants The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25, a national bank; SABLES, LLC, a foreign limited liability company,

Defendants.

CASE NO.: A-19-790150-C
DEPT NO.: XXIX

NOTICE OF APPEAL

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NOTICE OF APPEAL

Notice is hereby given that defendant THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25, hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Judgment entered in this action on the 5th day of August, 2020.

DATED: August 6, 2020

ZBS LAW, LLP

/s/J. Stephen Dolembo, Esq.
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Attorneys for Defendants The Bank of New York Mellon, FKA The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ZBS LAW, LLP, and that on this 6th day of August, 2020, I did cause a true copy of **NOTICE OF APPEAL** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

S F R Investments Pool 1 LLC:

Michael Sturm (mike@kgelegal.com)

KGE Legal Staff (staff@kgelegal.com)

KGE E-Service List (eservice@kgelegal.com)

Diana Ebron (diana@kgelegal.com)

/s/Sara Hunsaker

An Employee of ZBS LAW, LLP

REGISTER OF ACTIONS
CASE NO. A-19-790150-C

S F R Investments Pool 1 LLC, Plaintiff(s) vs. Bank of New York Mellon, Defendant(s)

Case Type: **Other Real Property**
Date Filed: **02/27/2019**
Location: **Department 29**
Cross-Reference Case Number: **A790150**
Supreme Court No.: **81604**

PARTY INFORMATION

		Lead Attorneys
Defendant	**Bank of New York Mellon** ***Formerly Known As*** **Bank of New York**	**J. Stephen Dolembo** *Retained* 702-948-8565(W)
Defendant	**Sables LLC**	**J. Stephen Dolembo** *Retained* 702-948-8565(W)
Plaintiff	**S F R Investments Pool 1 LLC**	**Diana S. Ebron** *Retained* 702-485-3300(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

07/22/2020 **Summary Judgment** (Judicial Officer: Jones, David M)
Debtors: Bank of New York Mellon (Defendant)
Creditors: S F R Investments Pool 1 LLC (Plaintiff)
Judgment: 07/22/2020, Docketed: 07/24/2020

OTHER EVENTS AND HEARINGS

02/27/2019 **Complaint**
Complaint
02/27/2019 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure
05/02/2019 **Notice of Lis Pendens**
Notice of Lis Pendens
05/02/2019 **Summons Electronically Issued - Service Pending**
Summons
05/02/2019 **Summons Electronically Issued - Service Pending**
Summons
05/03/2019 **Motion for Temporary Restraining Order**
Motion for Temporary Restraining Order and Preliminary Injunction
05/06/2019 **Clerk's Notice of Hearing**
Notice of Hearing
05/17/2019 **Affidavit of Service**
Affidavit of Service
05/17/2019 **Affidavit of Service**
Affidavit of Service
05/22/2019 **Answer**
Defendant The Bank Of New York Mellon's Answer to SFR Investments Pool 1, LLC's Complaint
05/22/2019 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure
05/28/2019 **Opposition to Motion**
The Bank of New York Mellon's Opposition to Plaintiff's Motion for Temporary Restraiining Order and Preliminary Injunction
05/28/2019 **Declaration**
Declaration of Non-Monetary Status
06/07/2019 **Reply**
Reply in Support of Motion for Temporary Restraining Order and Preliminary Injunction
06/12/2019 **Motion for Temporary Restraining Order** (9:00 AM) (Judicial Officer Jones, David M)
Motion for Temporary Restraining Order and Preliminary Injunction
Parties Present
Minutes
Result: Granted
06/17/2019 **Notice of Intent to Take Default**
Three-Day Notice of Intent to Take Default of Sables, LLC
07/12/2019 **Notice**
Notice of Firm Name Change
07/22/2019 **Joint Case Conference Report**
Joint Case Conference Report
08/01/2019 **Mandatory Rule 16 Conference Order**

Mandatory Rule 16 Pre-Trial Scheduling Conference Order

08/09/2019 *CANCELED* **Mandatory Rule 16 Conference** (9:30 AM) (Judicial Officer Jones, David M)
Vacated

08/14/2019 **Scheduling and Trial Order**
Scheduling Order and Order Setting civil Jury Trial, Pre-Trial and Calendar Call

09/13/2019 **Order**
Order Granting Temporary Restraining Order and Preliminary Injunction

09/13/2019 **Notice of Entry**
Notice of Entry of Order

10/02/2019 **Notice of Posting Bond**
Notice of Posting Bond

11/01/2019 **Stipulation and Order**
Stipulation and Order to Extend Discovery Deadlines (First Request)

11/04/2019 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines

12/13/2019 *CANCELED* **Status Check** (9:30 AM) (Judicial Officer Jones, David M)
Vacated

01/30/2020 **Request for Judicial Notice**
The Bank of New York Mellon's Request for Judicial Notice

01/30/2020 **Motion for Summary Judgment**
Defendants' Motion for Summary Judgment

01/30/2020 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

01/31/2020 **Clerk's Notice of Hearing**
Notice of Hearing

02/04/2020 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Discovery Deadline, Dispositive Motion Deadline, and to Continue Trial

02/04/2020 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Discovery Deadline, Dispositive Motion Deadline & to Continue Trial

02/06/2020 **Order Setting Civil Jury Trial**
First Amended Order Setting Civil Jury Trial

02/25/2020 **Stipulation and Order**
Stipulation and Order to Extend Opposition Deadline

02/25/2020 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Opposition Deadline

03/18/2020 *CANCELED* **Pre Trial Conference** (10:30 AM) (Judicial Officer Jones, David M)
Vacated - Superseding Order

03/18/2020 *CANCELED* **Calendar Call** (10:30 AM) (Judicial Officer Jones, David M)
Vacated - Superseding Order
03/25/2020 Reset by Court to 03/18/2020

03/23/2020 **Motion for Summary Judgment**
SFR Investments Pool 1, LLC's Motion for Summary Judgment

03/23/2020 **Clerk's Notice of Hearing**
Notice of Hearing

03/30/2020 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Jones, David M)
Vacated - Superseding Order

04/06/2020 **Opposition to Motion**
Defendants' Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment

04/06/2020 **Opposition to Motion For Summary Judgment**
Opposition to Defendant's Motion for Summary Judgment

04/20/2020 **Reply in Support**
Reply in Support of Motion for Summary Judgment

04/22/2020 **Reply in Support**
Defendants' Reply in Support of Motion for Summary Judgment

04/29/2020 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Jones, David M)
Defendant's Motion for Summary Judgment
03/11/2020 Reset by Court to 04/29/2020
Result: Motion Denied

04/29/2020 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Jones, David M)
Plaintiff SFR Investments Pool 1, LLC's Motion for Summary Judgment
05/06/2020 Reset by Court to 04/29/2020
Result: Motion Granted

04/29/2020 **All Pending Motions** (9:00 AM) (Judicial Officer Jones, David M)
Parties Present
Minutes
Result: Matter Heard

05/13/2020 **Supplement**
Supplemental Points an Authorities in Support of Defendants' Motion for Summary Jugment

05/13/2020 **Reply to Motion**
Sur-Reply in Support of Motion for Summary Judgment

05/20/2020 **Status Check: Trial Setting** (10:30 AM) (Judicial Officer Jones, David M)
Parties Present
Minutes
Result: Vacated and Reset

05/26/2020 **Minute Order** (3:00 AM) (Judicial Officer Jones, David M)
Minutes
Result: Minute Order - No Hearing Held

06/03/2020 *CANCELED* **Pre Trial Conference** (10:30 AM) (Judicial Officer Jones, David M)
Vacated - per Judge

06/03/2020 *CANCELED* **Pre Trial Conference** (10:30 AM) (Judicial Officer Jones, David M)

06/10/2020	*CANCELED* **Calendar Call** (10:30 AM) (Judicial Officer Jones, David M) *Vacated - per Judge*
06/10/2020	*CANCELED* **Calendar Call** (10:30 AM) (Judicial Officer Jones, David M)
06/22/2020	*CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Jones, David M) *Vacated - per Judge*
06/22/2020	*CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Jones, David M)
07/22/2020	**Findings of Fact, Conclusions of Law and Judgment** *FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT*
07/27/2020	**Memorandum of Costs and Disbursements** *Memorandum of Costs and Disbursements*
08/05/2020	**Notice of Entry of Findings of Fact, Conclusions of Law** *Notice of Entry of Findings of Fact and Conclusions of Law and Judgment*
08/06/2020	**Notice of Appeal** *Notice of Appeal*
08/06/2020	**Case Appeal Statement** *Case Appeal Statement*
08/10/2020	**Filing Fee Remittance** *Sables, LLC Answer Filing Fee*
08/19/2020	*CANCELED* **Status Check: Trial Readiness** (10:30 AM) (Judicial Officer Jones, David M) *Vacated - per Judge*
08/26/2020	**Order to Statistically Close Case** *Civil Order to Statistically Close Case*
09/02/2020	*CANCELED* **Pre Trial Conference** (10:30 AM) (Judicial Officer Jones, David M) *Vacated - per Judge*
09/09/2020	*CANCELED* **Calendar Call** (10:30 AM) (Judicial Officer Jones, David M) *Vacated - per Judge*
09/14/2020	*CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Jones, David M) *Vacated - per Judge*
10/16/2020	**Request** *REQUEST FOR TRANSCRIPT OF PROCEEDINGS*
11/17/2020	**Recorders Transcript of Hearing** *Recorders Transcript of Hearing Re: April 29, 2020*

FINANCIAL INFORMATION

Defendant Bank of New York Mellon

	Total Financial Assessment			477.00
	Total Payments and Credits			477.00
	Balance Due as of 01/20/2021			**0.00**
05/22/2019	Transaction Assessment			223.00
05/22/2019	Efile Payment	Receipt # 2019-31239-CCCLK	Bank of New York Mellon	(223.00)
01/30/2020	Transaction Assessment			200.00
01/30/2020	Efile Payment	Receipt # 2020-06287-CCCLK	Bank of New York Mellon	(200.00)
08/06/2020	Transaction Assessment			24.00
08/06/2020	Efile Payment	Receipt # 2020-43283-CCCLK	Bank of New York Mellon	(24.00)
08/10/2020	Transaction Assessment			30.00
08/10/2020	Efile Payment	Receipt # 2020-43909-CCCLK	Bank of New York Mellon	(30.00)

Defendant Sables LLC

	Total Financial Assessment			0.00
	Total Payments and Credits			0.00
	Balance Due as of 01/20/2021			**0.00**

Plaintiff S F R Investments Pool 1 LLC

	Total Financial Assessment			470.00
	Total Payments and Credits			470.00
	Balance Due as of 01/20/2021			**0.00**
02/28/2019	Transaction Assessment			270.00
02/28/2019	Efile Payment	Receipt # 2019-13101-CCCLK	S F R Investments Pool 1 LLC	(270.00)
03/23/2020	Transaction Assessment			200.00
03/23/2020	Efile Payment	Receipt # 2020-17141-CCCLK	S F R Investments Pool 1 LLC	(200.00)