

**Case No. 82078**

IN THE SUPREME COURT OF NEVADA

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

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Respondent.

Electronically Filed  
Jul 28 2021 02:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable MARY KAY HOLTHUS, District Judge  
District Court Case No. A-13-684715-C

**JOINT APPENDIX VOLUME 5**

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Respectfully submitted by:

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1	4	08/15/2013	Answer to Defendant Nevada Association Services, Inc. and Counterclaim	JA_0035
1	5	08/19/2013	Answer to Defendant SFR Investments Pool 1, LLC's Counterclaim and Third Party Complaint	JA_0038
1	2	08/02/2013	Answer, Counterclaim, and Third Party Complaint for Quiet Title and Injunctive Relief Arbitration Exception Claimed: Title to Real Estate	JA_0011
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1 SFR Investments Pool 1, LLC (“SFR”) hereby files its Reply in Support of its Motion for  
2 Summary Judgment. SFR hereby incorporates its Opposition to Nationstar’s Motion for Summary  
3 Judgment and Counter-Motion to Strike, filed on December 14, 2017, as if fully stated herein.

#### 4 **INTRODUCTION**

5 This matter was remanded from the Nevada Supreme Court with very simple instructions.  
6 This Court was to conclude “whether Freddie owned the loan in question, or whether Nationstar  
7 had a contract with Freddie Mac or the FHFA to service the loan in question.” *Nationstar*  
8 *Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758 (Nev. 2017). The Nevada  
9 Supreme Court did not disturb any of the other grounds on which this Court granted judgment in  
10 favor of SFR in the first instance. As a result of the remand, the Bank had one job: prove that  
11 Freddie owned the loan and that the Bank had a right to service this loan on behalf of Freddie. The  
12 Bank has failed to complete this job and providing nothing that prevents this Court from granting  
13 summary judgment in favor of SFR.

#### 14 **STATEMENT OF DISPUTED AND UNDISPUTED FACTS**

15 SFR hereby incorporates the Statement of Undisputed Facts from its MSJ, as well as the  
16 Statement of Disputed Facts presented in its Opp., as if fully stated herein. In addition, SFR states  
17 as follows:

18 **Disputed Fact #1: Nationstar’s dispute regarding whether the foreclosure sale**  
19 **complied with all requirements of law.** Bank Opp. at 2:21-23.

20 This issue was not previously raised and is therefore waived by the Bank. Further, this  
21 Court has already validated the foreclosure sale in its prior Order Granting Summary Judgment,  
22 which was not overturned by the Nevada Supreme Court on remand. As stated previously, there  
23 were specific issues which were to be resolved on remand, and this was not one of them. This  
24 disputed fact does not prevent this Court from granting summary judgment in favor of SFR.

#### 25 **LEGAL ARGUMENT**

##### 26 **I. THE BANK FAILED TO MEET ITS BURDEN ON REMAND.**

27 When this case was on appeal, the Nevada Supreme Court stated that “the servicer of a loan  
28 owned by a regulated entity may argue that the Federal Foreclosure Bar preempts NRS 116.3116,

1 and that neither Freddie Mac nor the FHFA need be joined as a party.” *Nationstar Mortgage, LLC*  
2 *v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758 (Nev. 2017).

3 However, “the district court did not determine whether Freddie owned the loan in question,  
4 or whether Nationstar had a contract with Freddie Mac or the FHFA to service the loan in question.  
5 Rather, the district court held that Nationstar lacked standing in either case.” *Id.* “Therefore, we  
6 conclude that remand is appropriate so the district court may address these factual inquiries in the  
7 first instance.” *Id.* (footnote omitted).

8 The Bank has failed to prove either factor for which this matter was remanded. The Bank  
9 has not proven that Freddie Mac owned the loan in question, nor has it provided the contract with  
10 Freddie Mac or the FHFA by which Nationstar services the loan.

11 **A. The Bank has the Burden of Proving its Defenses (or Claims Masquerading**  
12 **As Defenses).**

13 The Bank’s arguments are entirely premised on the idea that Freddie Mac allegedly  
14 purchased the underlying loan, obtaining a property interest prior to the Association foreclosure  
15 sale, and since Freddie Mac was under the conservatorship of the FHFA, the so-called “Federal  
16 Foreclosure Bar” under 12 U.S.C. 4617(j)(3) allegedly precluded SFR from acquiring free and  
17 clear interest in the Property. This argument requires the Bank to prove that the purported loan is  
18 “property of” the FHFA for purposes of 4617(j)(3), which in turn requires the Bank to prove that  
19 Freddie owned the purported loan at the time of the sale and that FHFA succeeded to the loan  
20 rather than it being held in trust. *See Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev.  
21 1996) (Evidence of a superior interest must be enough to overcome the “presumption in favor of  
22 the record titleholder” who is SFR in this case).

23 Here, the evidence shows that the Bank, Freddie, nor FHFA have any interest in the  
24 Property. Moreover, FHFA and the Enterprises have already admitted that as “[a] threshold matter,  
25 of course, [Plaintiff] must have a property interest in order for [4617(j)(3)] to apply.” *Dansker*,  
26 No. 2:13-cv-01420-RCJ-GWF (ECF No. 54, 2:12-13). Herein, the Bank, Freddie, and the FHFA  
27 have exclusive access to and possession of facts concerning securitization, whether the mortgage  
28 was “held in trust.” *Adobe*, 809 F.3d at 1080. Thus, the Bank is possession of all the information

1 to meets its burden of proving quiet title if what it alleged is true.

2 However, the Bank has utterly failed to provide any evidence to substantiate their claims.  
3 As the Bank bears the burden to establish its purported defense pursuant to 12 U.S.C. 4617(j)(3)  
4 and it failed to meet said burden, this Court should grant summary judgment in favor of SFR.

5 **B. The Bank's Evidence of Freddie's Ownership and its Contractual Interest in**  
6 **Servicing the Property is Unsatisfactory.**

7 The Bank is the named party and had the responsibility to establish the Freddie owns the  
8 mortgage in question. The following is a comprehensive list of such evidence the Bank has  
9 produced to support Freddie's alleged loan interest in the property:

- 10 1) Screenshot from Nationstar's Servicing System;  
11 2) The "please read" message / the Servicing Guidelines; and  
12 3) Testimony regarding Limited Power of Attorney to Nationstar from Freddie.

13 Each of these were discussed extensively in SFR's MSJ and were not substantively  
14 responded to in the Bank's Opp. Further, the only additional evidence the Bank asserts supports  
15 their position was the late-disclosed declaration of Dean Meyer, attached to its MSJ as Exhibit B.  
16 The Bank purports to attach yet another self-serving, late-disclosed supplemental declaration of  
17 Mr. Meyer to its Opp., however, the Bank's Opp. did not actually contain any exhibits. In any  
18 event, for the same reasons presented in SFR's Opp. regarding Mr. Meyer's first declaration, any  
19 additional declarations of Mr. Meyer should be equally disregarded. To the extent the Bank does  
20 produce this supplemental declaration and attempts in some way to supplement with the purported  
21 exhibits, it should be stricken for the same reasons laid out in SFR's Counter-Motion to Strike  
22 Exhibit B to the Bank's MSJ.

23 SFR further addressed the downfalls of the Bank's "evidence" in significant detail within  
24 its MSJ, and especially within SFR's Opp. and Counter-Motion to Strike, and as a matter of  
25 efficiency, said arguments are incorporated as if fully stated herein.

26 The only argument presented by the Bank related to its purported "contract" with Freddie  
27 Mac or FHFA is a reference to Freddie Mac's Single-Family Seller/Servicer Guide ("Guide"). As  
28 stated within SFR's Opp., said Guide is not sufficient to establish the relationship necessary, nor  
can this Court take judicial notice of the Guide, or any "facts" purportedly established by same.



**C. Even if Freddie has a Property Interest, the Bank Cannot Refute that the Mortgage is Held In Trust.**

SFR's arguments on this issue are detailed within SFR's MSJ and SFR's Opp. The Bank has failed to provide any sufficient evidence or argument to refute the scenario presented by SFR. The only "evidence" provided by the Bank was another late-disclosed, self-serving supplemental declaration of Mr. Meyer, which came with no other supporting evidence. As referenced above, this purported supplemental declaration should be stricken for the same reasons the original declaration of Mr. Meyer should be stricken.

The Bank then argues that the Borrower FAQs provided by SFR apply to some other category of loans allegedly owned by Freddie Mac. However, we have yet another assertion that is entirely unsupported by evidence. Argument of counsel is not evidence. It is not SFR's burden to demonstrate the loan was held in trust; it is the Bank's burden to demonstrate that it is **not** held in trust. The April 15, 2015 bulletin referenced by the Bank is hearsay and the Bank is trying to use it to prove the facts asserted therein. In any event, the bulletin makes no reference, inclusive or exclusive, to the FAQs noted by SFR. Again, the Bank has failed to meet its burden.

Additionally, the Bank reliance on *Elmer* is overstated. First, *Elmer* is unpublished. Second, *Elmer* is not inconsistent to SFR's position. The Bank is essentially arguing semantics. Even if the Bank's position was correct, and the FHFA "succeeded" to a mortgage held in trust by Freddie Mac, the FHFA would only succeed to whatever interest Freddie Mac had. Thus, if Freddie Mac was acting as a trustee and held a mortgage in trust, then even assuming *arguendo* that the Bank's interpretation and application of *Elmer* is correct, the FHFA would only succeed to the interest Freddie Mac had as a trustee, but would not succeed to the mortgage, as the underlying trust would retain ownership. Based on that interpretation, the protections afforded under 12 U.S.C. 4617(j)(3) would be inapplicable, as the mortgage would not be property of the Agency. The burden lies with the Bank to disprove this line of reasoning; it is not SFR's burden to prove it, as it goes directly to the Bank's "defense" under 4617(j)(3), and does not prevent summary judgment in favor of SFR.

**II. SFR IS A BONA FIDE PURCHASER FOR VALUE**

As laid out in SFR's Opp. and Counter-Motion, SFR is a BFP and the Bank provided no

evidence or argument to the contrary. In the interest of efficiency, SFR hereby incorporates by reference the arguments regarding SFR's BFP status as if fully stated herein. *See* SFR's Opp. at 25:14-29:26.

**CONCLUSION**

SFR has met its burden and come to this Court with a valid foreclosure deed. The Nevada Supreme Court has instructed this Court to evaluate both Freddie Mac's interest in the property, as well as the Bank's contractual right to service this property. However, the Bank has failed to provide evidence that Freddie Mac owns the mortgage or that it has a right to service this property on behalf of Freddie Mac. Therefore, this Court should enter summary judgment against the Bank and in favor of SFR, stating that (1) title is quieted in SFR's name; (2) the DOT was extinguished; and (3) the Bank, and any agents, successors and assigns are permanently enjoined from interfering with SFR's possession and ownership of the Property.

Dated this 28th day of December, 2017

**KIM GILBERT EBRON**

By: /s/ Jacqueline A. Gilbert  
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Cross-Claimant,  
SFR Investments Pool 1, LLC*

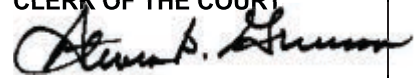
**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of December 2017, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF ITS 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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/s/ Jason G. Martinez  
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# **TAB 18**



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*Attorneys for Nationstar Mortgage, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**NATIONSTAR MORTGAGE LLC'S  
ERRATA TO MOTION FOR SUMMARY  
JUDGMENT**

Nationstar Mortgage LLC files this errata to its renewed motion for summary judgment filed on November 15, 2017. Exhibit E to Nationstar's renewed motion, Nationstar's declaration in support of the motion, inadvertently omitted the exhibits to the declaration.

1 A corrected copy of Exhibit E with attachments is attached hereto.

2 DATED this 8<sup>th</sup> day of January, 2018.

3 **AKERMAN LLP**

4 /s/ Tenesa S. Scaturro

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> of January, 2018 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S ERRATA TO MOTION FOR SUMMARY JUDGMENT**, addressed to:

**Kim Gilbert Ebron**

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*/s/ Doug J. Layne*

\_\_\_\_\_  
An employee of AKERMAN LLP

# EXHIBIT E

# EXHIBIT E



**MSJD**  
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*Attorneys for Bank of America, N.A., as Successor  
by Merger to BAC Home Loans Servicing, LP fka  
Countrywide Home Loans, Inc., incorrectly sued  
as Countrywide Home Loans, Inc. and Nationstar  
Mortgage, LLC.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,  
  
Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept. No: XVII

**DECLARATION IN SUPPORT OF  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

1 I, AJ Loll, declare as follows:

2 1. My name is AJ Loll. I am competent to testify and have personal knowledge of the  
3 matters stated herein by virtue of my position as Managing VP for Nationstar Mortgage LLC  
4 (**Nationstar**).

5 2. As Managing VP for Nationstar, I am familiar with certain Nationstar systems and  
6 databases that contain data regarding mortgage loans owned by Federal Home Loan Mortgage  
7 Corporation (**Freddie Mac**) that Nationstar services. I have reviewed Nationstar's systems and  
8 databases containing information and data related to this loan.

9 3. Entries in Nationstar's systems and corresponding databases are made at or near the time  
10 of the events recorded by, or from information transmitted by, persons with knowledge. Nationstar's  
11 systems and databases are maintained and kept in the course of Nationstar's regularly conducted  
12 business activity, and it is the regular practice of Nationstar to keep and maintain information  
13 regarding loans owned by Freddie Mac that Nationstar services in Nationstar's databases.  
14 Nationstar's systems and databases consist of records that were made and kept by Nationstar in the  
15 course of its regularly conducted activities pursuant to its regular business practice of creating such  
16 records. These systems and databases are Nationstar's business records.

17 4. The records in Nationstar's systems and corresponding databases are consistent with my  
18 knowledge of the following matters:

- 19 a. On or about July 6, 2005, Ignacio A. Gutierrez (**Borrower**) obtained a loan from KB  
20 Home Mortgage Company (**Lender**) in the amount of \$271,638.00.
- 21 b. The Borrowers executed a note dated July 6, 2005 in favor of Lender (the **Note**).  
22 Their promise to repay the amount borrowed is secured by a Deed of Trust recorded  
23 against real property located at 668 Moonlight Stroll Street, Las Vegas, Nevada  
24 89015 (the Note and Deed of Trust together are the Loan).
- 25 c. Nationstar began servicing the Loan on or about July 16, 2012. True and correct  
26 copies of printouts from Nationstar's records pertaining to the date that Nationstar  
27 began servicing the Loan are attached as **Exhibit 1**.
- 28

Name: A. J. Loll, Vice President  
Nationstar Mortgage LLC

# EXHIBIT 1

# EXHIBIT 1



www.MyNationstarMtg.com

July 27, 2012

63912 0000468 001  
IGNACIO A GUTIERREZ  
668 MOONLIGHT STROLL ST  
HENDERSON NV 89002-0505

Re: New Nationstar Loan Number 0597203363

Dear Ignacio A Gutierrez,  
Welcome to Nationstar Mortgage! Effective 07/15/12 Nationstar Mortgage is now the servicer for your mortgage account. We're excited about the opportunity to serve you. You can count on Nationstar Mortgage to meet your needs whether you're looking to make a payment or refinance your loan. We offer many exciting features including 24-hour account access through our Internet website at [www.MyNationstarMtg.com](http://www.MyNationstarMtg.com), various payment options, and a toll free line 1-877-782-7612 with automated account information.

To ensure accuracy, please verify the following loan information:

Name:	Ignacio A Gutierrez	Home Phone Number:	702-558-9034
Property Address:	668 Moonlight Stroll Street Henderson Nv 89015	Work Phone Number:	000-000-0000
Mailing Address:	668 Moonlight Stroll St Henderson Nv 89002-0505		

If you find any of the information listed above to be incorrect, please contact us immediately at 1-877-782-7612.

At Nationstar Mortgage, your business and total satisfaction are important to us. Any time you have questions regarding your account, do not hesitate to contact us at 1-877-782-7612, 8:00 a.m.to 5:00 p.m. central time Monday thru Friday or mail your questions to:

Nationstar Mortgage LLC  
Attn: Bankruptcy Department  
350 Highland Drive  
Lewisville, Texas 75067

We look forward to a long and lasting relationship with you.

Sincerely,

Nationstar Mortgage

*Please be advised that the information contained in this letter is being sent for informational purposes, and should not be considered as an attempt to collect a debt.*



This area is intentionally left blank.

692-4014-0807F



PO BOX 650783  
DALLAS, TX 75265

[www.MyNationstarMtg.com](http://www.MyNationstarMtg.com)

July 27, 2012

63912 0000468

IGNACIO A GUTIERREZ  
668 MOONLIGHT STROLL ST  
HENDERSON NV 89002-0505

New Nationstar Loan Number: 0597203363

## NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Dear Ignacio A Gutierrez:

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from BANK OF AMERICA to Nationstar Mortgage LLC, effective 07/15/12.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires Nationstar Mortgage send you this notice no later than 15 days after the effective date of the transfer.

Your new servicer is Nationstar Mortgage LLC.

Nationstar Mortgage's business address is:

Nationstar Mortgage LLC  
350 Highland Drive  
Lewisville, Texas 75067  
[www.MyNationstarMTG.com](http://www.MyNationstarMTG.com)

Nationstar Mortgage's toll free number is 1-877-782-7612. If you have any questions relating to the transfer of servicing to Nationstar Mortgage, call 1-877-782-7612 between 8 a.m. and 8 p.m. on the following days Monday - Thursday, 8 a.m. and 5 p.m. on Friday, or visit us anytime at [www.MyNationstarMTG.com](http://www.MyNationstarMTG.com).

The date that Nationstar Mortgage will start accepting payments from you is 07/15/12. You can pay online via the Nationstar Mortgage website at [www.MyNationstarMTG.com](http://www.MyNationstarMTG.com), or you can send all payments due on or after that date to:

Nationstar Mortgage LLC  
PO Box 650783  
Dallas, Texas 75265

Your mortgage life insurance, disability insurance and/or other optional products will not continue. If you wish to retain optional products, you will need to contact your current optional product/service provider.

Enclosed is your Welcome Letter which includes a payment coupon with detailed loan information.

### **You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):**

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 5 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

Nationstar Mortgage LLC  
Attention Research Department  
350 Highland Drive  
Lewisville, Texas 75067  
[www.MyNationstarMTG.com](http://www.MyNationstarMTG.com)

Not later than 30 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

### **Important Loan Transfer "Home Affordable Modification Program" Information**

**Home Affordable Modification Program:** If you are currently participating in (or being considered for) a loan modification program, we will be transferring all your documentation to the new servicer. Until the transfer date, you should continue to make your payments (e.g., trial payments if attempting to qualify for a modification under the Home Affordable Modification Program) to BANK OF AMERICA. After transfer, you should make all payments to Nationstar until such time that you are provided additional direction. Decisions regarding qualification will be made by Nationstar. All information regarding other loss mitigation activities (forbearance agreements, short sales, refinances and deed-in-lieu of foreclosure) will be forwarded to Nationstar for processing. Please be advised that this transfer may extend the time needed for a final decision.

Sincerely,  
Nationstar Mortgage LLC



JA\_0981

# EXHIBIT 2

# EXHIBIT 2

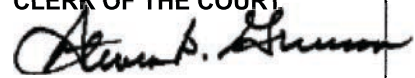
```

Loan#: 0597203363 Asum: N Inv: 472 FHLMC SCH/ACT GANESHA ..... 000000 Lien: 1
IGNACIO GUTIERREZ Loan Type/Sub: 03 Conv/Unins / 00 Next Due: 4/01/10
+ Rate: 6.750 UnPaidBal: 271066.83 Pmt: 1833.08
668 MOONLIGHT STROLL STRE #Pmts Delq: 00090 Dlq Amt 169966.94 P&I: 1524.75
HENDERSON NV 89015 Msg: #1: 17 #2: 08 #3: 91 LPR: 1/30/12 Stat: R
Phone 1: H 702-558-9034 W Phone 2: H W
FCBA Code: PFP: W/Ext: SCRA: N Behavioral Score: 000 W/Ext:
Potential Del: 004 Eligibility Code: 0 Complaint Risk: Credit Score: 646
Instructions:
BRAND: NSM BORROWERS 001
* Entered By Target Class ----- First Comment -----
= 09/12/17 MIS 00/00/00 CL FREDDIE MAC DEFAULT REPORTING COMPLETED
- 09/08/17 MIS 00/00/00 CL PROPERTY INSPECTION ORDERED (STANDARD ID
- 08/16/17 KPAT1036 08/16/17 CL FORECLOSURE TITLE AUDIT PASS
- 08/15/17 ** 00/00/00 CL PROPERTY INSPECTION COMPLETED
- 08/10/17 MIS 00/00/00 CL PROPERTY INSPECTION ORDERED (STANDARD ID
- 08/09/17 MIS 00/00/00 CL FREDDIE MAC DEFAULT REPORTING COMPLETED
- 08/08/17 LS1300R2 08/07/17 CL ANNUAL PRIVACY NOTICE SENT - STAND ALONE
- 07/15/17 ** 00/00/00 CL PROPERTY INSPECTION COMPLETED
- 07/15/17 ** 00/00/00 CL PROPERTY INSPECTION COMPLETED
* I=Inquiry, U=Update, C=Clear (Highlighted lines show the Uncleared items) +
Page Up/Dn F1=Detail Comm. F2=Excl Cleared F4=List F5=Exec Comm
F7=Next Loan F8=Prv Loan F9=Loan Info F10=Add F11=Dsp Master
F12=Return F13=Door F14=All Classes F15=Delq Hist

```



# **TAB 19**



RIS

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

TENESA S. SCATURRO, ESQ.

Nevada Bar No. 12488

AKERMAN LLP

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Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: tenesa.scaturro@akerman.com

*Attorneys for Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVII

**NATIONSTAR'S REPLY IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT AND TO  
OPPOSE COUNTERMOTION TO  
STRIKE**

As described in Nationstar's Motion for Summary Judgment, while Freddie Mac is in conservatorship under FHFA, none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").<sup>1</sup> In this case, at the

<sup>1</sup> Terms not defined herein shall take on the definition in Nationstar's Motion for Summary Judgment ("MSJ").

1 time of the HOA Sale, Freddie Mac had a property interest in the Deed of Trust encumbering the  
2 Property. As multiple federal and state courts, including the Ninth Circuit, have held in dozens of  
3 cases, MSJ at 10-11 (citing cases), the Federal Foreclosure Bar protects Freddie Mac's interest,  
4 precluding SFR from acquiring a free and clear interest in the Property. *See, e.g., Berezovsky v.*  
5 *Moniz*, 869 F.3d 923, 932 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 Fed. App'x  
6 658 (9th Cir. Oct. 20, 2017); *Elmer v. JPMorgan Chase & Co.*, No. 15-17407, 2017 WL 3822061, at  
7 \*1-2 (9th Cir. Aug. 31, 2017). The legal issues here are identical to all of these other cases, and the  
8 facts here are virtually identical to those in many of these cases: Fannie Mae and Freddie Mac own  
9 a secured mortgage loan, giving them a protected property interest while their contractually  
10 authorized servicer appears in the property records as beneficiary of record on their behalf. SFR  
11 repeats many of the same arguments that courts have already rejected in these related cases. SFR's  
12 arguments similarly fail and should be rejected.

13 Additionally, the Court should deny SFR's counter-motion to strike Nationstar's evidence  
14 proving Freddie Mac's interest in the Property because Nationstar's evidence was timely disclosed  
15 preventing any prejudice to SFR.

16 Finally, Nationstar demonstrated low price and unfairness sufficient to set aside the HOA's  
17 sale and SFR has failed to meet its burden that it is a bona fide purchaser.

18 Accordingly, this Court should grant Nationstar's Motion for Summary Judgment.

### 19 ARGUMENT

#### 20 **I. The Federal Foreclosure Bar Defeats SFR's Claim to an Interest in the Property Free** 21 **and Clear of the Deed of Trust**

##### 22 **A. Freddie Mac Had a Protected, Secured Property Interest at the Time of the** 23 **HOA Sale**

24 As discussed in Nationstar's Opening Brief and *infra*, the Federal Foreclosure Bar protects  
25 the property of Freddie Mac while it is in conservatorship. That protection is not limited to the  
26 interest Freddie Mac might have if it were the *beneficiary of record* of the Deed of Trust at the time  
27 of an HOA Sale. Rather, it extends to the secured property interest that Freddie Mac has as the  
28 *owner* of the note and Deed of Trust—an interest recognized under Nevada law—while its

1 contractually authorized servicer is record beneficiary of the Deed of Trust. Freddie Mac’s property  
2 interest is amply supported in the evidentiary record through property records, Freddie Mac’s and  
3 Nationstar’s business records with supporting employee declarations, and Freddie Mac’s Servicing  
4 Guide—the same type of evidence the Ninth Circuit held as sufficient and valid to confirm Freddie  
5 Mac’s Property interest at the summary judgment stage.<sup>2</sup>

6 1. Freddie Mac Owned the Note and Deed of Trust Under Nevada Law

7 SFR argues that Nationstar has not proven that Freddie Mac owns the note and Deed of  
8 Trust. Opp. at 8. SFR is wrong and fails to engage with the chief authorities cited in Nationstar’s  
9 Opening Brief that set out Nevada’s approach to ownership of a deed of trust: *In re Montierth*, 354  
10 P.3d 648 (Nev. 2015) and the Restatement (Third) of Property: Mortgages § 5.4 (1997)  
11 (“Restatement”). Pursuant to these authorities, Freddie Mac had an interest in the Property at the  
12 time of the HOA Sale, regardless of the fact that Nationstar was the record beneficiary of that Deed  
13 of Trust. Indeed, the Ninth Circuit has cited to these authorities to recognize Freddie Mac’s property  
14 interest under similar factual circumstances. *Berezovsky*, 869 F.3d at 923 (recognizing the Nevada  
15 Supreme Court’s adoption of the Restatement); *Elmer*, 2017 WL 3822061 (following *Berezovsky*);  
16 *Flagstar Bank, FSB*, 699 F. App’x at 658-59 (same for Fannie Mae). Interestingly, SFR cites to  
17 *Berezovsky*, but fails to apply the law to this case. Opp. at 9.

18 The Nevada Supreme Court recognized in *Montierth* that an entity who owned a loan was a  
19 secured creditor—meaning that it had a property interest in the collateral—while MERS, an entity  
20 with which it had an agency or contractual relationship, was record beneficiary of the deed of trust.  
21 See *Montierth*, 354 P.3d at 651. The Restatement, which *Montierth* adopts, explains the relationship  
22 between “institutional purchasers of loans” and their servicers, and states that when a servicer  
23 appears in the public records as beneficiary of a mortgage, “[i]t is clear in this situation that the  
24 owner of both the note and mortgage is the investor and not the servicer.” Restatement § 5.4 cmt. c.  
25 The Ninth Circuit analyzed *Montierth* and the Restatement in detail to confirm Nevada law

26  
27 <sup>2</sup> In its Opposition, SFR briefly argues that Freddie Mac does not have a property interest because the Loan was  
28 securitized, and FHFA does not have an interest in securitized loans. Opp. at 8, 11-12. As explained in Nationstar’s  
Opposition brief, the Loan was not securitized at the time of the HOA Sale and even if it was, FHFA as Conservator  
succeeds to that ownership interest during the conservatorship. Nationstar’s Opp. at 5-7.

1 recognizes that a loan owner like Freddie Mac has a secured property interest when its contractually  
2 authorized servicer (Nationstar) appears as beneficiary of record. *See Berezovsky*, 869 F.3d at 933.  
3 This Court should do the same here.

4 The relevant facts in this case are materially the same as those in *Montierth*, the section of the  
5 Restatement cited by *Montierth*, and the Ninth Circuit cases: (i) the owner of the note was not  
6 reflected in the public record, though the lien itself was recorded; (ii) the owner of the note had a  
7 contractual or agency relationship with the beneficiary of record; and (iii) the beneficiary of record  
8 had authority to foreclose on the owner's behalf. *See* MSJ. These authorities make clear that the  
9 loan owner has a property interest under these circumstances.

10 SFR attempts to rely on a Nevada Supreme Court decision that predates *Montierth* to claim  
11 that Freddie Mac did not have a Property interest because "the Note and Deed of Trust were split."  
12 Opp. at 9 (citing *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 256 (2012)). But *Montierth*  
13 expressly and significantly clarifies *Edelstein* by confirming that Nevada law adopts the Restatement  
14 approach articulating exceptions to the general rule discussed in *Edelstein*. *See Montierth*, 354 P.3d  
15 at 651. Those exceptions provide that a foreclosure *could* proceed when the owner of a loan was not  
16 the beneficiary named in the recorded deed of trust, so long as the named beneficiary had a particular  
17 relationship with the loan owner. *Id.* at 650-51. Accordingly, *Montierth's* explicit adoption of those  
18 Restatement exceptions confirms that under Nevada law a loan owner, like Deutsche Bank in  
19 *Montierth* and Freddie Mac here, has a secured interest when the beneficiary of record is a servicer  
20 acting on the loan owner's behalf.

21 *Montierth* confirms that there is no rule that every deed of trust must be recorded *in its*  
22 *owner's name* for the owner to have a valid, secured interest, *Montierth*, 354 P.3d at 650-51,  
23 contrary to SFR's contention, Opp. at 10-11. Indeed, Nevada's recording statutes do not require  
24 public recording of changes in the ownership of a loan in order for a party to have a legal property  
25 interest through that ownership. *See* NRS 106.210 (discussing only recording of assignments of  
26 beneficial interests). The recording statutes require only the recording of a "conveyance" of a deed  
27 of trust itself or an assignment of a deed of trust, not its subsequent acquisition by an investor  
28

1 through its purchase of a loan. *See Leyva v. Nat'l Default Servicing Corp.*, 255 P.3d 1275, 1279  
2 (Nev. 2011) (deed of trust constitutes a conveyance as defined by NRS 111.010).

3 At the time of the HOA Sale, the relevant security interest, the Deed of Trust, was recorded  
4 in the name of Freddie Mac's contractually authorized servicer, Nationstar, and SFR is charged with  
5 notice that the Deed of Trust encumbered the Property. The Deed of Trust was the instrument that  
6 Freddie Mac owned, regardless of whether Freddie Mac's name appeared on the face of the  
7 instrument. The requirements of the Nevada recording statutes are consistent with those in  
8 Kentucky, which the Sixth Circuit Court of Appeals recently held did not require a separate  
9 recording anytime a party purchased a loan, so long as the beneficiary of record remained the same  
10 entity, as is the case here. *See Higgins v. BAC Home Loans Servicing, LP*, 793 F.3d 688, 689 (6th  
11 Cir. 2015).

12 If Nevada's recording statutes required all *loan ownership* interests to be recorded, a loan  
13 owner would always also need to serve as beneficiary of record of a deed of trust. Under such a rule,  
14 the loan owner in *Montierth* would not have had a secured property interest, and the Nevada  
15 Supreme Court would have ruled that MERS could not act as record beneficiary as nominee for the  
16 lender. But *Montierth* made the opposite ruling, consistent with *Higgins* and with a number of Ninth  
17 Circuit decisions regarding MERS and its role in the consumer mortgage industry. *See In re*  
18 *Mortgage Elec. Registration Sys., Inc.*, 754 F.3d 772, 776-77 (9th Cir. 2014); *Cervantes v.*  
19 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011).

20 Thus, *Montierth* confirms that SFR's challenge to Freddie Mac's Property interest because  
21 Nationstar, not Freddie Mac, appeared as the record beneficiary of the Deed of Trust fails. Opp. at  
22 10-11. Indeed, "Nevada law . . . recognizes that . . . a note owner remains a secured creditor with a  
23 property interest in the collateral even if the recorded deed of trust names" a servicer. *Berezovsky*,  
24 869 F.3d at 932. Here, the recorded documents name Freddie Mac's contractually authorized  
25 servicer, Nationstar. Thus, "[a]lthough the recorded deed of trust here omitted Freddie Mac's name,  
26 Freddie Mac's property interest is valid and enforceable under Nevada law." *Id.*

2. The Evidence Unequivocally Proves That Freddie Mac Owns the Loan and Deed of Trust

SFR argues that the evidence before this Court is insufficient to prove that Freddie Mac owned the Loan and Deed of Trust. Opp. at 11-16. But SFR’s arguments ignore the rules of evidence and applicable case law. The history of Freddie Mac’s ownership and relationship with its servicer at the time of the HOA Sale is supported by the recorded property records, and Nationstar and Freddie Mac’s business records, which are supported by declarations from their respective employees.

Nationstar submitted Freddie Mac’s business-records data from its MIDAS system, an electronic system of record that Freddie Mac uses in its ordinary business operations to track millions of loans it owns nationwide. MSJ at Ex. B. The MIDAS data shows the date on which Freddie Mac acquired ownership of the Loan was in August 2005—long before the April 2013 HOA Sale. *Id.* This data demonstrates Freddie Mac’s continued ownership of the Loan at the time of the HOA Sale. *Id.* Freddie Mac’s business records also show that Nationstar was the servicer for Freddie Mac at the time of the HOA Sale. *Id.* Nationstar also submitted its own business records proving that it was the servicer of the Loan for Freddie Mac at the time of the HOA Sale. MSJ at Ex. E and Errata.

Evaluating the same type of evidence as that presented here—business records and a declaration from a Freddie Mac employee—the Ninth Circuit held that Freddie Mac’s “database printouts” were admissible and sufficient to support a “valid and enforceable” property interest under Nevada law. *Berezovsky*, 869 F.3d at 932-33 & n.8. In *Elmer*, “Freddie Mac provided a record from its internal database stating . . . the loan’s “funding date”[, which] was . . . well before the [foreclosure] sale[, and] Freddie Mac’s employee explained that the record indicates that Freddie Mac acquired ownership of the loan . . . and has owned it ever since.” *Elmer*, 2017 WL 3822061, at \*1. Nationstar has provided the same type of evidence here—Freddie Mac’s business records providing the “funding date,” which was before the HOA Sale, and an employee declaration explaining the records and the fact that Freddie Mac continued to own the Loan at the time of the HOA Sale. The submitted business records are “*reliable* and uncontroverted evidence of Freddie Mac’s interest in the property on the date of the foreclosure.” *Elmer*, 2017 WL 3822061, at \*1

1 (emphasis added). Indeed, the Ninth Circuit rejected speculation by the opposing party that the  
2 records might be interpreted in some way other than that presented in Freddie Mac’s employee  
3 declaration. *Id.*

4 In order to convince the Court not to consider the business records from Freddie Mac or  
5 Nationstar, the burden is on SFR to establish that “the source of information or the method or  
6 circumstances of preparation indicate a lack of trustworthiness.” Fed. R. Evid. 803 (2014 advisory  
7 committee notes). The chief indication of a record’s untrustworthiness is whether it is “a document  
8 prepared for purposes of litigation,” and thus effectively “not a business record”; “where the only  
9 function that the report serves is to assist in litigation or its preparation, many of the normal checks  
10 upon the accuracy of business records are not operative.” *Paddack v. Dave Christensen, Inc.*, 745  
11 F.2d 1254, 1259 (9th Cir.1984); *Impact Mktg. Int’l, LLC v. Big O Tires, LLC*, No. 2:10-cv-01809-  
12 MMD, 2012 WL 2092815, at \*3 (D. Nev. June 11, 2012) (quoting *Paddack*).

13 SFR does not dispute that Freddie Mac uses the data contained in MIDAS in its ordinary  
14 course of business. However, SFR contends that the business records are “questionable” because  
15 they “are dated July 26, 2017—nowhere near the time of the 2013 Association foreclosure sale.”  
16 Opp. at 4. But the July 2017 date is the date in which the information was pulled from the database  
17 and printed. SFR confuses a print-date of a continuously used database with a record newly created  
18 for litigation. “[S]o long as the original computer data compilation was prepared pursuant to a  
19 business duty in accordance with regular business practice, the fact that the hard copy offered as  
20 evidence was printed for purposes of litigation does not affect its admissibility.” *United States v.*  
21 *Hernandez*, 913 F.2d 1506, 1512-13 (10th Cir. 1990).

22 In addition, rather than engaging with the Ninth Circuit authorities—*Berezovsky* and *Elmer*—  
23 SFR cites to a few decisions from the District of Nevada that have declined to grant summary  
24 judgment to FHFA, the Enterprises, or their servicers based on a similar evidentiary record. Opp. at  
25 9 & n.2. These cases were all decided before the Ninth Circuit confirmed what evidence is sufficient  
26 to establish Freddie Mac’s property interest. Consequently, these decisions would not withstand  
27 scrutiny upon appellate review.



1 For example, in *LN Management, LLC Series 5664 Divot v. Dansker*, the court’s decision  
2 denying a servicer’s motion for summary judgment was predicated on the fact that Fannie Mae was  
3 not named as the beneficiary of record on the deed of trust. No. 2:13-cv-01420-RCJ-GWF, 2015  
4 WL 5708799, at \*3 (D. Nev. Sept. 29, 2015)); *see also Kielty v. Fed. Home Loan Mortg. Corp.*, No.  
5 2:15-cv-00230-RCJ-GWF, 2016 WL 1030054, at \*3 (D. Nev. Mar. 9, 2016); *LN Mgm’t LLC Series*  
6 *2543 Citrus Garden v. Gelgotas*, No. 2:15-cv-0112-MMD, 2016 WL 1071005, at \*6 (D. Nev. Mar.  
7 16, 2016). But the Ninth Circuit rejected this concern in *Berezovsky, Elmer*, and *Flagstar*, holding  
8 that the assignment of a deed of trust to a servicer or MERS is consistent with the Enterprise’s  
9 ownership interest, and does not defeat summary judgment, because the owner and the record  
10 beneficiary need not be the same entity.

11 Similarly, while the court in *LN Mgmt. LC Series 5271 Lindell v. Estate of Piacentini*,  
12 referred in passing to Fannie Mae’s database records as “cryptic,” its decision to deny summary  
13 judgment rested on the court’s uncertainty as to whether there was sufficient evidence of a servicer  
14 relationship to satisfy *Montierth*. *See* No. 2:15-cv-00131-JAD-NJK, 2015 WL 6445799, at \*2, \*4  
15 (D. Nev. Oct. 8, 2015). But the Ninth Circuit has since confirmed that Freddie Mac’s Guide, along  
16 with its business records and testimony, sufficiently proves the servicer relationship.<sup>3</sup> *Berezovsky*  
17 and *Elmer* evaluated Freddie Mac’s Guide and found that the “Guide’s language mirrors *Montierth*’s  
18 description of the requisite . . . relationship,” *id.* at 933, because it details how the servicer, as  
19 beneficiary of record, is “*acting on Freddie Mac’s behalf.*” *Elmer*, 2017 WL 3822061, at \*1  
20 (emphasis added).

21 SFR’s argument that the Court should not consider the Guide because “[t]here is nothing  
22 tying this document directly to the subject Property or loan,” Opp. at 6, misunderstands the evidence.  
23 The Guide shows the *content* of the Freddie Mac-servicer relationship, confirming that its governing  
24 terms match the relationship discussed in *Montierth*. *See Berezovsky*, 869 F.3d at 932-33 & n.9. But  
25 as noted above, the fact of a particular servicing relationship between Freddie Mac and Nationstar  
26 regarding the Loan and Property in this case is evidenced by witness testimony and business records,  
27

28 <sup>3</sup> Contrary to SFR’s contention, Opp. at 4, like the Ninth Circuit has done, the Court can take judicial notice of the Guide. *See Berezovsky*, 869 F.3d at 932 n.9.

1 not by the Guide itself. SFR has not identified any genuine basis to dispute that evidence.

2 SFR also argues that the language assigning the Deed of Trust is “inconsistent” with Freddie  
3 Mac’s Property interest because the language assigns the Deed of Trust “together with the note(s)  
4 and obligations therein described.” Opp. at 12. However, this language does not suggest any change  
5 in *ownership* of the note or deed of trust; Mortgage Electronic Registration System (“MERS”) had  
6 no ownership interest in the Deed of Trust to transfer to Bank of America, N.A. (“BANA”), then to  
7 Nationstar, since Freddie Mac owned the Loan beginning in August 2005. And prior to Freddie  
8 Mac’s acquisition of the Loan, MERS was beneficiary “solely as nominee for Lender and Lender’s  
9 successors and assigns.” MSJ at Exs. A, C. MERS never had an ownership interest in the Loan.  
10 The principle of *nemo dat quod non habet*—i.e., one cannot give what one does not have—confirms  
11 that the use of assignment language could not enlarge the property rights MERS had and could  
12 transfer to BANA, then to Nationstar. *See Mitchell v. Hawley*, 83 U.S. 544, 550 (1872). This is  
13 because an “assignee stands in the shoes of the assignor and ordinarily obtains only the rights  
14 possessed by the assignor at the time of the assignment, and no more.” 6A C.J.S. Assignments  
15 § 111; *see also* 55 Am. Jur. 2d Mortgages § 944 (An “assignee of a mortgagee’s interest in a  
16 mortgage gains only the rights the assignor had at the time of the assignment.”).

17 Thus, under the circumstances here, the assignment language must be read to be consistent  
18 with these principles of assignment law and the contractual relationships between Freddie Mac and  
19 its servicers: the assignment transferred only an interest in the Deed of Trust as beneficiary of  
20 record and whatever interest in the note the assignor had at the time. The assignment did not transfer  
21 ownership of the note or the Deed of Trust.<sup>4</sup> Indeed, had it done so, BANA, and later Nationstar  
22 would not have continued to report monthly to Freddie Mac concerning the Loan, remitting principal  
23 and interest payments. But as Freddie Mac’s records show, its servicers did just that. Ex. B at ¶ 5(j).  
24 If BANA or Nationstar believed the assignment made one of them the owner of the Loan, they never  
25 evidenced that belief by any action.

26  
27 <sup>4</sup> SFR also argues that Freddie Mac’s ownership interest is contradicted by the assignments because Mr. Meyer’s  
28 declaration stated that Freddie Mac purchased the Loan from BANA instead of from its predecessor BAC Home Loans  
Servicing, LP. Opp. at 4. SFR’s argument is frivolous. As SFR recognizes, BANA became assignee as successor by  
merger to BAC Home Loans Servicing, LP in 2011. *Id.* That Mr. Meyer named BANA, the current entity that BAC has  
since merged into, does not raise a material question of fact.

1 In short, despite SFR’s conclusory statements to the contrary, SFR has failed to raise any  
2 genuine issue of material fact and offers no evidence contrary to these business records and  
3 declarations. SFR cannot defeat summary judgment merely by saying it does not believe the  
4 evidence introduced by Nationstar: a “metaphysical doubt as to the material facts” cannot defeat  
5 summary judgment. *Berezovsky*, 869 F.3d at 933.

6 3. Freddie Mac’s Ownership of the Loan At the Time of the HOA Sale Is Not  
7 Dependent on Whether It Holds the Endorsed Note Now

8 Instead of presenting any contrary evidence, SFR argues that Nationstar should have to  
9 produce the endorsed note to prove who can enforce it, citing the method for the transfer of notes  
10 under Article 3 of the Uniform Commercial Code or Nevada Revised Statutes § 104.3201. Opp. at  
11 9-11. This argument misunderstands the difference between the *holder* and the *owner* of a secured  
12 instrument, which may be two different entities. A transfer of a note has no bearing on ownership,  
13 but instead “vests in the transferee any right of the transferor to enforce the instrument.” NRS  
14 § 104.3203. Under Nevada law, “[a] person may be a person entitled to enforce [a promissory note]  
15 even though the person is not the owner of the [note].” NRS § 104.3301(2). Thus, “the status of  
16 holder merely pertains to one who may enforce the debt and is a separate concept from that of  
17 ownership.” *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at \*3 n.9  
18 (Nev. Dec. 20, 2011). In *Thomas*, the Nevada Supreme Court applied the Uniform Commercial  
19 Code in an analogous case where Freddie Mac claimed to own a note while BAC was the holder of  
20 the note and the record beneficiary of the associated deed of trust. The Court held there was nothing  
21 inconsistent with this situation under Nevada law. *See id.* at \*1, 3 & n.9. Therefore, the question  
22 that SFR poses—who is the *holder* of the note *now*?—has no bearing on the issue to be decided here:  
23 whether Freddie Mac *owned* the note *at the time of the HOA Sale*.

24 As SFR confirms in its brief, the purpose in proving that Freddie Mac holds the endorsed  
25 note is to give Freddie Mac authority to enforce the note. *See* Opp. 9-11. But neither Freddie Mac  
26 nor Nationstar are attempting to enforce the note in this litigation, which would be to try to foreclose  
27 on the Property. Indeed, SFR concedes that “this is not a foreclosure action.” Opp. at 9. But  
28 contrary to SFR’s contention, this case does not resemble a foreclosure action because the Federal

1 Foreclosure Bar does not “seek[] to strip SFR of its property rights” as the Federal Foreclosure Bar  
2 recognizes valid homeowner foreclosure sales. Instead, Nationstar argues that under the Federal  
3 Foreclosure Bar, the Deed of Trust still encumbers the Property, and SFR acquired its interest in the  
4 Property subject to it.

5 Under Nevada law, Freddie Mac must have been the *owner* of the note and have a  
6 contractual relationship with Nationstar at the time of the HOA Sale to maintain a secured property  
7 interest; it is of no relevance if Freddie Mac holds the endorsed note today. Even if the note had  
8 been endorsed to some other entity (it has not been), this would not have any bearing on the  
9 ownership question relevant here.

10 As discussed, Freddie Mac’s business records, not the note, are direct evidence that establish  
11 the relevant facts: the date Freddie Mac purchased the Loan and the fact that Freddie Mac owned  
12 the Loan and Deed of Trust at the time of the HOA Sale. SFR does not identify how the promissory  
13 note could be more probative of the facts relevant to this case than the business records that Freddie  
14 Mac itself uses in the central business function of keeping track of the loans it acquires.  
15 Accordingly, evidence of who is entitled to enforce the note is irrelevant to the Federal Foreclosure  
16 Bar.<sup>5</sup>

17 **B. SFR Is Not a Bona Fide Purchaser, But Even If It Were, the Federal Foreclosure**  
18 **Bar Still Applies**

19 SFR contends that Nevada’s bona fide purchaser laws protect it from any claim based on  
20 Freddie Mac’s interest in the Property relying, again, on the fact that Freddie Mac’s name did not  
21 appear in the public records at the time of the HOA Sale.<sup>6</sup> Opp. at 25-29. However, Nevada’s bona  
22 fide purchaser laws do not apply here—SFR was not a bona fide purchaser because it had “actual  
23

24 <sup>5</sup> SFR also takes issue with the fact that the Seller/Servicer Profile Inquiry record from MIDAS, identifying one of the  
25 servicer numbers associated with BANA, shows BANA as having a “power of attorney.” SFR Opp. at 4. SFR seems to  
26 believe that this record shows BANA has a power of attorney regarding the particular Loan here, but Mr. Meyer’s  
27 discussion of that record shows that this record only identifies the seller/servicer, BANA, who is elsewhere identified in  
the loan-specific records only by its number. The Seller/Servicer Profile Inquiry does not contain any information  
specific to the Loan, and thus the fact that BANA has a “power of attorney” generally does not mean it has one for the  
Loan here, which is currently serviced by Nationstar.

28 <sup>6</sup> SFR bears the burden of proving it is a bona fide purchaser. *RLP-Ampus Place LLC v. U.S. Bank, National Association*,  
Case No. 71883 at \*2-3 (unpublished) (Dec. 22, 2017), citing *Berge v. Fredericks*, 95 Nev. 183, 187 (1979). Even if  
BFP applied, SFR failed to meet its burden of proof.

1 knowledge, constructive notice of, or reasonable cause to know that there exists . . . adverse rights,  
2 title, or interest to, the real property.” NRS 111.180.

3 Here, both the Deed of Trust and its assignment to Nationstar were recorded prior to the  
4 HOA Sale in April 2013. That Deed of Trust is the instrument that Freddie Mac owns, regardless  
5 of whether Freddie Mac’s interest is apparent from the face of the instrument. Thus, it is  
6 immaterial whether the state statutes render an unrecorded deed of trust invalid against a  
7 subsequent bona fide purchaser—the Deed of Trust embodying Freddie Mac’s interest was  
8 recorded at the time of the HOA Sale in the name of its servicer. As a consequence, SFR cannot  
9 legitimately claim that it was a bona fide purchaser; it was on notice of the Deed of Trust  
10 encumbering the Property *before* the foreclosure sale.

11 Furthermore, the Deed of Trust put SFR on inquiry notice because it stated that the note,  
12 along with the Deed of Trust, “can be sold one or more times without prior notice to Borrower.”  
13 See MSJ at Ex. A. Thus, SFR was on notice that unnamed other parties might have an interest in  
14 the Property. In this case, that interest was held by Freddie Mac which, along with Fannie Mae,  
15 has a large, well-publicized, and well-known role in the national housing market, especially in the  
16 aftermath of the recent housing crisis. In 2008, the Enterprises’ “mortgage portfolios had a  
17 combined value of \$5 trillion and accounted for nearly half of the United States mortgage  
18 market.” *Perry Capital LLC v. Mnuchin*, 848 F.3d 1072, 1083 (D.C. Cir. 2017). Since 2012,  
19 “Fannie and Freddie, among other things, collectively purchased at least 11 million mortgages.”  
20 *Id.*

21 Thus, SFR cannot avoid the duty to inquire imposed before one can claim bona fide  
22 purchaser status. Any purchaser of a property sold at an HOA sale in recent years should expect  
23 that there is a significant likelihood that Fannie Mae or Freddie Mac own the loan secured by the  
24 deed of trust that the purchaser hopes to secure in the course of the HOA sale or subsequent  
25 transfers. SFR cannot complain that it had no idea that a beneficiary of record of a deed of trust  
26 might be a servicer acting on behalf of one of the Enterprises. The Enterprises’ reliance on  
27 servicers as beneficiaries of record is a well-established practice in this industry—a practice  
28 supported by the variety of cases concerning MERS and loan servicers and the Restatement’s

1 recognition of the relationship between loan owners and their servicers who act as beneficiaries of  
2 record. *See Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, No. 69400, 133 Nev.  
3 Adv. Op. 34, 2017 WL 2709806, at \*3 (Nev. June 22, 2017) (citing *Montierth* and the  
4 Restatement in describing servicers' role); *see also del Junco v. Conover*, 682 F.2d 1338, 1342  
5 (9th Cir. 1982) (parties engaged in a regulated business are particularly unable to claim ignorance  
6 of the relevant law); *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 565 (1971)  
7 (“[W]here . . . the probability of regulation is so great,” one operating in that business “must be  
8 presumed to be aware of the regulation.”). Thus, SFR could and should have anticipated that  
9 there was a significant chance that a property it purchased at an HOA foreclosure sale was subject  
10 to an interest owned by one of the Enterprises. *Atkins v. Parker*, 472 U.S. 115, 130 (1985) (“All  
11 citizens are presumptively charged with knowledge of the law.”).

12 Furthermore, there is no legal basis for the lack of a recorded assignment to Freddie Mac to  
13 interfere with the mandatory protection afforded to Freddie Mac's interests by the Federal  
14 Foreclosure Bar. The U.S. Supreme Court has rejected an analogous challenge to a statute  
15 allowing enforcement of an unrecorded lien that the affected party (a secured lender who  
16 repossessed property subject to the lien) had no practical means of discovering. *See Int'l*  
17 *Harvester Credit Corp. v. Goodrich*, 350 U.S. 537 (1956).

18 That case concerned a motor carrier's failure to pay a New York state highway tax, and the  
19 state's effort to impose and enforce a tax lien on trucks the carrier had purchased on credit from a  
20 vendor who retained a security interest in them. *Id.* at 538-42. When New York attempted to  
21 enforce its lien, the carrier's trucks had already been repossessed by the vendor under the security  
22 arrangement. *Id.* at 542. When the state contended that its unrecorded lien embodied a senior  
23 interest, essentially extinguishing the vendor's interest in the trucks, the vendor responded that the  
24 enforcement of such an unrecorded lien would violate its right to due process. *Id.* at 543. While  
25 the U.S. Supreme Court recognized that the vendor had neither notice of the government's  
26 unrecorded tax lien before the conditional sale or the later repossession, nor any practical means  
27  
28

1 of discovering it,<sup>7</sup> the Court upheld the validity and seniority of state's lien, reasoning that the  
2 vendor had subjected itself to the possibility of such a lien by executing conditional sales of trucks  
3 operating in New York. *Id.* at 541, 544-46.

4 As in *International Harvester*, even if SFR was unaware of Freddie Mac's ownership of the  
5 Deed of Trust, that would not make the operation of a statute protecting that lien unfair or  
6 unequitable. Freddie Mac's Deed of Trust remains an encumbrance on the Property, undisturbed  
7 by the HOA Sale.

8 Nevertheless, if SFR was a bona fide purchaser under Nevada law, the Federal Foreclosure  
9 Bar would preempt those statutes. The bona fide purchaser statutes would add a hurdle to the  
10 protection of Freddie Mac's interest, those laws would come into conflict with the Federal  
11 Foreclosure Bar, and the state law must yield. As the Ninth Circuit held twice, "the Federal  
12 Foreclosure Bar preempts the Nevada law to the extent that the Nevada law would permit a  
13 foreclosure on a superpriority lien to extinguish Freddie Mac's interest, without [FHFA's]  
14 consent, while Freddie Mac is under [FHFA's] conservatorship." *Elmer*, 2017 WL 3822061, at  
15 \*1; *Berezovsky*, 2017 WL 3648519, at \*6-7 (same).

16 The conflict between the Federal Foreclosure Bar and the bona fide purchaser statutes, as  
17 SFR would interpret them, is obvious. The Federal Foreclosure Bar automatically bars any  
18 nonconsensual extinguishment through foreclosure of any interest in property held by Freddie Mac  
19 while in conservatorship. 12 U.S.C. § 4617(j)(3). However, according to SFR's interpretation, the  
20 bona fide purchaser laws would allow state HOA lien sales to extinguish Freddie Mac's property  
21 interests whenever the associated deed of trust appeared in the name of Freddie Mac's nominee or  
22 servicer, an arrangement (as discussed *supra*) otherwise permitted under Nevada law. Federal law  
23 thus precludes what state law would permit: extinguishment of the Freddie Mac conservatorship's  
24 deed-of-trust interest. Under such circumstances, state law must yield.

25  
26  
27 <sup>7</sup> Indeed, state employees were prohibited by law from informing the vendor that the trucks were subject to a tax lien.  
28 350 U.S. at 541 n.7. The dissent focused on the point that the vendor had no reasonable means of avoiding the tax lien,  
noting that the vendor's only apparent means of doing so would be "by avoiding such sales" in the first place. *Id.* at 550  
(Frankfurter, J., dissenting).

**C. FHFA Did Not Consent to the Extinguishment of the Deed of Trust**

In an attempt to defeat summary judgment, SFR disputes the fact that FHFA did not consent to extinguishment of Freddie Mac’s interest in the Property. Opp. at 6-7. *First*, it is SFR’s burden to prove that FHFA consented to the extinguishment of Freddie Mac’s property interest in this case. As discussed in Nationstar’s Opening Brief, FHFA did not, and SFR has not shown otherwise. MSJ at Ex. L. “The Federal Foreclosure Bar does not require the Agency to actively resist foreclosure. Rather, the statutory language cloaks Agency property with Congressional protection unless or until the Agency affirmatively relinquishes it.” *Berezovsky*, 869 F.3d at 930 (citation omitted).

*Second*, SFR incorrectly references Freddie Mac’s Guide as purportedly evidencing consent to the extinguishment of Freddie Mac’s property interest. SFR’s characterization of the Guide is incorrect and confuses *priority* with *extinguishment*. It is consistent for Freddie Mac to direct its servicers in the Guide to try to protect the *priority* of its liens even when the Federal Foreclosure Bar would otherwise protect those liens from the more severe consequences of *extinguishment*. Freddie Mac’s Guide does not suggest consent to extinguishment of Freddie Mac’s property interests.

In any event, the terms of the Guide cannot override the preemptive effect of federal law. The Federal Foreclosure Bar is a statutory protection to the Enterprises provided by Congress for the duration of their conservatorship, regardless of any action by their servicers. If a servicer fails in its contractual duties during conservatorship, this does not equate to consent on behalf of FHFA to erase the protective effect of the statute. On the other hand, the Guide was written to apply throughout Freddie Mac’s relationship with its servicers, relationships that predate, and will postdate, the conservatorship. Therefore, it is natural for the Guide to include instructions to servicers that would be necessary should the statutory protection not be in effect.

Moreover, SFR cannot enforce the terms of the Guide against Freddie Mac or its servicers. While the Guide is a contract between Freddie Mac and its servicers, SFR is not a party or a third party beneficiary of that contract, and therefore cannot enforce its terms. *See, e.g., Skylights v. Byron*, 112 F. Supp. 3d 1145, 1157 (D. Nev. 2015); *Wood v. Germann*, 331 P.3d 859, 861 (Nev. 2014) (person “who is neither a party nor an intended third-party beneficiary of [a mortgage-backed



1 security contract], lacked standing to challenge the [contractually authorized] assignment's  
2 validity"); *Deerman v. Freddie Mac*, 955 F. Supp. 1393, 1404-05 (N.D. Ala. 1997).

3 Finally, SFR cites to Fannie Mae's failure to advance a federal preemption defense in a  
4 Michigan state court action, *Trademark Properties*, to argue FHFA consented here. Opp. at 7 (citing  
5 *Trademark Properties of Michigan, LLC v. Fannie Mae*, 308 Mich. App. 132, 863 N.W.2d 344  
6 (2014)). SFR relies only on the fact that Fannie Mae appears to have raised various alternative  
7 arguments in its defense but not the Federal Foreclosure Bar. SFR fails to explain how *Fannie*  
8 *Mae's* decision to invoke certain arguments but not others in a different state and under different  
9 factual circumstances can be interpreted as consent to extinguishing *Freddie Mac's* interest here.

10 **D. SFR's Argument Concerning "Reasoned Decision Making" Fails**

11 SFR's argument that FHFA's "decision not to consent" violates reasoned decision-making  
12 misunderstands the way that the Federal Foreclosure Bar works. Opp. at 22-23. This argument  
13 relies on the incorrect premise that the Federal Foreclosure Bar does not operate automatically and  
14 that FHFA makes property-by-property decisions about consent. This argument has no basis in the  
15 record. Indeed, such a reading of the Federal Foreclosure Bar would undermine the purpose of the  
16 statutory protection—making it toothless unless FHFA continuously monitors each potential state-  
17 law action that could affect the tens of millions of loans that the Enterprises own nationwide. The  
18 text of the Federal Foreclosure Bar makes clear that the protection is automatic and requires no such  
19 herculean efforts. *See Beal Bank, SSB v. Nassau Cty.*, 973 F. Supp. 130, 133 (E.D.N.Y. 1997)  
20 (evaluating the FDIC's similar property protection statute and concluding Congress did not intend  
21 the FDIC to make individual decisions for that protection to be effective). Accordingly, SFR's  
22 argument fails because it ignores that no Agency action is involved in protecting individual deeds of  
23 trust from extinguishment; Congress made the determination to protect them by statute, and that is  
24 all the "reasoned decisionmaking" to which SFR was entitled.

25 Even if SFR were correct that FHFA made individual decisions regarding particular  
26 properties, such decisions would be well within FHFA's statutory powers and thus appropriate. The  
27 Ninth Circuit has recognized that FHFA's powers as conservator include managing the mortgage  
28 assets of the Enterprises: "[N]othing precludes a conservator from making business decisions that

are both broad in scope and entirely prospective.” *Cty. of Sonoma v. FHFA*, 710 F.3d 987, 994 (9th Cir. 2013). “In granting the conservator broad, sweeping authority over [the Enterprises’] assets, Congress made it clear that it left to the FHFA ... the discretion to decide how best to manage the assets of [the Enterprises].” *In re Freddie Mac Derivative Litig.*, 643 F. Supp. 2d 790, 798 (E.D. Va. 2009). SFR offers no plausible reason why FHFA’s unwillingness to consent to extinguishment of a deed of trust worth more than \$271,000 in exchange for *nothing*—a patently unreasonable proposition that would also allow SFR to acquire free and clear title to a home for \$11,000—would depart from “reasoned decisionmaking.”

#### E. The Federal Foreclosure Bar Does Not Violate Due Process

SFR argues that the Federal Foreclosure Bar’s protection of Freddie Mac’s lien interest does not preempt state law, but rather deprives SFR of property, constituting a violation of its procedural due process rights under the Fifth Amendment. Opp. at 14-22. Specifically, SFR argues that it was deprived of a property interest when FHFA “decided not to consent to extinguishment.” Opp. at 14. But this argument misunderstands how the Federal Foreclosure Bar operates and the nature of the property interest SFR acquired at the HOA Sale.

*First*, due process requirements attach only to governmental action that deprives a party of a protected interest. SFR’s argument that it suffered a deprivation of property is wrong:

Because the protections of 12 U.S.C. § 4617(j)(3) were already in effect at the time of sales, so long as Fannie Mae or Freddie Mac had obtained its interest and been placed into conservatorship before the foreclosure, the plaintiffs all purchased real property subject to FHFA’s lienhold interest, and there was no deprivation of property.

*Skylights*, 112 F. Supp. 3d at 1153 n.4. This is because applicable federal law (like the Federal Foreclosure Bar here) is no less important than state law in defining the scope of property interests. The “‘existing rules and understandings’ and ‘background principles’” that “define the dimensions of the requisite property rights” for purposes of constitutional protections are “derived from an independent source, such as state, federal, or common law . . . .” *Schooner Harbor Ventures, Inc. v. United States*, 569 F.3d 1359, 1362 (Fed. Cir. 2009) (emphasis added) (quoting *Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1213 (Fed. Cir. 2005)). Indeed, “[f]ederal law, no less than

1 state law, can provide the rules or understandings that create and define property interests.”  
2 *Hardison v. Cohen*, 375 F.3d 1262, 1268 (11th Cir. 2004) (citing *Mathews v. Eldridge*, 424 U.S.  
3 319, 332 (1976)).

4 Accordingly, SFR cannot make a due-process argument because any interest acquired at the  
5 time of the HOA Sale was, from the outset, subject to Freddie Mac’s preexisting property interest.  
6 HERA was enacted and the Enterprises were placed under FHFA’s conservatorship in 2008. Thus,  
7 the Federal Foreclosure Bar applied to and limited any interest in the Property that SFR could  
8 acquire at the HOA Sale.

9 The cases SFR cites do not support its due process argument, in fact, they undermine it. For  
10 example, *Ralls* helps illustrate the distinction between a deprivation of an existing right and a right  
11 never having been acquired in the first place under prevailing law. *Ralls Corp. v. CFIUS*, 758 F.3d  
12 296 (D.C. Cir. 2014) (cited at Opp. at 20-22). In *Ralls*, it was undisputed that the plaintiff first  
13 acquired a property right in an Oregon farm. *Id.* at 315. The President subsequently nullified Ralls’s  
14 purchase pursuant to the Defense Protection Act (“DPA”).<sup>8</sup> The default legal regime was thus that  
15 Ralls had a property right, and it was only at the President’s option that this property right could be  
16 cancelled; the DPA operated as a potential qualification on Ralls’s vested property rights, not a  
17 condition precedent to the vesting of such rights. *Id.* at 316. If the President had taken no action,  
18 Ralls would have continued to enjoy rights under Oregon law in perpetuity. *Id.* at 316-17.

19 The Federal Foreclosure Bar operates in the opposite manner—once it was enacted and the  
20 Enterprises entered conservatorship, HOA sales could not extinguish their pre-existing interests and  
21 deliver to purchasers like SFR free and clear title. If FHFA takes no action to give consent, then the  
22 Enterprises’ property rights remain undisturbed. Unlike the DPA, the Federal Foreclosure Bar does  
23 not give FHFA the option to cancel a property right SFR has already acquired; rather, FHFA’s  
24 consent is a *prerequisite* for SFR to obtain free and clear title.

25 The other cases cited by SFR are similarly distinguishable; in each, the parties complaining  
26 of a due process violation had already acquired a property interest *before* government action

27 <sup>8</sup> The DPA provides that the President “may take such action for such time as the President considers appropriate to  
28 suspend or prohibit any covered transaction that threatens to impair the national security of the United States.” 50  
U.S.C. § 4565(d)(1).

1 purported to take away that interest. For example, *United States v. James Daniel Good Real*  
2 *Property* concerned a civil forfeiture law that would deprive a homeowner of a property that the  
3 homeowner already owned prior to the seizure—under such circumstances, due process was  
4 required. 510 U.S. 43, 47-48 (1993). None of these cases considers a federal statute that, as here,  
5 protects one party’s property from being extinguished and thereby prevents from the outset the  
6 complainant’s acquisition of an interest in the property.

7 SFR’s citation to *Rucklehaus* fails for this same reason; the property interest at issue—in  
8 excluding others from knowledge of a trade secret—was one that Monsanto had before the EPA  
9 decided to publish that trade secret information. *See Opp.* at 17 (citing *Rucklehaus v. Monsanto Co.*,  
10 467 U.S. 986, 1012 (1984)). Moreover, the Supreme Court held that such publication by the EPA  
11 was *not* a taking after the relevant federal statute was amended to make clear that such publication  
12 was possible; after that time, companies like Monsanto “could not have had a reasonable,  
13 investment-backed expectation” that their trade secrets would remain confidential. 476 U.S. at 1006.  
14 Here, too, after HERA was passed, SFR could not have a reasonable, investment-backed expectation  
15 that it would necessarily get a free and clear title interest at the HOA Sale.

16 *Second*, even assuming *arguendo* that an adjustment of property rights somehow occurred,  
17 establishing that point would not salvage SFR’s argument. The action that “purportedly deprived ...  
18 property *was the enactment of HERA*, which was undertaken by Congress in the normal manner  
19 prescribed by law.” *Skylights*, 122 F. Supp. 3d at 1156 (emphasis added). “When the action  
20 complained of is legislative in nature, due process is satisfied when the legislative body performs its  
21 responsibilities in the normal manner prescribed by law.” *Samson v. City of Bainbridge Island*, 683  
22 F.3d 1051, 1060 (9th Cir. 2012) (citation omitted). Thus, even if SFR had been deprived of some  
23 property interest, “the deprivation of property rights effected by [the Federal Foreclosure Bar]  
24 occurred with due process of law.” *Skylights*, 112 F. Supp. 3d at 1154.<sup>9</sup>

25 SFR attempts to avoid this conclusion by contending that the Federal Foreclosure Bar is not  
26

27 <sup>9</sup> SFR incorrectly characterizes *Bank of Manhattan, N.A. v. FDIC* as a rejection by the Ninth Circuit of the doctrine that  
28 legislative action inherently provides due process. *See Opp.* at 18-19 (citing 778 F.3d 1133 (9th Cir. 2015)). While  
FDIC might have made that argument, it was never evaluated by the Ninth Circuit; the court did not need to reach the  
issue because it held that the federal statute at issue did not preempt state law. 778 F.3d at 1137.

1 “self-executing,” and that instead FHFA must be making individual case-by-case post-sale decisions  
2 to withhold consent to extinguishment, thereby depriving SFR of an interest it obtained earlier, at the  
3 time of the sale. Opp. at 17-18. This contention has no support in the statute or record, and this is  
4 not how FHFA operates. Moreover, it contemplates that the Federal Foreclosure Bar does not  
5 automatically protect Enterprise property at the time of an HOA sale, an interpretation contrary to its  
6 statutory text and the Ninth Circuit’s holding that the Federal Foreclosure Bar “cloaks Agency  
7 property with Congressional protection *unless or until* the Agency *affirmatively* relinquishes it.”  
8 *Berezovsky*, 869 F.3d 929 (emphasis added). Preservation of Enterprise property interests is the  
9 default rule, with no action necessary from FHFA. SFR’s argument that the Federal Foreclosure Bar  
10 is not self-executing must be rejected.

11 **II. The sales price was inadequate and there was unfairness in the sale.**

12 Although SFR references the recent *Nationstar Mortgage LLC v. Saticoy Bay LLC* 2227  
13 *Shadow Canyon* case, it fails to address the relevant inquiry. Opp. at 24:2-10 (stating only that the  
14 court rejected the 20% restatement approach and rejecting the commercial reasonableness standard).  
15 The *Shadow Canyon* court considered “whether U.C.C. Article 9’s commercial reasonableness  
16 standard applies when considering an HOA’s foreclosure sale of the property” in *Shadow Canyon*.  
17 *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 654 (Nev.  
18 2017) (emphasis added). It held the UCC commercial reasonableness standard inapplicable but  
19 confirmed the court must set aside a foreclosure sale “where the inadequacy of price is great . . . [and  
20 there is] slight evidence of fraud, unfairness or oppression.” *Id.* at 642. The court listed several  
21 specific examples of unfairness that may justify setting the sale aside, including “an HOA’s failure to  
22 mail a deed of trust beneficiary the statutorily required notices.” *Id.* at 648 n. 11.

23 **A. The Sale Price Was Grossly Inadequate**

24 The price “inadequacy” in this case “is palpable and great.” *Id.* at 648 (internal quotations  
25 omitted). The HOA sold the property for only \$11,000. MSJ at Ex. I. SFR bought a three-bedroom  
26 house for the price of a used car. MSJ at Ex. J.

27 At the time of foreclosure, the property’s fair market value was \$138,000.00. MSJ at Ex. J.  
28 The property sold for less than 8% of its fair market value, a grossly inadequate price by anyone’s

standards. *Cf. Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105, 1112 (Nev. 2016) (acknowledging Restatement definition of "[g]ross inadequacy" at approximately 20% of fair market value).

SFR argues the sale price's adequacy should be compared to the prices obtained at other HOA foreclosure sales around the same time. SFR is wrong. When courts assess whether a foreclosure price is grossly inadequate, they compare the foreclosure not to other forced sales, but to an ordinary negotiated real estate transaction. *See, e.g., Shadow Canyon*, 405 P.3d at 649-50 (basing the inadequacy of the price on the "fair market value"); *Golden v. Tomiyasu*, 387 P.2d 989, 990 (Nev. 1963) (basing the inadequacy of the price on the "market value").

The Restatement explains this at length:

The standard by which "gross inadequacy" is measured is the fair market value of the real estate. For this purpose the latter means, ***not the fair "forced sale" value of the real estate***, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (1997) (emphasis added); *accord, e.g., Baskurt v. Beal*, 101 P.3d 1041, 1044 (Alaska 2004).

The United States Supreme Court agrees:

[M]arket value, as it is commonly understood . . . is the very *antithesis* of forced-sale value. "The market value of . . . a piece of property is the price which it might be expected to bring if offered for sale in a fair market; ***not the price which might be obtained on a sale at public auction*** or a sale forced by the necessities of the owners, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser . . . ."

*BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 538 (1994) (second emphasis added) (quoting BLACK'S LAW DICTIONARY 971 (6th ed. 1990)).

The IRS agrees, too:

[F]air market value is the price . . . [that would be set] between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. ***The fair market value of a particular item of property . . . is not to be determined by a forced sale price.*** Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public.

1 26 C.F.R. § 20.231-1(b) (emphasis added). According to the IRS, "fair market value" assumes  
2 buyers have "reasonable knowledge of relevant facts," *id.*, which HOA buyers lack, bidding on  
3 properties sight unseen. Nor are HOA foreclosures the market in which residences are "most  
4 commonly sold to the public." *Id.*

5 SFR may argue courts should reject Nationstar's definition of fair market value because it  
6 assumes title is good and marketable, and title was not marketable at the time of the HOA's  
7 foreclosure. But HOA foreclosures are hardly special in this regard. No foreclosure sale matches  
8 the conditions of fair market value; "'fair market value' presumes market conditions that, by  
9 definition, simply do not obtain in the context of a forced sale." *BFP*, 511 U.S. at 538. "There are  
10 several reasons why foreclosure sales fail to attract fair market value bids, such as the difficulty in  
11 inspecting the subject properties, technical publication notices, marketable title concerns, and the  
12 lack of a willing seller." *Hungate v. Law Office of David B. Rosen*, 391 P.3d 1, 16 (Haw. 2017).

13 The reason to compare foreclosure sales with fair market value is not that anyone actually  
14 expects foreclosure sales to return fair market value. *See, e.g., id.* at 15 (foreclosure sellers "not  
15 require[d] to obtain the fair market value"). It is that fair market value provides an objective  
16 standard of measurement, instead of comparing flawed foreclosures to other potentially flawed  
17 foreclosures. Where unfair foreclosure practices are widespread (as numerous banks allege  
18 happened with Nevada HOAs), the widespread unfairness may depress the average foreclosure price.  
19 In such a market, SFR's standard would allow relief only if a sale were *unusually* unfair, awful  
20 compared even to other awful sales. It would protect from judicial scrutiny the large number of sales  
21 that are only run-of-the-mill awful—which is precisely SFR's goal.

22 Finally, SFR may argue "fair market value" is an unrealistic standard in foreclosures, but this  
23 problem is already solved by the low price-to-value ratio required to label a sale price "grossly  
24 inadequate." If a sale returned only half of what appraisers would expect from a fairly conducted  
25 foreclosure, that inadequacy would already be "palpable," and a great injustice against the foreclosed  
26 owner, who would rely on the foreclosure to satisfy her debt, and against junior lienholders who  
27 would claim any surplus proceeds. Half of fair market value would be a much higher amount than  
28 half of fair foreclosure value, so half of fair market value is not grossly inadequate. *See* Restatement

1 (Third) of Property (Mortgages) § 8.1 (2017) ("Courts routinely uphold foreclosure sale prices of 50  
2 percent or more of fair market value.").

3 But one fifth of fair market value—or 5% of fair market value, as in this case—is a "palpable  
4 and great" inadequacy. *Shadow Canyon*, 405 P.3d at 648. It justifies setting the sale aside if there is  
5 "very slight additional evidence of unfairness." *Id.*

### 6 A. The Sale Was Unfair

7 There is ample evidence of unfairness in this case. To begin with, there is the grossly  
8 inadequate price of 8% of the fair market value. While this may not be enough, by itself, to prove  
9 unfairness and set the sale aside, it "is a relevant consideration because a wide disparity may require  
10 less evidence of fraud, unfairness, or oppression to justify setting aside the sale." *Id.* at 648.  
11 Because "the inadequacy is palpable and great, very slight additional evidence of unfairness or  
12 irregularity is sufficient to authorize" setting the sale aside. *Id.* (internal quotations omitted).  
13 Second, it is *undisputed* that the HOA failed to send notice to Nationstar, the record beneficiary at  
14 the time of the sale. MSJ at Ex. K. SFR half-heartedly argues that Nationstar's argument is  
15 somehow irrelevant because it does not claim it didn't receive the notices. Opp. at 25:9-10. Notably,  
16 SFR provides *no contrary evidence* demonstrating the HOA *did* send notice to Nationstar, it merely  
17 raises an argument. This is insufficient to defeat Nationstar's motion. *See* NRCP 56. As the *Shadow*  
18 *Canyon* court recently stated, "an HOA's failure to mail a deed of trust beneficiary the statutorily  
19 required notices" is evidence of unfairness. 405 P.3d at 648 n. 11. This unfairness, coupled with the  
20 inadequate sales price, justifies setting aside the HOA's foreclosure sale, or alternatively, finding the  
21 deed of trust was not extinguished.

### 22 III. Unclean hands is inapplicable.

23 SFR argues "the Bank" cannot prevail because it has unclean hands. Opp. at 29. The  
24 unclean hands doctrine is inapplicable. This doctrine "bars a party from receiving equitable relief  
25 because of that party's own inequitable conduct." *Las Vegas Fetish & Fantasy Halloween Ball, Inc.*  
26 *v. Ahern Rentals, Inc.*, 182 P.3d 764, 766 (Nev. 2008). It applies to when a party's conduct relating  
27 to the subject matter of the litigation has been unconscientious, unjust, or in bad faith. *Id.* In  
28 determining whether the doctrine applies, the court must consider (1) the egregiousness of the



1 misconduct at issue and, (2) the seriousness of the harm caused by the misconduct. *Id.* at 767.  
2 Nationstar cannot be faulted for failing to take action to pay the super-priority lien or attempt to stop  
3 the sale when the HOA did not provide notice to it. Even if notice were provided, Nationstar was  
4 not required to take any action where, as a matter of law, Freddie Mac's deed of trust could not be  
5 extinguished.

6 **IV. The Court Should Deny SFR's Counter-Motion to Strike**

7 SFR seeks to strike the declaration of Dean Meyer because Nationstar did not disclose Mr.  
8 Meyer as a witness within the discovery period. Opp. at 2-3. As discussed in Nationstar's  
9 Opposition to SFR's Motion for Summary Judgment, on November 29, 2017, Nationstar served its  
10 sixth supplemental initial disclosures disclosing Freddie Mac's corporate representative as an  
11 individual with knowledge of Freddie Mac's ownership of the Loan. Nationstar's Sixth  
12 Supplemental Disclosures, Ex. F to SFR's MSJ; *see also* Opp. to SFR's MSJ at 4-5. Nationstar's  
13 disclosure was timely as Nevada's Rules of Civil Procedure do not mandate that supplements to  
14 initial disclosures be made before the discovery cutoff date. NRCp 16.1. Thus, for these reasons  
15 and the reasons set forth in Nationstar's reply in support of its motion to reopen discovery, **Ex. A**,  
16 SFR has not been prejudiced, and SFR's request for further discovery, consequently, should be  
17 rejected. *See also* **Ex. B**, Decl. of Melanie D. Morgan, Esq. Indeed, SFR's arguments as to why  
18 Nationstar's evidence "require further inquiry," Opp. at 4, do not genuinely dispute material facts to  
19 defeat summary judgment. SFR's request is futile and should be denied.

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**CONCLUSION**

Pursuant to 12 U.S.C. § 4617(j)(3), the HOA Sale did not extinguish Freddie Mac's Deed of Trust. As an alternative basis, this court should find that the low sales price coupled with the HOA's failure to send Nationstar notice resulted in an unfair sale. Nationstar respectfully requests that the Court grant its Motion for Summary Judgment.

DATED January 10, 2018.

**AKERMAN LLP**

/s/Tenesa S. Scaturro

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*Attorneys for Nationstar Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 10th day of January, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND TO OPPOSE COUNTERMOTION TO STRIKE**, in the following manner:

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

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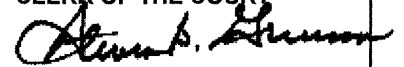
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# **Exhibit A**



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

IGNACIO GUTIERREZ, an individual,  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**REPLY IN SUPPORT OF MOTION TO  
REOPEN DISCOVERY**

SFR accuses Nationstar of "gamesmanship" and "bad faith" because of an inadvertent oversight by counsel that SFR claims prejudices it, despite the fact there is no pending trial date. Notably, SFR does not ask for any less extreme remedy, such as a deposition or the ability to file supplemental briefing. Instead, it asks the court to strike a witness it long knew would be testifying

1 and whom *it sought to depose* during discovery. The court should grant Nationstar's motion.

2 **I. LEGAL ARGUMENT**

3 **A. Nationstar's disclosure complies with NRCP 26(e)(1)**

4 As an initial matter, Nationstar moved to reopen discovery because SFR made clear it  
5 thought a motion was necessary. Nationstar disagrees.

6 Under Rule 26(e)(1), a party is required to supplement disclosures at appropriate intervals if  
7 the party learns that information is incomplete *and* "if the [] information has not otherwise been  
8 made known to the other parties during the discovery process or in writing." NRCP 26(e)(1). As  
9 SFR points out repeatedly, Freddie Mac's interest is a core question on remand. Opp'n at 4:8-10  
10 (Freddie Mac's interest was the issue on remand), and 4:25-5:2 (noting that Nationstar supplemented  
11 its disclosures by stating Nationstar would testify regarding Freddie Mac's interest and disclosing  
12 several hundred pages of documents). Further, Nationstar responded to SFR's second set of requests  
13 for admission stating that Freddie Mac's business records do not appear in Nationstar's business  
14 records and that Freddie Mac has knowledge of these documents. Ex. A. Finally, SFR informed  
15 Nationstar that it "need[ed]" to depose Freddie Mac, but did nothing further in that regard once it  
16 realized that Nationstar had inadvertently failed to disclose a Freddie Mac witness. Ex. C. The  
17 timeline below shows that SFR's attempt to exploit moving counsel's honest mistake.

- 18 • September 12, 2017 at 11:41 a.m.: Counsel for SFR, Diana Ebron, sends an email to counsel  
19 for Nationstar, Melanie Morgan and Tenesa Scaturro stating, "We need to set the deposition  
20 [sic] of Countrywide, Nationstar **and Freddie Mac** in this case." (Ex. C, 11:41 email  
21 (emphasis added)).
- 22 • September 12, 2017 at 5:06 p.m.: Ms. Ebron sends a second email to Ms. Morgan and Ms.  
23 Scaturro stating: "I can only find email notifications for the initial and third supplemental  
24 disclosures in this case. It looks like the first and second supplemental disclosures may be  
25 Lubawy's expert report (which we had from an expert disclosure) and documents produced  
26 by the association. Can you forward those? Also, have you made any other disclosures? If  
27 so, can you forward?" (Ex. C, 5:06 p.m. email).
- 28 • September 12, 2017 5:15 p.m.: Ms. Scaturro responds: "I've sent initial through third

1 supplemental disclosure via sendthisfile.com.” (Ex. C, 5:15 email).

- 2 • Following this exchange, SFR deposited Nationstar for a second time and never made any  
3 further contact with counsel about scheduling a deposition of Freddie Mac.

4 As the emails show, SFR knew on September 12, 2017 that Nationstar inadvertently failed to  
5 disclose a witness for Freddie Mac. SFR’s claim that it thought Nationstar purposely did not  
6 disclose a Freddie Mac witness is disingenuous. SFR knew the issue of Freddie Mac’s interest in the  
7 loan was front and center in this remand following a published opinion. SFR also knew that it is  
8 moving counsel’s practice to disclose a witness for Freddie Mac or Fannie Mae in cases involving  
9 the Federal Foreclosure Bar. While SFR certainly had no duty to alert counsel to the oversight, it  
10 cannot purposely remain silent and then claim prejudice. If any party is guilty of gamesmanship, it  
11 is SFR. SFR purposely remained silent on the issue until it filed its motion for summary judgment  
12 hoping that, by that time, it would be too late for Nationstar to remedy the oversight. That is not  
13 evidence of prejudice. Rather, it is evidence of SFR’s attempt to capitalize on opposing counsel’s  
14 honest mistake.

15 Admittedly, Nationstar inadvertently failed to identify a witness in its NRCP 16.1 disclosures  
16 during discovery. Nationstar fully intended to disclose a Freddie Mac witness and, in fact, thought it  
17 had done so until November 29, 2017. As soon as Nationstar learned of the omission, it served a  
18 supplemental disclosure. Contrary to its assertion, SFR has long known that Freddie Mac had  
19 relevant information and is not prejudiced by allowing the disclosure.

20 **B. Nationstar's motion demonstrated good cause and excusable neglect.**

21 Even if the court decides re-opening discovery is necessary despite Nationstar's proper and  
22 timely supplemental disclosure and SFR's knowledge that Freddie Mac had relevant information,  
23 Nationstar's motion explained the excusable neglect and good cause for the motion. Mot. at 4:16-27.

24 Under *Nutton v. Sunset Station, Inc.*, 357 P.3d 966, 972 (Nev. 2015), the court should also  
25 consider the potential prejudice and availability of a continuance to cure such prejudice. As  
26 discussed above, SFR has suffered no prejudice. Even if this court disagrees, there is no trial date set  
27 and the court can grant SFR other relief to cure any perceived prejudice. Although SFR claims a  
28 continuance would not cure any prejudice, it fails to set forth any reason for its conclusion.

1   **II.    CONCLUSION**

2           To the extent the court deems it necessary, it should reopen discovery to allow disclosure of a  
3   Freddie Mac witness. If this court determines SFR is prejudiced by the disclosure, despite long since  
4   having knowledge that Freddie Mac has relevant information, it should grant curative relief.

5           Dated: January 9, 2018.

6                                   **AKERMAN LLP**

7                                   /s/Tenesa S. Scaturro

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9                                   Nevada Bar No. 8215

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12                                  1160 Town Center Drive, Suite 330

13                                  Las Vegas, Nevada 89144

14                                  *Attorneys for Nationstar Mortgage LLC*



**DECLARATION OF TENESA S. SCATURRO**

1           I, Tenesa S. Scaturro, under penalty of perjury, hereby declare as follows:

2           I am a duly licensed attorney in the state of Nevada, and as associate attorney with the  
3 law firm of Akerman LLP. Akerman is counsel for Nationstar Mortgage LLC in this matter.

4           I am over 18 years of age, of sound mind, and capable of making this declaration.

5           This case was appealed and the Nevada Supreme Court reversed and remanded the  
6 case in a published opinion on June 22, 2017.

7           On remand, the district court reopened discovery for ninety days. Discovery closed on  
8 October 17, 2017.

9           During the post-remand discovery, Nationstar disclosed documents in its NRCP 16.1  
10 disclosures evidencing Freddie Mac's ownership, including business records from Freddie Mac.

11           In response to written discovery, Nationstar also identified that those records are  
12 Freddie Mac's business records. A true and correct copy of Nationstar's responses to SFR's second  
13 set of Requests for Admission is attached as **Exhibit A**.

14           Nationstar also permitted a second Nationstar NRCP 30(b)(6) deposition wherein the  
15 witness testified that many of the specific documents disclosed were those of Freddie Mac, not  
16 Nationstar. A true and correct copy of the transcript of the second deposition of Nationstar's Rule  
17 30(b)(6) witness, Keith Kovalic, is attached as **Exhibit B**.

18           Attached as **Exhibit C** is are true and correct copies of emails between SFR's counsel  
19 and Nationstar's counsel dated September 12, 2017. On September 12, 2017, SFR's counsel stated it  
20 needed to depose Freddie Mac.

21           Nationstar inadvertently failed to disclose a Freddie Mac witnesses in its NRCP 16.1  
22 disclosures. At all times, Nationstar intended to disclose a Freddie Mac witness. Until November  
23 20, 2017, I thought I had already disclosed the Freddie Mac witness.

24           SFR filed its renewed motion for summary judgment on November 16, 2017 wherein  
25 it raised for the first time that Nationstar did not disclose a Freddie Mac witness.

26           On November 29, 2017 Nationstar served a supplemental disclosure identifying a  
27 Freddie Mac witness.  
28

1 13. SFR requested Nationstar withdraw the supplemental disclosure and although the  
2 parties met and conferred on the issue, no resolution was reached.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this January 9, 2018 in Las Vegas, Nevada.

5  
6 **AKERMAN LLP**

7 /s/ Tenesa S. Scaturro  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 9th day of January, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC' S REPLY IN SUPPORT OF MOTION TO REOPEN DISCOVERY**, in the following manner:

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

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*Attorneys for Bank of America, N.A., as  
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Servicing, LP fka Countrywide Home Loans,  
Inc., incorrectly sued as Countrywide Home  
Loans, Inc. and Nationstar Mortgage, LLC*

**EIGHT JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
Limited Liability Company,

Counter-Claimant/  
Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant/  
Third Party Defendants,

NEVADA ASSOCIATION SERVICES, INC.,

Case No.: A-13-684715-C

Dept. No.: XVII

**NATIONSTAR MORTGAGE, LLC'S  
RESPONSE TO SFR INVESTMENTS  
POOL 1, LLC'S SECOND SET OF  
REQUESTS FOR ADMISSION**

1 Counter-Claimant,  
2 vs.  
3 IGNACIO GUTIERREZ,  
4 Counter-Defendant.

5 Nationstar Mortgage, LLC (**Nationstar** or **NSM**) hereby responds to Defendant SFR  
6 Investments Pool, LLC's (**SFR**) Second Set of Request for Admission pursuant to NRCP 34 as follows:

7 **GENERAL OBJECTIONS APPLICABLE TO ALL REQUESTS**

8 1. Scope. Nationstar objects to the Requests to the extent that they exceed the permissible  
9 scope of discovery under the Nevada Rules of Civil Procedure or any local rule. In addition, Nationstar  
10 objects to the Requests to the extent that they purport to impose requirements beyond those imposed  
11 by the Nevada Rules of Civil Procedure or any local rule.

12 2. Attorney-Client Privilege and Work Product Doctrine. Nationstar objects to the  
13 Requests to the extent that they request information or documents subject to any privilege, immunity,  
14 or obligation of confidentiality, including, without limitation, the attorney-client privilege, the work  
15 product doctrine, or any other applicable legal privilege against disclosure.

16 3. Best Knowledge, Information and Belief; No Waiver. Nationstar's responses are made  
17 to the best of Nationstar's present knowledge, information and belief. These responses are at all times  
18 subject to such additional or different information, knowledge, or facts that discovery or further  
19 investigation may disclose. Nationstar reserves the right to supplement these responses in accordance  
20 with Nevada Rule of Civil Procedure 26(e). The response to each Request shall not be interpreted to  
21 concede the truth of any factual assertion or implication contained in the Request. Nationstar is  
22 providing these responses without waiver of, or prejudice to, its rights to later raise objections to  
23 relevance, materiality, privilege, or admissibility of any document produced in conjunction with this  
24 response. To the extent any Request or portion thereof is not specifically admitted, it is denied.

25 4. Subsequent Discovery of Documents or Information. Nationstar reserves the right to  
26 make any use of, or to introduce at any hearing and/or at trial, documents or other information  
27 responsive to these Requests but discovered by Nationstar subsequent to the date of these responses.  
28

1           5.     Specific Objections. In addition to these General Objections, Nationstar may set forth  
2 other and further objections with its specific responses. By its specific objection, Nationstar does not  
3 limit or restrict these General Objections.

4           6.     Incorporation. Nationstar incorporates all of the foregoing General Objections into  
5 each response to these Requests, as set forth below.

6                               **RESPONSES TO REQUESTS FOR ADMISSIONS**

7     **REQUEST NO. 1:**

8           Admit that the document Bates Stamped NSM00102-NSM00153 (Funding Report) is not part  
9 of your business records.

10    **RESPONSE TO REQUEST NO. 1:**

11           Objection. This Request is vague. Without waiving any objection, Nationstar admits that  
12 NSM00102-NSM00153 are Freddie Mac's business records.

13    **REQUEST NO. 2:**

14           Admit that the document Bates Stamped NSM00215 (TOS Summary Report) is not part of  
15 your business records.

16    **RESPONSE TO REQUEST NO. 2:**

17           Objection. This Request is vague. Without waiving any objection, Nationstar admits that  
18 NSM00215 is Freddie Mac's business record.

19    **REQUEST NO. 3:**

20           Admit that the document Bates Stamped NSM00216 (Securities and Pool Information) is not  
21 part of your business records.

22    **RESPONSE TO REQUEST NO. 3:**

23           Objection. This Request is vague. Without waiving any objection, Nationstar admits that  
24 NSM00216 is Freddie Mac's business record.

25    **REQUEST NO. 4:**

26           Admit that the document Bates Stamped NSM00217-221 (Mortgage Payment History Report)  
27 is not part of your business records.

28

1 **RESPONSE TO REQUEST NO. 4:**

2       Objection. This Request is vague. Without waiving any objection, Nationstar admits that  
3 NSM00217-221 are Freddie Mac's business records.

4 **REQUEST NO. 5:**

5       Admit that the document Bates Stamped NSM00222-223 (MIDAS Report) is not part of your  
6 business records.

7 **RESPONSE TO REQUEST NO. 5:**

8       Objection. This Request is vague. Without waiving any objection, Nationstar admits that  
9 NSM00222-223 are Freddie Mac's business records.

10 **REQUEST NO. 6:**

11       Admit that at the time of the Association foreclosure sale, you did not have a power of attorney  
12 applicable to the First Deed of Trust with Freddie Mac.

13 **RESPONSE TO REQUEST NO. 6:**

14       Deny. Nationstar was servicer of the Deed of Trust at the time of the foreclosure sale and  
15 authorized to act on Freddie Mac's behalf.

16 **REQUEST NO. 7:**

17       Admit that at the time of the Association foreclosure sale, you did not have a power of attorney  
18 applicable to the First Deed of Trust with the FHFA.

19 **RESPONSE TO REQUEST NO. 7:**

20       Deny. Nationstar was servicer of the Deed of Trust at the time of the foreclosure sale, at which  
21 time Freddie Mac was under conservatorship with FHFA, and Nationstar was authorized to act on  
22 Freddie Mac's behalf.

23 **REQUEST NO. 8:**

24       Admit that at the time of the Association foreclosure sale, you did not have a written contract  
25 applicable to the First Deed of Trust with Freddie Mac.

26 **RESPONSE TO REQUEST NO. 8:**

27       Deny. Nationstar was servicer of the Deed of Trust at the time of the foreclosure sale and  
28 authorized to act on Freddie Mac's behalf.



1 **REQUEST NO. 9:**

2 Admit that at the time of the Association foreclosure sale, you did not have a written contract  
3 applicable to the First Deed of Trust with the FHFA.

4 **RESPONSE TO REQUEST NO. 9:**

5 Deny. Nationstar was servicer of the Deed of Trust at the time of the foreclosure sale, at which  
6 time Freddie Mac was under conservatorship with FHFA, and Nationstar was authorized to act on  
7 Freddie Mac's behalf.

8 **REQUEST NO. 10:**

9 Admit that at the time of the Association foreclosure sale, you did not have a Mortgage Selling  
10 and Servicing Contract applicable to the First Deed of Trust with Freddie Mac.

11 **RESPONSE TO REQUEST NO. 10:**

12 Objection. This Request is vague as the term "Mortgage Selling and Servicing Contract" is  
13 not defined and it is not clear what document is being referred to. Without waiving any objection,  
14 Nationstar was servicer of the Deed of Trust at the time of the foreclosure sale and authorized to act  
15 on Freddie Mac's behalf.

16 **REQUEST NO. 11:**

17 Admit that at the time of the Association foreclosure sale, you did not have a Servicing  
18 Agreement applicable to the First Deed of Trust with Freddie Mac.

19 **RESPONSE TO REQUEST NO. 11:**

20 Deny.

21 **REQUEST NO. 12:**

22 Admit that you have no personal knowledge of Freddie Mac's policies, practices and  
23 procedures for creating and maintaining the documents Bates Stamped NSM00102-NSM00153  
24 (Funding Report).

25 **RESPONSE TO REQUEST NO. 12:**

26 Admit; upon information and belief, Freddie Mac has personal knowledge of its policies,  
27 practices and procedures for creating and maintaining NSM00102-NSM00153.

28

1 **REQUEST NO. 13:**

2 Admit that you have no personal knowledge of Freddie Mac's policies, practices and  
3 procedures for creating and maintaining the documents Bates Stamped NSM00215 (TOS Summary  
4 Report).

5 **RESPONSE TO REQUEST NO. 13:**

6 Admit; upon information and belief, Freddie Mac has personal knowledge of its policies,  
7 practices and procedures for creating and maintaining NSM00215.

8 **REQUEST NO. 14:**

9 Admit that you have no personal knowledge of Freddie Mac's policies, practices and  
10 procedures for creating and maintaining the documents Bates Stamped NSM00216 (Securities and  
11 Pool Information).

12 **RESPONSE TO REQUEST NO. 14:**

13 Admit; upon information and belief, Freddie Mac has personal knowledge of its policies,  
14 practices and procedures for creating and maintaining NSM00216.

15 **REQUEST NO. 15:**

16 Admit that you have no personal knowledge of Freddie Mac's policies, practices and  
17 procedures for creating and maintaining the documents Bates Stamped NSM00217-221 (Mortgage  
18 Payment History Report).

19 **RESPONSE TO REQUEST NO. 15:**

20 Admit; upon information and belief, Freddie Mac has personal knowledge of its policies,  
21 practices and procedures for creating and maintaining NSM00217-221.

22 **REQUEST NO. 16:**

23 Admit that you have no personal knowledge of Freddie Mac's policies, practices and  
24 procedures for creating and maintaining the documents Bates Stamped NSM00222-223 (MIDAS  
25 Report).

26 **RESPONSE TO REQUEST NO. 16:**

27 Admit; upon information and belief, Freddie Mac has personal knowledge of its policies,  
28 practices and procedures for creating and maintaining NSM00222-223.

1 **REQUEST NO. 17:**

2 Admit that the Freddie Mac Single Family Seller/Servicing Guide in effect at the time of the  
3 Association foreclosure sale required you to pay the Association's lien to protect the priority of the  
4 First Deed of Trust.

5 **RESPONSE TO REQUEST NO. 17:**

6 Objection. The Guide speaks for itself. Subject to and without waiving any objection, deny.

7 **REQUEST NO. 18:**

8 Admit that at the time of the Association foreclosure sale, the loan underlying the First Deed  
9 of Trust was part of a securitized trust.

10 **RESPONSE TO REQUEST NO. 18:**

11 Deny. Upon information and belief, Freddie Mac placed the loan into a securitized trust upon  
12 its acquisition of the loan in on or about October 24, 2005. The loan was removed from the trust and  
13 transferred to Freddie Mac's unsecuritized portfolio of loans on or about January 15, 2009, before the  
14 foreclosure sale on April 5, 2013.

15 **REQUEST NO. 19:**

16 Admit that at the time of the Association foreclosure sale, you do not know if the loan  
17 underlying the First Deed of Trust was part of a securitized trust.

18 **RESPONSE TO REQUEST NO. 19:**

19 Deny.

20 **REQUEST NO. 20:**

21 Admit that you are a sub-servicer of the loan underlying the First Deed of Trust.

22 **RESPONSE TO REQUEST NO. 20:**

23 Deny.

24 DATED this 17<sup>th</sup> day of October, 2017.

25 **AKERMAN LLP**

26 /s/Tenesa S. Scaturro

27 MELANIE D. MORGAN, ESQ.  
28 Nevada Bar No. 8215  
TENESA SCATURRO, ESQ.  
Nevada Bar No. 12488

AKERMAN LLP

1160 Town Center Drive, Suite 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

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1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A., as Successor by  
Merger to BAC Home Loans Servicing, LP fka  
Countrywide Home Loans, Inc., incorrectly sued as  
Countrywide Home Loans, Inc. and Nationstar  
Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 17<sup>th</sup> day of October, 2017 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC'S RESPONSE TO SFR INVESTMENTS POOL 1, LLC'S SECOND SET OF REQUESTS FOR ADMISSION**, in the following manner:

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

P. Sterling Kerr, Esq.  
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2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074

Richard J. Vilkin, Esq.  
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1286 Crimson Sage Ave.  
Henderson, NV 89012

*Attorneys for Ignacio Gutierrez*

*Attorneys for Nevada Association Services, Inc.*

Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
HOWARD KIM & ASSOCIATES  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014

*Attorneys for Nevada Association Services, Inc.*

**(UNITED STATES MAIL)** By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

Anthony L. Ashby, Esq.  
THE LAW OFFICES OF DAVID M. JONES  
7455 Arroyo Crossing Parkway, Suite 200  
Las Vegas, NV 89113

*Attorney for Horizon Heights HOA*

/s/Jill Sallade

An employee of AKERMAN LLP

# **Exhibit B**

**Keith Kovalic - 9/22/2017**  
**Ignacio Gutierrez vs. SFR Investments Pool 1, LLC, et al.**

1                   IN THE EIGHTH JUDICIAL DISTRICT COURT  
2                   OF THE STATE OF NEVADA  
3                   IN AND FOR THE COUNTY OF CLARK

3    IGNACIO GUTIERREZ, an                   )  
4    individual,                                )  
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3    Plaintiff,                                )  
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3    VS.                                        )  
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3    SFR INVESTMENTS POOL 1,                )  
4    LLC; NEVADA ASSOCIATION                )  
5    SERVICES, INC., HORIZON                )  
6    HEIGHTS HOMEOWNERS                    )  
7    ASSOCIATION, KB HOME                   )  
8    MORTGAGE COMPANY, a                    )  
9    foreign corporation; DOE                )  
10   Individuals I through X,                )  
11   ROE Corporations and                    )  
12   Organizations I through X,               )  
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3    Defendants.                                )  
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14                   \*\*\*\*\*

15                   ORAL DEPOSITION OF  
16                   NORTHSTART MORTGAGE, LLC BY AND THROUGH  
17                   KEITH KOVALIC  
18                   SEPTEMBER 22, 2017

19                   \*\*\*\*\*

20                   ORAL DEPOSITION OF NORTHSTART MORTGAGE, LLC BY AND  
21                   THROUGH KEITH KOVALIC, produced as a witness at the  
22                   instance of the SFR Investments Pool 1, LLC, and duly  
23                   sworn, was taken in the above-styled and numbered cause  
24                   on September 22, 2017, from 11:34 a.m. to 1:31 p.m., via  
25                   telephone, before Lisa C. Hundt, CSR, RPR, CLR in and

**Keith Kovalic - 9/22/2017**  
**Ignacio Gutierrez vs. SFR Investments Pool 1, LLC, et al.**

1     for the State of Texas, reported by machine shorthand,  
2     at the law offices of Akerman, located at 2001 Ross  
3     Avenue, Suite 3600, Dallas, Texas, in accordance with  
4     the Nevada Rules of Civil Procedure and the provisions  
5     stated on the record or attached hereto.

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1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 Ms. Melanie D. Morgan  
AKERMAN  
4 1160 Town Center Drive  
Suite 330  
5 Las Vegas, Nevada 89144  
702.634.5000  
6 702.380.8572 (Fax)  
melanie.morgan@akerman.com

8 FOR DEFENDANT/COUNTERCLAIMANT/THIRD-PARTY PLAINTIFF, SFR  
INVESTMENTS POOL 1, LLC:

9 Ms. Diana S. Ebron (via videoconference)  
KIM GILBERT EBRON  
10 7625 Dean Martin Drive  
Suite 110  
11 Las Vegas, Nevada 89139  
702.485.3300  
12 702.485.3301 (Fax)  
diana@kgelegal.com

**Keith Kovalic - 9/22/2017**  
**Ignacio Gutierrez vs. SFR Investments Pool 1, LLC, et al.**

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1	EXHIBITS		
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**Keith Kovalic - 9/22/2017**  
**Ignacio Gutierrez vs. SFR Investments Pool 1, LLC, et al.**

1 PROCEEDINGS  
2 (Exhibit Number 1 was marked.)  
3 (Witness sworn.)  
4 (Sotto voce conversation.)  
5 NORTHSTART MORTGAGE, LLC BY AND THROUGH KEITH KOVALIC,  
6 having been first duly sworn, testified as follows:  
7 EXAMINATION  
8 BY MS. EBRON:  
9 Q. Good morning. I'm Diana Ebron. I represent  
10 SFR Investments Pool, LLC in this matter. Will you  
11 please state your full name for the record?  
12 A. First name is Keith, K-E-I-T-H. My last name  
13 is Kovalic, K-O-V, as in Victor, A-L-I-C.  
14 Q. And who's your employer?  
15 A. NationStar Mortgage, LLC doing business as  
16 Mr. Cooper.  
17 Q. It's been a while since we've gone through all  
18 of your work history but we won't do that again. But  
19 just to confirm, you have never worked for Freddie Mac  
20 before, have you?  
21 A. That's correct.  
22 Q. Have you ever worked for FHFA?  
23 A. No.  
24 Q. Have you ever worked for Fannie Mae?  
25 A. No.

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1 Q. Can you take a look at the document that was  
2 marked as Exhibit 1. It's Federal Notice of 30(b)(6)  
3 Deposition of NationStar Mortgage, LLC.  
4 A. Okay.  
5 Q. Is this a document that you have seen before  
6 today?  
7 A. Yes.  
8 Q. During the deposition, you will be talking  
9 about the property, which refers to the real property  
10 located at 668 Moonlight Stroll Street, Henderson,  
11 Nevada 89002, Parcel Number 179-31-714-046.  
12 Whenever we talk about the first deed of  
13 trust, we're going to be referring to the document  
14 recorded in the official records of the Clark County  
15 Recorder as Instrument Number 200507200004600 on or  
16 about July 20, 2005. And then re-recorded in the  
17 official records of the Clark County Recorder as  
18 instrument number 201302110001798 on or about  
19 February 11, 2013. Okay?  
20 A. Yes.  
21 Q. Is it your understanding that's a description  
22 of the deed of trust you're here to talk about today?  
23 A. Yes.  
24 Q. Whenever we talk about The Association, we're  
25 referencing specifically the Horizon Heights Homeowners

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1 Association unless otherwise specified, okay?  
2 A. Okay.  
3 Q. When we talk about the association foreclosure  
4 sale, we'll be referring to the public auction held on  
5 April 5, 2013, by Nevada Association Services, Inc. on  
6 behalf of the association, okay?  
7 A. Okay.  
8 Q. I may refer to Nevada Association Services as  
9 NAS, okay?  
10 A. Okay.  
11 Q. When we talk about the borrower, we'll be  
12 referring to Ignacio Gutierrez, okay?  
13 A. Okay.  
14 Q. Did you have a chance to thoroughly review  
15 each of the topics listed on pages 3 through 6 of the  
16 deposition notice?  
17 A. Yes.  
18 Q. And are you the person at NationStar Mortgage,  
19 LLC that's been designated to testify on behalf of these  
20 topics?  
21 A. Yes.  
22 Q. Just for the record, I previously took the  
23 deposition of Faye Janati from NationStar on July 14,  
24 2015. We'll be going over many of the normal topics we  
25 would have covered in these types of cases dealing with

Page 8

1 NRS 16 quiet-title litigation. We're not going to go  
2 over all of the same information that we generally do  
3 when I depose you, Mr. Kovalic, but we'll just go over  
4 the topics that are in the notice.  
5 A. I'm sorry, you broke up for a second, that are  
6 what?  
7 Q. We'll just go over the topics in this  
8 particular notice of deposition.  
9 A. Okay.  
10 Q. What did you do to prepare for topic number 1?  
11 It's "evidence contained in your business records  
12 showing that you and your predecessor in interest  
13 notified the association that Freddie Mac or FHFA may  
14 have an interest in the first deed of trust" [as read].  
15 A. I reviewed NationStar's system of record to  
16 see if there were any communications either from  
17 NationStar or the documentation I had from Bank of  
18 America to see if there were any communications between  
19 the association and one of the servicers, servicers  
20 being NationStar or Bank of America, the prior servicer.  
21 Q. Anything else?  
22 A. No.  
23 Q. What -- which systems of record did you  
24 review?  
25 A. I reviewed LSAMS, L-S-A-M-S, and I reviewed

Page 9

**Keith Kovalic - 9/22/2017**  
**Ignacio Gutierrez vs. SFR Investments Pool 1, LLC, et al.**

1 File Net which is -- which contains image -- I'm sorry  
2 let me start that over -- which contains image copies of  
3 the documentation we received from the prior servicer,  
4 which is where I obtained the Bank of America servicing  
5 notes.  
6 Q. Did NationStar ever notify the association  
7 that Freddie Mac may have an interest in the first deed  
8 of trust?  
9 A. No.  
10 Q. Did Bank of America, based on a review of the  
11 documents you have within your file, ever notify the  
12 association that Freddie Mac may have an interest in the  
13 deed of trust?  
14 A. Not that I saw in the records.  
15 Q. Did NationStar ever notify the association  
16 that the FHFA may have an interest in the first deed of  
17 trust?  
18 A. Not that I saw in my review.  
19 Q. Did Bank of America, based on a review of the  
20 records that you have from Bank of America, ever notify  
21 the association that the FHFA may have an interest in  
22 the first deed of trust?  
23 A. Not that I saw.  
24 Q. Did you see any communications to NAS about  
25 Freddie Mac's interest in the first deed of trust?

Page 10

1 A. No, I did not.  
2 Q. Did you see any communications to NAS  
3 regarding FHFA's interest in the first deed of trust to  
4 NAS?  
5 A. No, I did not.  
6 Q. What did you do to prepare for topic number 2,  
7 which is "evidence of which you are aware that suggests  
8 SFR Investments Pool, LLC knew or should have known that  
9 Freddie Mac or FHFA may have an interest in the first  
10 deed of trust prior to the association foreclosure sale"  
11 [as read]?  
12 A. I did the same actions that I did for  
13 number 1, topic number 1. I also researched  
14 approximately how many loans around that time -- around  
15 the time of origination rather, of this loan the deed of  
16 trust that was recorded where Freddie Mac loans, or GSE  
17 loans in general, and that's it.  
18 Q. Where did you research the approximate number  
19 of loans that were Freddie Mac loans and general at the  
20 time of origination?  
21 A. I reviewed several what I would call reputable  
22 banking and mortgage origination websites that provided  
23 statistics that were sourced from valid places. I  
24 wasn't going to random blogs or any opinion articles.  
25 Q. What were those websites?

Page 11

1 A. I don't recall. There are a lot of them. So  
2 I --  
3 Q. Are there any that you recall?  
4 A. I believe I found an article on the Wall  
5 Street Times. I believe I found something on  
6 Bankrate.com. But I mean, it was an extensive search,  
7 and in terms of what I found, I'm going to testify to  
8 generalities because of discrepancies and information I  
9 found.  
10 But I think I found a happy medium in  
11 terms of the statistics I found because statistics can  
12 be manipulated.  
13 Q. What was the range of -- of the amounts that  
14 you found?  
15 A. Well, essentially, that -- the reason I even  
16 went to these websites was to find out how many loans  
17 were Freddie Mac loans to decide whether there was a  
18 reasonable expectation that the loan might be a Freddie  
19 Mac loan.  
20 And I found anywhere between 27 and about  
21 35 percent, so I, kind of, just met in the middle at  
22 30 percent and erred on the side of caution, which still  
23 would show that the loan was a one-in-three chance of  
24 being a Freddie Mac loan. And I feel that -- well,  
25 based on the way the topic's worded, "evidence of which

Page 12

1 you are aware that suggests SFR Investments Pool 1, LLC  
2 knew or should have known that Freddie Mac or FHFA may  
3 have an interest in the first deed of trust prior to the  
4 association foreclosure sale, [as read]" I think a  
5 one-in-three chance is a -- applies to this should have  
6 known that Freddie Mac or FHFA may have had an interest,  
7 I think one-in-three is a fair number.  
8 And like I said, that applies to all GSE  
9 loans.  
10 Q. Okay. So not just Freddie Mac, but also  
11 Fannie Mae would be included in that line 3?  
12 A. Yes.  
13 Q. Would that include any other entities --  
14 A. No.  
15 Q. -- besides Fannie Mae or Freddie Mac?  
16 A. No. I -- based on my independent research, I  
17 didn't include any FHA or VA loans or anything like  
18 that. Ginnie Mae was not included.  
19 Q. Did you find any other -- or are you aware of  
20 any other evidence that suggests SFR knew or should have  
21 known that Freddie Mac or FHFA may have an interest in  
22 the first deed of trust?  
23 A. No, I did not.  
24 Q. So am I correct to understand that there's  
25 nothing publicly recorded against the property before

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<p>1 the association foreclosure sale that indicates that</p> <p>2 Freddie Mac may have an interest in the deed of trust?</p> <p>3 <b>A. As I've stated in previous depositions, I</b></p> <p>4 <b>can't talk to what your understanding personally is, but</b></p> <p>5 <b>I didn't see anything that was recorded prior to the</b></p> <p>6 <b>sale that would have indicated -- or that did indicate</b></p> <p>7 <b>Freddie Mac was an owner, investor, or had an interest</b></p> <p>8 <b>in the property.</b></p> <p>9 Q. Did anyone representing the beneficiary of the</p> <p>10 deed of trust make an announcement at the association</p> <p>11 foreclosure sale that Freddie Mac had an interest in the</p> <p>12 deed of trust?</p> <p>13 <b>A. Not that I'm aware of.</b></p> <p>14 Q. You said that you were researching the number</p> <p>15 of approximate loans that were GSE loans at the time of</p> <p>16 origination. Is it correct to state that the loan was</p> <p>17 originated in July of 2005?</p> <p>18 <b>A. Yes. I believe we addressed that in the</b></p> <p>19 <b>second definition of -- on page 3 of Exhibit 1 it states</b></p> <p>20 <b>that the first deed of trust was recorded on or about</b></p> <p>21 <b>July 20 -- July 20, 2005.</b></p> <p>22 Q. And that's consistent with your documents in</p> <p>23 your file?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What did you do to prepare for topic number 3,</p> <p style="text-align: right;">Page 14</p>	<p>1 information about what NationStar could --</p> <p>2 <b>A. I'm sorry, you cut off -- the rest of your</b></p> <p>3 <b>question cut off.</b></p> <p>4 Q. Sorry. Is there a title to the document that</p> <p>5 contained the information about what NationStar could do</p> <p>6 as the servicer?</p> <p>7 <b>A. Once again, you kind of broke up, but did you</b></p> <p>8 <b>say could and could not do as the servicer?</b></p> <p>9 Q. Right. I think you mentioned a document that</p> <p>10 contained information that NationStar could and could</p> <p>11 not do as the servicer as something you reviewed from</p> <p>12 SharePoint?</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. Is there a title to that document?</p> <p>15 <b>A. Well, the document in there is a document that</b></p> <p>16 <b>points NationStar to go look at the Freddie Mac single</b></p> <p>17 <b>family servicing guide.</b></p> <p>18 Q. So the document says go look at the Freddie</p> <p>19 Mac single family servicing guide?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And was the title of the document the single</p> <p>22 family servicing guide or was the title of the document</p> <p>23 something different?</p> <p>24 <b>A. The title of the document was "please read," I</b></p> <p>25 <b>believe.</b></p> <p style="text-align: right;">Page 16</p>
<p>1 which is "your knowledge of the contractual/servicer</p> <p>2 relationship between you" -- meaning NationStar -- "and</p> <p>3 Freddie Mac or FHFA including the contracts, other</p> <p>4 documents reflecting the relationship, terms of the</p> <p>5 contracts, loan schedules, timing of the relationship,</p> <p>6 and if the contractual relationship ever ended" [as</p> <p>7 read]?</p> <p>8 <b>A. I reviewed a SharePoint site that is -- that</b></p> <p>9 <b>NationStar uses to keep records regarding the investors</b></p> <p>10 <b>on specific loans, and the files are coded in a certain</b></p> <p>11 <b>way within LSAMS, which as, stated was, one of</b></p> <p>12 <b>NationStar's systems of record. And I reviewed the</b></p> <p>13 <b>documentation in those SharePoint sites.</b></p> <p>14 Q. Anything else?</p> <p>15 <b>A. No.</b></p> <p>16 Q. What documents did you review from the</p> <p>17 SharePoint site?</p> <p>18 <b>A. I reviewed a document that pointed to what</b></p> <p>19 <b>NationStar could/could not do as a servicer. And I also</b></p> <p>20 <b>reviewed three different powers of attorney that --</b></p> <p>21 <b>limited powers of attorney that NationStar had on behalf</b></p> <p>22 <b>of Freddie Mac.</b></p> <p>23 Q. Anything else?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Is there a name of the document that contained</p> <p style="text-align: right;">Page 15</p>	<p>1 Q. Okay. How do you know -- how did you identify</p> <p>2 that that document would relate to the first -- trust in</p> <p>3 this case?</p> <p>4 THE REPORTER: I'm sorry, you cut out.</p> <p>5 Would relate to what?</p> <p>6 MS. EBRON: The first deed of trust in</p> <p>7 this case.</p> <p>8 <b>A. As I stated, in LSAMS, there is an investor</b></p> <p>9 <b>code on every file, so I went onto the SharePoint site</b></p> <p>10 <b>and found that investor code. And every investor code</b></p> <p>11 <b>has a folder, and I opened the folder to see what it</b></p> <p>12 <b>contained. And it contained a document that said</b></p> <p>13 <b>"please read."</b></p> <p>14 When I opened that up, it said, please</p> <p>15 see -- and that's normally with the pooling and</p> <p>16 servicing agreement would be, but as Freddie Mac doesn't</p> <p>17 have a pooling and servicing agreement, they use what's</p> <p>18 called the single family servicing guide -- we have</p> <p>19 multiple servicing guides, but that's what would apply</p> <p>20 to this loan and that's what I looked at.</p> <p>21 The document just said "please read," or</p> <p>22 something along those lines. And when I opened it,</p> <p>23 there was a single sentence that said, "please see</p> <p>24 Freddie Mac single family servicing guide."</p> <p>25 And I believe Faye Janati, in her</p> <p style="text-align: right;">Page 17</p>

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<p>1 testimony, testified to some sort of PSA. And I think</p> <p>2 that if you look at it in context of that deposition, it</p> <p>3 was just a semantics issue. I think based on that --</p> <p>4 based on that --</p> <p>5 (Sotto voce conversation.)</p> <p>6 MS. MORGAN: Let's go off the record real</p> <p>7 quick.</p> <p>8 (Off the record for less than one minute.</p> <p>9 A. So as I was talking about, I believe it was</p> <p>10 just a semantics issue whenever Faye mentioned a pooling</p> <p>11 and servicing agreement that existed between Freddie Mac</p> <p>12 NationStar. I believe she was talking about the single</p> <p>13 family servicing guide. She was just using a different</p> <p>14 terminology.</p> <p>15 Q. (MS. EBRON) Did you speak to Faye Janati in</p> <p>16 preparation for your deposition?</p> <p>17 A. No, I did not. I read her deposition.</p> <p>18 Q. She's not -- I'm sorry, is she still employed</p> <p>19 by NationStar?</p> <p>20 A. As far as I know, yes. As of yesterday, yes.</p> <p>21 Q. Or Mr. Cooper?</p> <p>22 A. Mr. Cooper, yes.</p> <p>23 Q. Is there a reason why you didn't speak to her</p> <p>24 about what she meant by the --</p> <p>25 A. Just to clarify because you cut out at the</p> <p style="text-align: right;">Page 18</p>	<p>1 MS. EBRON: We can if you want.</p> <p>2 Go ahead and mark that as Exhibit 2.</p> <p>3 (Exhibit Number 2 was marked.)</p> <p>4 A. Okay.</p> <p>5 Q. (BY MS. EBRON) Will you look at the page</p> <p>6 Bates stamped NSM00475. Is this what's described in the</p> <p>7 disclosure as NationStar's servicer screen shot?</p> <p>8 A. That's correct.</p> <p>9 Q. Is this a document that can refresh your</p> <p>10 recollection as to the investor code?</p> <p>11 A. Yes. The investor code is 472 as stated in</p> <p>12 the top middle of the screen next to INV.</p> <p>13 Q. So when you went to SharePoint, you went to a</p> <p>14 folder named 472; is that right?</p> <p>15 A. Without getting into how the system itself</p> <p>16 works, essentially, yes.</p> <p>17 Q. Okay. What does the text after 472 on the</p> <p>18 page Bates stamped NSM00475, what does that text</p> <p>19 represent?</p> <p>20 A. It says FHLMC SCH/ACT GANESHA. In this case,</p> <p>21 it tells you it's a Freddie Mac loan. I don't know what</p> <p>22 the remainder -- well, SCH is for schedule. ACT, is for</p> <p>23 actual. I don't know what GANESHA means in the context</p> <p>24 of the investor code.</p> <p>25 Q. Is that all --</p> <p style="text-align: right;">Page 20</p>
<p>1 end: You said what she meant by the pooling and</p> <p>2 servicing agreement?</p> <p>3 Q. Yes.</p> <p>4 A. Because I felt that it didn't really apply to</p> <p>5 the topics at hand, and I think the deposition itself,</p> <p>6 if you look at it, speaks for itself. And I didn't</p> <p>7 think there was any additional information I could have</p> <p>8 received from Faye other than what was already in that</p> <p>9 deposition as she testified to it in July of 2015.</p> <p>10 Q. Okay. So am I correct to understand that the</p> <p>11 investor code within LSAMS is 472?</p> <p>12 A. I don't recall. There's multiple Freddie Mac</p> <p>13 codes. If I had a document in front of me with the main</p> <p>14 screen of -- the collection history profile in LSAMS, I</p> <p>15 could verify that, but that's not something I normally</p> <p>16 commit to memory.</p> <p>17 Q. Okay. I think your counsel may have a copy of</p> <p>18 NationStar's Fourth Supplement to Initial Disclosure of</p> <p>19 Documents and Witnesses.</p> <p>20 MS. MORGAN: I do.</p> <p>21 MS. EBRON: Thank you.</p> <p>22 Q. (BY MS. EBRON) If you could turn to page</p> <p>23 Bates stamp --</p> <p>24 MS. MORGAN: Are we going to mark it or</p> <p>25 no?</p> <p style="text-align: right;">Page 19</p>	<p>1 A. Investor name.</p> <p>2 Q. -- investor code?</p> <p>3 A. No. That's the investor name. The investor</p> <p>4 code, in this case, because it's a Freddie Mac loan, is</p> <p>5 just 472.</p> <p>6 Q. Okay. So FHLMC stands for Federal Home Loans</p> <p>7 Mortgage Corporation --</p> <p>8 A. Correct.</p> <p>9 Q. -- right?</p> <p>10 A. Correct.</p> <p>11 Q. And that's Freddie Mac?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So do you know why there's SCH/ACT?</p> <p>14 A. I know that Freddie Mac has different ways of</p> <p>15 categorizing different types of loans, however, I don't</p> <p>16 know the methodology behind it off the top of my head.</p> <p>17 But there's -- it can be -- there's -- if</p> <p>18 you think of it as a fraction, there's an numerator and</p> <p>19 a denominator. And one could be -- there's two options</p> <p>20 for each. It can be schedule or actual on the top and</p> <p>21 schedule/actual at the bottom. I don't know what the</p> <p>22 methodology is or what makes a loan scheduled or actual.</p> <p>23 That's what it stands for.</p> <p>24 Q. Is GANESHA a person?</p> <p>25 A. I have no idea.</p> <p style="text-align: right;">Page 21</p>

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<p>1 Q. Okay. Do you know who input the information</p> <p>2 into LSAMS that we're looking at on this page Bates</p> <p>3 stamped NSM00475?</p> <p>4 MS. MORGAN: Objection; scope.</p> <p>5 <b>A. What information?</b></p> <p>6 Q. (BY MS. EBRON) Just at the investor code.</p> <p>7 <b>A. No, I do not know specifically.</b></p> <p>8 Q. Do you know of a department that would have</p> <p>9 input that information?</p> <p>10 MS. MORGAN: Same objection.</p> <p>11 <b>A. I do not.</b></p> <p>12 Q. (BY MS. EBRON) All right. And I know that</p> <p>13 this document wasn't one of the specific ones that I</p> <p>14 included on the deposition notice, and that's because it</p> <p>15 wasn't disclosed at the time that I sent out the</p> <p>16 deposition notice. It was just disclosed earlier this</p> <p>17 week.</p> <p>18 MS. EBRON: So I'm not sure, Counsel, if</p> <p>19 you think that we should postpone the deposition --</p> <p>20 like, just continue it to another time so that there's</p> <p>21 more time to --</p> <p>22 THE REPORTER: I'm sorry, you cut out.</p> <p>23 There's more time...?</p> <p>24 MS. MORGAN: No. I'm confident Keith can</p> <p>25 testify as to his knowledge and in his preparation for</p> <p style="text-align: right;">Page 22</p>	<p>1 <b>borrower 001, and then there's a series of notes.</b></p> <p>2 Q. Yes, I see.</p> <p>3 Just out of curiosity, what does</p> <p>4 behavioral score mean in the middle of the page just to</p> <p>5 the top right of -- or top left of credit score?</p> <p>6 <b>A. I don't know and I've never -- I think it's an</b></p> <p>7 <b>outdated field that's no longer used, because most of</b></p> <p>8 <b>the time when I see it, it's either 0 or 700. There's</b></p> <p>9 <b>really -- I just think it's an outdated field just</b></p> <p>10 <b>like -- for instance, if you see below target in the</b></p> <p>11 <b>body of the -- of the screen shot of the notes, that</b></p> <p>12 <b>target field is an outdated field that's no longer used.</b></p> <p>13 <b>So I think it's just a field that is part of the LSAMS</b></p> <p>14 <b>system, but doesn't have any bearing on anything.</b></p> <p>15 Q. Okay. Do you know what LPR stands for and</p> <p>16 there's a -- looks like a date of January 30, 2012?</p> <p>17 <b>A. Last payment received.</b></p> <p>18 Q. So would it be accurate to say that the last</p> <p>19 time that the borrower sent in any money towards the</p> <p>20 loan, that was received on January 30, 2012?</p> <p>21 <b>A. Without having the full payment history in</b></p> <p>22 <b>front of me, I don't know if that's when the last</b></p> <p>23 <b>payment was actually sent in or if that's when the last</b></p> <p>24 <b>payment was applied, because funds had been allocated in</b></p> <p>25 <b>different ways and there was money in the expense</b></p> <p style="text-align: right;">Page 24</p>
<p>1 the topics that -- well, I think he did testify already</p> <p>2 that he looked at this screen shots, so I think we can</p> <p>3 proceed.</p> <p>4 MS. EBRON: Okay. I'm just concerned</p> <p>5 because you keep objecting to scope --</p> <p>6 MS. MORGAN: I'm just preserving --</p> <p>7 MS. EBRON: -- and I --</p> <p>8 MS. MORGAN: I'm just preserving my</p> <p>9 objections for the record.</p> <p>10 MS. EBRON: Right. And I think that topic</p> <p>11 number 3 would cover --</p> <p>12 MS. MORGAN: Okay, I see that.</p> <p>13 MS. EBRON: -- this document as well. Do</p> <p>14 you know what I'm saying?</p> <p>15 MS. MORGAN: Yeah, I see that. "The</p> <p>16 documents reflecting the relationship," so I think</p> <p>17 you're correct. So I withdraw my objections to the</p> <p>18 question.</p> <p>19 MS. EBRON: Okay.</p> <p>20 Q. (BY MS. EBRON) Do you know when this screen</p> <p>21 shot was made?</p> <p>22 <b>A. I don't know the exact date, but it was</b></p> <p>23 <b>sometime on September 12, 2017, or after, as that's the</b></p> <p>24 <b>most recent note in the, what I would call the actual</b></p> <p>25 <b>body of the screen shot under where it says Brand, NSM</b></p> <p style="text-align: right;">Page 23</p>	<p>1 <b>account, and then that was applied as a payment. So to</b></p> <p>2 <b>say that that's the last time the homeowner sent funds</b></p> <p>3 <b>in, I don't know if that's accurate.</b></p> <p>4 Q. Okay. Up from the -- up on the second line</p> <p>5 from the top by, it says, next due April 1, 2010.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Is that the date for which the next payment is</p> <p>8 due?</p> <p>9 <b>A. Yes. That means the loan is paid through the</b></p> <p>10 <b>actual payment is for March of 2010 has been made and</b></p> <p>11 <b>the payment for April of 2010 is due. It applies to the</b></p> <p>12 <b>actual payment, not the interest.</b></p> <p>13 Q. Okay. Going down to the -- at the top, it</p> <p>14 starts with September 12, 2017.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. Does MIS in the next column stand for the</p> <p>17 person who entered the information?</p> <p>18 <b>A. MIS is normally a system-generated note. It's</b></p> <p>19 <b>normally a task-based note. So if a action is performed</b></p> <p>20 <b>by a certain department, certain notes will generate in</b></p> <p>21 <b>here. And so MIS is an identifier for an automated note</b></p> <p>22 <b>that takes place after an action is completed.</b></p> <p>23 Q. Do you know what the CL in the class column</p> <p>24 stands for?</p> <p>25 <b>A. Collections, the department that -- go ahead.</b></p> <p style="text-align: right;">Page 25</p>



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1 Q. Sorry. So collections in the department that  
2 would have performed the default reporting mentioned in  
3 the comment?  
4 **A. Correct.**  
5 Q. How is that reporting to Freddie Mac done by  
6 NationStar?  
7 MS. MORGAN: Objection; form.  
8 **A. In -- in what sense? A global scale or as it**  
9 **applies to this loan?**  
10 Q. (BY MS. EBRON) This loan.  
11 **A. If you look, that happened on 9/12/17. If**  
12 **you'll look back, you'll see on 8/9/17 the same note.**  
13 **On a monthly basis, loans that are in default -- so**  
14 **loans that are 30 days past due -- are reported to --**  
15 **well, loans that are in default -- and I don't know if**  
16 **the system logic has it at 30 days or at 40 days or at**  
17 **60 days, but if a loan's in default, those loans are all**  
18 **batched and reported to Freddie Mac.**  
19 Q. Do you know how that reporting is done?  
20 **A. It's a -- well, what do you mean by how that**  
21 **reporting is done?**  
22 Q. Does somebody at NationStar call somebody at  
23 Freddie Mac and say the loans are all in default? Is  
24 there an email sent? Is there an automatic transfer  
25 from system to system?

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1 **A. I don't know -- I mean, I know it's not done**  
2 **by an individual person. I know a report is run which**  
3 **is why you'll see the MIS in there. So it will pull all**  
4 **the Freddie Mac investor codes and run a script on the**  
5 **system for -- for instance, if you see the top, there's**  
6 **a -- right below where it says investor, if you go down**  
7 **three lines, it says number of payments delinquent. And**  
8 **that's not a life of the loan that's in the current**  
9 **period. So if you -- if a person's nine -- 90 days**  
10 **delinquent, it will show a 3 there. If they're brought**  
11 **current, it's back to zero. It's not a running total**  
12 **how many times you've been delinquent. It's how many**  
13 **times you're currently delinquent, how many payments.**  
14 **So once there's a number in that field, the script is**  
15 **run and it pulls all the loans and batches those. I**  
16 **don't know how it's transmitted to Franny -- Franny? --**  
17 **to Freddie Mac.**  
18 Q. Okay. So are you saying that the borrower's  
19 been delinquent 90 months as of the time of this?  
20 **A. That's correct.**  
21 Q. As of the time of this screen shot?  
22 **A. That's correct.**  
23 Q. Okay. Do you know what the foreclosure title  
24 audit pass means within the note dated -- or sorry, the  
25 comment dated August 16, 2017?

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1 **A. No. I would have to see -- if you notice,**  
2 **that note has a identifier next to it in the "by"**  
3 **column, so that note was actually entered in by a person**  
4 **and the -- there's generic titles for notes that are**  
5 **used, but then there may be additional information that**  
6 **that person entered, and I would have to see what**  
7 **information they entered, if any.**  
8 Q. Okay. So from this screen shot, you can tell  
9 that there was default reporting to Freddie Mac on  
10 September 12, 2017, as well as August 9, 2017; is that  
11 correct?  
12 **A. That is correct.**  
13 Q. Are there any other places that you saw  
14 communications with Freddie Mac within your business  
15 records?  
16 **A. No, there were not.**  
17 Q. You have reviewed limited powers of attorney,  
18 right?  
19 **A. That is correct.**  
20 Q. How many?  
21 **A. There were three in the system that I could**  
22 **find.**  
23 Q. Were those stored within the same SharePoint  
24 folder as the document pointing you to the Freddie Mac  
25 single family servicing guide?

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1 **A. No. There's a separate SharePoint for powers**  
2 **of attorney.**  
3 Q. How do you know which powers of attorney are  
4 applicable to the deed of trust in this case?  
5 **A. Because based on -- for Freddie Mac -- for the**  
6 **GSE investors -- Freddie Mac, Fannie Mae, Ginnie Mae, I**  
7 **guess you could throw in there HUD -- it applies to all**  
8 **of their loans that NationStar services. And there are**  
9 **a couple other investors, what I would call**  
10 **private-label investors -- that are -- not that are,**  
11 **that utilize NationStar as a servicer that only would**  
12 **have one power of attorney, whereas some other investors**  
13 **may have a power attorney for every single investor code**  
14 **that NationStar -- sorry, Mr. Cooper -- utilizes.**  
15 Q. So how do you know which of the three limited  
16 powers of attorney apply to this particular loan?  
17 **A. By when they're dated.**  
18 Q. Okay. What were the dates of the powers of  
19 attorney?  
20 **A. I believe they're all in November/December,**  
21 **there towards the end of the year, and it was annually**  
22 **renewed. I saw one from 2014, 2015, and 2016.**  
23 Q. So the limited powers of attorney that you  
24 reviewed or identified were from the end of 2014, the  
25 end of 2015, and the end of 2016?

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1 **A. Correct.**  
2 Q. Are there any other limited powers that may  
3 apply to this deed of trust?  
4 **A. Not that I saw. Doesn't mean there isn't one**  
5 **that exists, but based on what I could find, those were**  
6 **the three years that I found.**  
7 Q. Did you look in all of the places that you  
8 would expect to see powers of attorney applicable to  
9 this particular deed of trust?  
10 **A. Yes, I did. However, it's a repository that**  
11 **documents can be, quote, checked out of similar to a**  
12 **library, so -- and there's no way to tell if something**  
13 **is checked out other than continually checking back. So**  
14 **there could have been one from, say, 2013, 2012, that**  
15 **somebody else was utilizing the few times that I looked**  
16 **at this SharePoint site.**  
17 Q. So when a document is checked out of  
18 SharePoint, there's no -- if somebody doesn't put it  
19 back, it does not exist on the system, nobody will know  
20 that it's missing?  
21 **A. No. I believe there's a script that's run**  
22 **every so often to pull the information back. It's**  
23 **highly monitored and it's a very restricted access**  
24 **system. But given the nature of the topics in the**  
25 **deposition and seeing that we still have a valid power**  
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1 of attorney, I felt that that was the most important  
2 power of attorney was to show that -- that we still have  
3 power of attorney over -- for these Freddie Mac loans.  
4 Q. Are there any loan schedules attached to the  
5 power --  
6 THE REPORTER: I'm sorry, attached to  
7 what?  
8 THE WITNESS: The power of attorney.  
9 **A. Not in this case.**  
10 Q. (BY MS. EBRON) Have you seen that in other  
11 cases?  
12 **A. Not on GSE files.**  
13 Q. Besides the number in the system that we  
14 looked at, number 472, was there any other indication  
15 that this loan was part of a loan serviced by NationStar  
16 for Freddie Mac?  
17 **A. Could you rephrase that? I don't understand**  
18 **what you're asking.**  
19 Q. Okay. So I know in other depositions we  
20 talked about pooling and servicing agreements and how  
21 sometimes there's loan schedules attached to those so  
22 that you can tell which loans are actually part of that  
23 pool of loans.  
24 Is there some similar type of document  
25 that indicates that NationStar is servicing a loan on  
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1 behalf of Freddie Mac and lists those actual loans?  
2 **A. Once again, we're going into Freddie Mac as**  
3 **a -- as a global entity as opposed to this one loan, and**  
4 **this one loan has a unique Freddie Mac identifier of**  
5 **472. And there are multiple Freddie Mac investor codes.**  
6 **Some have schedules, some don't.**  
7 **However, seeing as how Freddie Mac default**  
8 **reporting is being done on this every month, the loan**  
9 **has always been listed as a Freddie Mac loan in**  
10 **NationStar's system in multiple places, within LSAMS**  
11 **especially, I have no reason to believe that it's not a**  
12 **Freddie Mac loan. And I have seen where we've attempted**  
13 **to -- on other files -- report to Freddie Mac for the**  
14 **default reporting and it'll say default reporting**  
15 **rejected because it's not actually a Freddie Mac loan,**  
16 **and I don't see that comment in here on the two**  
17 **instances we have on the screen, so that means it went**  
18 **through and was valid. So I have no reason to believe**  
19 **this isn't a Freddie Mac loan.**  
20 Q. So you're saying there were -- there have been  
21 instances where NationStar attempted to report  
22 information about loans to Freddie Mac and it was  
23 rejected because it wasn't a Freddie Mac loan?  
24 **A. Correct. It's -- that's usually due to an**  
25 **error in the script that I said is run to batch the**  
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1 delinquencies. It's not common by any stretch but it --  
2 Q. But you're saying -- sorry. You're saying  
3 that because you don't see a rejection, that it's your  
4 belief that it was accepted by Freddie Mac?  
5 **A. Correct. And it's -- it's always -- I've only**  
6 **seen it a couple of times, and as you know, I deal with**  
7 **multiple hundreds of files. It's always -- after the**  
8 **default reporting completed, it'll say default reporting**  
9 **rejected and it will be on the same date, be the**  
10 **immediate note following.**  
11 **So it's basically like an immediate error.**  
12 **And I don't see this here, and I see two instances --**  
13 **two instances of it being reported in two months without**  
14 **incident or without fail.**  
15 Q. You said that the loan has always been listed  
16 as a Freddie Mac loan. How do you know that?  
17 **A. There's no references to any other investors.**  
18 **Freddie Mac default reporting was completed on this**  
19 **fairly -- well, within 30 days of NationStar receiving**  
20 **the loan from the prior servicer. There's no**  
21 **indications in the prior servicer notes that it wasn't a**  
22 **Freddie Mac loan when it came over to NationStar. There**  
23 **were no other investor codes. I can see the investor**  
24 **code history.**  
25 **There's no -- there were no other investor**  
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1 codes on this that pointed to it being anything but  
2 Freddie Mac.  
3 Q. On what screen do you look at to see the  
4 investor code history?  
5 A. I don't recall the exact name. But I believe  
6 it's investor code history.  
7 MS. EBRON: Counsel, I don't think that's  
8 something that was disclosed. Do you know if I just  
9 missed it?  
10 MS. MORGAN: What is it?  
11 THE WITNESS: Investor code history.  
12 MS. EBRON: Investor code history.  
13 MS. MORGAN: Investor code history?  
14 (Sotto voce conversation.)  
15 MS. MORGAN: Yeah, I don't think that's  
16 ever come up -- or at least from me, at least, but  
17 that's something we can look into.  
18 MS. EBRON: Okay.  
19 Q. (BY MS. EBRON) When did NationStar begin  
20 servicing?  
21 A. July 16th, I believe, 2012.  
22 Q. Who was the servicer before NationStar?  
23 A. Bank of America.  
24 Q. How do you know that?  
25 A. The prior servicer documents are all from Bank

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1 of America. The screen that precedes this, that tells  
2 you who the prior servicer was and it says Bank of  
3 America.  
4 Q. Did you ever work on this particular loan when  
5 you worked with Bank of America?  
6 A. Not that I recall.  
7 Q. Have you seen any powers of attorney between  
8 Bank of America and Freddie Mac applicable to this loan?  
9 A. No. NationStar doesn't maintain powers of  
10 attorney for previous servicers.  
11 Q. Are there any contracts between NationStar and  
12 Freddie Mac other than the limited power of attorney --  
13 or attorneys -- that you referenced that are applicable  
14 to this loan?  
15 A. Not that I could find in my review.  
16 Q. Did you look in all the places that you'd  
17 expect to see those types of contracts between  
18 NationStar and Freddie Mac that will be applicable to  
19 this loan?  
20 A. To the best of my knowledge.  
21 Q. In the documents -- well, let me start over.  
22 Is it safe to say that Bank of America  
23 transferred at least a portion of its loan file  
24 applicable to the deed of trust to NationStar when  
25 NationStar began servicing?

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1 A. Yes.  
2 Q. Did any of the documents transferred from Bank  
3 of America to NationStar include contracts or written  
4 agreements with Freddie Mac and Bank of America?  
5 A. Not that I recall seeing, but I was --  
6 normally, we don't get contracts between other entities  
7 as part of a servicing transfer. That's a business  
8 record from another company that's not transferred over.  
9 Q. Have you seen the original limited powers of  
10 attorney from 2014, 2015, or 2016?  
11 A. I saw digital representations of them.  
12 Q. But not the originals?  
13 A. No.  
14 Q. Do you know who has the original?  
15 A. No, I do not.  
16 Q. Does the most recent limited power of attorney  
17 contain a provision that allows NationStar to  
18 subordinate the deed of trust?  
19 A. I don't recall if I -- I don't know, rather.  
20 I would need a copy of it in front of me to refresh my  
21 memory.  
22 Q. Okay. I -- I haven't seen them and I don't  
23 believe they've been disclosed.  
24 MS. EBRON: Did I miss those, Counsel?  
25 MS. MORGAN: What is it?

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1 THE WITNESS: The powers -- the power of  
2 attorney.  
3 MS. MORGAN: No. We haven't disclosed  
4 those, but we can get them. And what was that other  
5 thing called, investor history...?  
6 THE WITNESS: The investor code --  
7 history.  
8 (Sotto voce conversation.)  
9 MS. MORGAN: Let's go off real quick.  
10 (Off the record for less than one minute.)  
11 Q. (BY MS. EBRON) Do you know if there is a  
12 limited power of attorney that would have been in effect  
13 between NationStar and Freddie Mac on the date of the  
14 association foreclosure sale?  
15 A. I didn't see one, but like I stated, it could  
16 be, quote, checked out of the system or it might have  
17 been listed under something other than Freddie Mac or  
18 the investor code. There's literally thousands of  
19 investor codes so there's thousands of powers of  
20 attorney.  
21 Based on the limited time I had to review  
22 this information, I wasn't able to find something from  
23 that time period. I was only able to identify the three  
24 that I've spoken about.  
25 Q. Okay. Do you know who signed the 2014 power

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1 of attorney?  
2 **A. I don't -- I don't know without having it in**  
3 **front of me.**  
4 Q. Do you know who signed the 2015 power of  
5 attorney?  
6 **A. I don't know without having it in front of me.**  
7 Q. Who signed the 2016 power of attorney?  
8 **A. I don't know without having it in front of me.**  
9 Q. Have you seen any agreement or document that  
10 contained a loan schedule identifying this loan where  
11 the contractor agreement was between NationStar and  
12 Freddie Mac?  
13 **A. Could you -- could you --**  
14 THE WITNESS: I'm sorry, can you read that  
15 back?  
16 (Requested portion was read.)  
17 MS. MORGAN: Objection; form.  
18 **A. I didn't see any loan schedules that had this**  
19 **loan -- I didn't see any loan schedules as it applied to**  
20 **this loan.**  
21 Q. (BY MS. EBRON) Is it accurate to say that the  
22 Freddie Mac single family servicing guide is available  
23 online?  
24 **A. Yes.**  
25 Q. And that you don't have to be a servicer for a

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1 particular loan to access it?  
2 **A. That's correct. Anybody can access it.**  
3 Q. Did NationStar pay anything to be the servicer  
4 of this loan underlying the first deed of trust?  
5 **A. Not that I could find in my review.**  
6 Q. Is there anywhere in NationStar's business  
7 records that indicates the date on which Freddie Mac  
8 obtained its interest in the first deed of trust?  
9 **A. Not in NationStar's system of record.**  
10 Q. Is there anywhere else in NationStar's  
11 business records that you would look to find that  
12 information?  
13 **A. No. That would be a question for Freddie Mac.**  
14 Q. Okay.  
15 THE WITNESS: Can -- can we take a break  
16 whenever you get to a stopping point?  
17 MS. EBRON: Yeah; let me ask two more  
18 questions.  
19 Q. (BY MS. EBRON) When Freddie Mac purchased the  
20 loan, did it pay any money?  
21 MS. MORGAN: Objection; calls for  
22 speculation.  
23 **A. I -- I don't know. That would be a question**  
24 **for Freddie Mac.**  
25 Q. (BY MS. EBRON) When Freddie Mac obtained its

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1 interest in the loan, did it exchange certificates in a  
2 trust --  
3 MS. MORGAN: Objection; calls for  
4 speculation.  
5 Q. (BY MS. EBRON) -- for its interest?  
6 **A. I don't know. That would be a question for**  
7 **Freddie Mac.**  
8 Q. Is there anywhere within NationStar's business  
9 records that indicates who Freddie Mac purchased the  
10 loan from?  
11 **A. That would be a question for Freddie Mac.**  
12 MS. EBRON: Okay. Let's take a break.  
13 THE WITNESS: Okay. Thank you.  
14 (Break taken from 12:36 p.m. to  
15 12:43 p.m.)  
16 Q. (BY MS. EBRON) Is there a document that  
17 governs the relationship between NationStar and Freddie  
18 Mac other than the Freddie Mac single family servicing  
19 guide as far as this particular deed of trust goes?  
20 **A. The power of attorney from 2016, if we're**  
21 **talking about today.**  
22 Q. What about at the time of the foreclosure  
23 sale?  
24 **A. Based on my review, it would be the single**  
25 **family servicing guide. But as I also stated, there's**

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1 **no reason to believe that Freddie Mac was not the**  
2 **investor on the loan at that time, which was April 2013.**  
3 Q. Is there a document between NationStar and  
4 Freddie Mac that would have been applicable at the time  
5 of the association foreclosure sale that indicates that  
6 NationStar's required to follow the Freddie Mac single  
7 family servicing guide?  
8 **A. The same investor code that we've talked about**  
9 **already and the document that that points to in the**  
10 **SharePoint.**  
11 Q. So the investor code requires you to follow  
12 the Freddie Mac single family servicing guide?  
13 **A. No. The investor code -- without going into**  
14 **the machinations of how the SharePoint works, the**  
15 **investor codes drives how I utilize that system to find**  
16 **out what servicing agreement -- in this case, the single**  
17 **family servicing guide -- needs to be applied to this**  
18 **loan.**  
19 Q. Besides NationStar and Bank of America, have  
20 there been any other servicers of this loan?  
21 MS. MORGAN: Objection to the extent it  
22 calls for speculation.  
23 **A. If you're -- the only notes I saw were Bank of**  
24 **America, but based on some other evidence I saw, it**  
25 **appears that Countrywide may have serviced the loan, but**

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1 as we all know, Countrywide merged with Bank of America,  
2 so, essentially, Bank of America has -- is the only  
3 other servicer that I could see.  
4 Q. (BY MS. EBRON) Did you -- I apologize if I  
5 already asked this, but did you see any other -- sorry.  
6 Did you see any written agreements between  
7 Bank of America and Freddie Mac that identified this  
8 particular loan as being part of a group that Bank of  
9 America was servicing for Freddie Mac?  
10 **A. No. As I -- I don't mind repeating the**  
11 **answer. That would be a question for Freddie Mac or**  
12 **Bank of America. We don't receive contracts like that**  
13 **from prior servicers.**  
14 Q. Does NationStar have any written agreements  
15 with the FHFA as it relates to this deed of trust?  
16 MS. MORGAN: Objection to the extent it  
17 calls for a legal conclusion.  
18 **A. And not that -- not that I saw overtly.**  
19 Q. (BY MS. EBRON) Did you see any powers of  
20 attorney between NationStar and the FHFA?  
21 **A. No. I was primarily looking for Freddie Mac**  
22 **powers of attorney as they're listed as the investor on**  
23 **the screen we looked at earlier in Exhibit 2, Bates**  
24 **stamped NSM00475.**  
25 Q. Have you ever seen any written agreements

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1 between NationStar and the FHFA for any file that you've  
2 ever looked at?  
3 **A. Not that I can recall.**  
4 Q. What did you do to prepare for topic number 4,  
5 which is "your knowledge, if any, of the  
6 contractual/servicer relationship between or FHFA" --  
7 sorry -- "FHFA and any other entity including the  
8 contracts, other documents reflecting the relationship,  
9 terms of the contract, loan schedules, timing of the  
10 relationship, and if the contractual relationship ever  
11 ended" [as read]?  
12 **A. I mean, I reviewed the business records on**  
13 **this file and systems of record in conjunction with my**  
14 **knowledge of being with NationStar and Mr. Cooper for**  
15 **over three years. And as I just stated a couple**  
16 **questions ago, NationStar -- that would be a question**  
17 **for Freddie Mac. We wouldn't have any documentation on**  
18 **hand reflecting the relationship with other entities**  
19 **other than NationStar.**  
20 Q. Okay. What did you do to prepare for topic  
21 number 5, which is "evidence contained in your business  
22 records reflecting communication with Freddie Mac or  
23 FHFA generally about servicing the loan from the time  
24 the contract was entered --  
25 THE REPORTER: I'm sorry, you really cut

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1 out there.  
2 MS. MORGAN: "From the time the contract  
3 was entered until the time of the association  
4 foreclosure sale" [as read]?  
5 MS. EBRON: Correct. I'm sorry, I'm just  
6 reading number 5, topic number 5.  
7 (Sotto voce conversation.)  
8 MS. EBRON: I'll start over.  
9 THE WITNESS: Are we good?  
10 THE REPORTER: I think we're good.  
11 **A. I mean, I know what you're --**  
12 Q. (BY MS. EBRON) We're good?  
13 **A. Yeah.**  
14 Q. Okay.  
15 **A. The same as number 4. I reviewed our systems**  
16 **of record. And we also talked about this when we were**  
17 **talking about the screen shot on Exhibit 2, number --**  
18 **the page Bates stamped NSM00475, you can see in here**  
19 **where there's monthly Freddie Mac default reporting.**  
20 **Then there's -- I believe, there's other Freddie Mac**  
21 **reporting done periodically in terms of the entire**  
22 **portfolio Freddie Mac loans that would be part of this.**  
23 **But other than that, there is not -- based**  
24 **on what the single family servicing guide says, there's**  
25 **not a lot of communication other than sending reports to**

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1 **Freddie Mac.**  
2 Q. Have there been any communications, before the  
3 date of the association foreclosure sale, between  
4 NationStar and Freddie Mac regarding the association's  
5 need for foreclosure?  
6 **A. Not that I saw any record of.**  
7 Q. Did you see any indication from the documents  
8 that were forwarded from Bank of America that Bank of  
9 America communicated with Freddie Mac regarding this  
10 loan?  
11 **A. Not that I could -- not that I saw any**  
12 **evidence of in the documentation I reviewed.**  
13 Q. Did you see any indication in your business  
14 record of communications with the FHFA about this loan?  
15 **A. No.**  
16 Q. Did you see any indication in the documents  
17 forwarded from Bank of America that it had communicated  
18 with the FHFA regarding this loan?  
19 **A. No.**  
20 Q. What did you do to prepare for topic number 6,  
21 which is "communications between you and Freddie Mac or  
22 FHFA after receiving the association's notice -- and/or  
23 notice of sale" [as read]?  
24 MS. MORGAN: Let's get the court reporter  
25 the topic so she can...

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1 **A. I was going to say, can I just read the topic**  
2 **in so -- because you seem to be breaking up when you**  
3 **read the topics?**  
4 Q. (BY MS. EBRON) Sure.  
5 **A. The topic reads "communications between you**  
6 **and Freddie Mac or FHFA after receiving the**  
7 **association's notice of default and/or notice of sale"**  
8 **[as read].**  
9 **There were none.**  
10 Q. You looked at all of the places you would  
11 expect to see such communications and did not see any?  
12 **A. That's correct.**  
13 Q. Did you see any -- strike that. I've already  
14 asked that. I was going to ask you about topic number  
15 7, but it's one that I already asked.  
16 Is there any process or procedure for an  
17 association to obtain consent from the FHFA to proceed  
18 with the association foreclosure sale at the time that  
19 the association foreclosure sale took place in this  
20 case?  
21 MS. MORGAN: Objection; calls for  
22 speculation.  
23 **A. That would be a question for FHFA.**  
24 Q. (BY MS. EBRON) Have you ever heard of a  
25 policy or procedure -- sorry -- process or procedure for

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1 anyone to obtain consent from the FHFA to proceed with  
2 an association foreclosure sale?  
3 **A. No, I -- no, I'm not.**  
4 Q. What did you do with number 8 --  
5 THE REPORTER: I'm sorry, you cut out.  
6 MS. MORGAN: What did you do to prepare  
7 for topic 8?  
8 Q. (BY MS. EBRON) Sorry. What did you do to  
9 prepare for topic number 8, which is "your knowledge of  
10 procedure, if any, put in place by you, Freddie Mac,  
11 and/or FHFA for the association to consent from the FHFA  
12 to proceed with the association foreclosure sale" [as  
13 read]?  
14 **A. I reviewed NationStar's policies and**  
15 **procedures to find mention of communications between**  
16 **FHFA and NationStar in terms of HOA foreclosure sales**  
17 **and did not find any.**  
18 Q. Did you speak to anyone at Freddie Mac in  
19 preparation for topic number 8?  
20 **A. No, I did not.**  
21 Q. Did you speak to anyone at Freddie Mac in  
22 preparation for any of the topics listed in the  
23 deposition notice?  
24 **A. No, I did not.**  
25 Q. Did you speak to anyone at the FHFA in

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1 preparation for any of the deposition topics?  
2 **A. No, I did not.**  
3 Q. What did you do to prepare for topic number 9,  
4 which is your knowledge of the documents Bates stamped  
5 NSM00102 through NSM00153, which is identified as the  
6 funding report; NSM00215, which is identified as the TOS  
7 summary report; NSM00216, which is identified as the  
8 securities and pool information; NSM00217 through -221,  
9 which is identified as the mortgage payment history  
10 report; and NSM00222 through -223, which is identified  
11 as MIDAS report?  
12 **A. That would be a question for Freddie Mac as**  
13 **those are all their documents that are created and**  
14 **maintained by them. NationStar's not involved in**  
15 **creating or maintaining any of those.**  
16 Q. So would it be accurate to say that NationStar  
17 does not have knowledge of any of those documents listed  
18 in topic number 9?  
19 **A. NationStar, as I sit here today -- these**  
20 **aren't documents that NationStar maintains in their**  
21 **system of record in the normal course of business. And**  
22 **the topic reads "the policies and procedures for**  
23 **creating and maintaining the business records" [as read]**  
24 **and that's not --**  
25 Q. I'm on 9.

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1 **A. I'm sorry --**  
2 Q. I just --  
3 **A. -- I was looking at number 10. I apologize.**  
4 Q. Maybe what we should do is put the Third  
5 Supplemental Disclosure as an Exhibit Number 3?  
6 THE REPORTER: Yes.  
7 (Exhibit Number 3 was marked.)  
8 **A. I mean, these are documents I saw in my**  
9 **review. I mean, other than that, my knowledge of**  
10 **them --**  
11 Q. (BY MS. EBRON) Let me just go through them --  
12 **A. Okay.**  
13 Q. Let me just go through them with you and you  
14 can tell me if they're part of your business records  
15 first.  
16 **A. Okay.**  
17 Q. Okay. So for the document that starts at  
18 NSM00102 and goes through NSM00153, which has been  
19 identified as funding report, is this a document that is  
20 contained in NationStar's business records?  
21 **A. No, it is not.**  
22 Q. Did NationStar input any of the information  
23 into this document?  
24 **A. No.**  
25 Q. Does NationStar have knowledge of the policies

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<p>1 and procedures for creating and maintaining this funding 2 report? 3 <b>A. No.</b> 4 Q. Let's turn to the page that is Bates stamped 5 NSM00215, which is identified as the TOS summary report. 6 <b>A. Okay.</b> 7 Q. Is this a document that is contained in 8 NationStar's business records? 9 <b>A. No, it is not.</b> 10 Q. Did NationStar input any of the information 11 into the TOS summary report? 12 <b>A. No, they did not.</b> 13 Q. Does NationStar have any knowledge of the 14 policies or procedures for creating or maintaining the 15 TOS summary report? 16 <b>A. No.</b> 17 Q. Can you look at the page Bates NSM000216, 18 which is identified as securities and pool information? 19 <b>A. Okay.</b> 20 Q. Is this document part of NationStar's business 21 records? 22 <b>A. No, it is not.</b> 23 Q. Did NationStar input any information into this 24 securities and pool information page? 25 <b>A. No.</b></p> <p style="text-align: right;">Page 50</p>	<p>1 NSM00222 through -223. This has been identified in the 2 disclosure as MIDAS report. 3 <b>A. Okay.</b> 4 Q. Are these -- these look like screen shots. 5 Are these part of NationStar's business records? 6 <b>A. No, they're not.</b> 7 Q. Did NationStar enter any of the information 8 into what's been identified as the MIDAS report? 9 <b>A. No, they did not.</b> 10 Q. Does NationStar have knowledge of the 11 policies, practices, or procedures used to create or 12 maintain the MIDAS report? 13 <b>A. No.</b> 14 Q. What did you do to prepare for topic number 15 11, which is -- 16 <b>A. You want me to read it?</b> 17 Q. -- your knowledge -- "your knowledge of the 18 Freddie Mac single family seller/servicing guide in 19 effect currently and at the time of the association 20 foreclosure sale including the portions Bates stamped 21 NSM00154 to NSM00214" [as read]? 22 <b>A. I reviewed this document.</b> 23 Q. Anything else? 24 <b>A. No.</b> 25 Q. Did you speak to anyone in preparation for</p> <p style="text-align: right;">Page 52</p>
<p>1 Q. Does NationStar have any knowledge about the 2 policies/procedures for creating and maintaining this 3 securities/pool information? 4 <b>A. I'm sorry, just for the clarity of the record</b> 5 <b>because you broke up, securities and pool information,</b> 6 <b>is that what you said?</b> 7 Q. Right. That's what this document on the page 8 Bates stamped NSM216 has been identified as in the 9 disclosures. 10 <b>A. No, to answer your question.</b> 11 Q. Thank you. 12 Can you turn to the page Bates stamped 13 NSM00217 through -221, which has been identified as the 14 mortgage payment history report. 15 <b>A. Okay.</b> 16 Q. Is this a document that NationStar has in its 17 business records? 18 <b>A. No, it is not.</b> 19 Q. Did NationStar pull this report? 20 <b>A. Not that I'm aware of.</b> 21 Q. Is NationStar aware of the policies, 22 practices, or procedures used for creating and 23 maintaining this mortgage payment history report? 24 <b>A. No.</b> 25 Q. Can you look at the page Bates stamped</p> <p style="text-align: right;">Page 51</p>	<p>1 topic number 11? 2 <b>A. Other than internal and counsel present here</b> 3 <b>today, no.</b> 4 Q. Is there any portion of the Freddie Mac single 5 family seller/servicing guide that would have been in 6 effect leading up to the association foreclosure sale 7 that required NationStar to pay the association 8 assessments that were delinquent? 9 MS. MORGAN: Objection; calls for legal 10 conclusion. 11 <b>A. Not that I recall seeing.</b> 12 Q. (BY MS. EBRON) Does the Freddie Mac single 13 family seller/servicing guide that was in effect at the 14 time of the association foreclosure sale require 15 reporting of the foreclosure sale to Freddie Mac? 16 <b>A. I don't know.</b> 17 Q. What did you do to prepare for topic number 18 12, which is "your knowledge of any purchase agreement 19 or other contract applicable to the first deed of trust 20 between you and the entity from which you obtained your 21 interest in the loan underlying the first deed of trust" 22 [as read]? 23 <b>A. Nation -- I reviewed NationStar's system for</b> 24 <b>where a purchasing agreement would be found if it was</b> 25 <b>there; and, then, same thing with the contracts,</b></p> <p style="text-align: right;">Page 53</p>

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1 **NationStar's interest is solely as the servicer of the**  
2 **loan. So as I've stated multiple times where the**  
3 **pooling and servicing agreement on a nonGSE coded loan,**  
4 **would be found -- I found a document that pointed me to**  
5 **the single family seller and servicing guide and then**  
6 **the power of attorney. Those combined tell me that**  
7 **those are the servicing interest.**  
8 Q. Anything else?  
9 **A. No.**  
10 Q. So am I correct to understand that there is no  
11 purchase agreement between NationStar and any other  
12 entity separate and apart from just the seller/servicing  
13 guide?  
14 **A. That's not --**  
15 MS. MORGAN: I object to form.  
16 **A. That's not what I stated. I didn't see one.**  
17 **That doesn't mean that one doesn't exist. However, in**  
18 **my review, I wasn't able to find the purchasing**  
19 **agreement.**  
20 Q. (BY MS. EBRON) What did you do to prepare for  
21 topic number 13, which is "your knowledge of any  
22 purchase agreement applicable to the first deed of trust  
23 between the originating lender and the entity that you  
24 allege sold its interest to the Freddie Mac" [as read]?  
25 **A. That's --**

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1 MS. MORGAN: Object; calls for  
2 speculation.  
3 **A. That's a question that would be for Freddie**  
4 **Mac or the originating lender. NationStar was not the**  
5 **originating lender on this. I believe KB Mortgage**  
6 **Company was the originating lender. NationStar wasn't**  
7 **the original servicer either, so that would be**  
8 **information that Freddie Mac would have to provide you.**  
9 Q. (BY MS. EBRON) Okay. So is it accurate to  
10 say that NationStar doesn't have knowledge of any  
11 purchasing agreement applicable to the first deed of  
12 trust between the originating lender and the entity that  
13 sold its interest to Freddie Mac?  
14 **A. Could you say the very -- the first few words**  
15 **of that again? You broke up. Could you repeat your**  
16 **question basically?**  
17 Q. Okay. Would it be accurate to say that  
18 NationStar does not have knowledge of the purchase  
19 agreement applicable to the first deed of trust between  
20 the originating lender and the entity that sold its  
21 interest to Freddie Mac?  
22 **A. That's correct.**  
23 MS. MORGAN: Objection; form.  
24 **A. That's correct.**  
25 Q. (BY MS. EBRON) I believe we've already

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1 covered topic number 14, which is "your knowledge of any  
2 powers of attorney applicable to the first deed of trust  
3 in effect at the time of the association foreclosure  
4 sale" [as read].  
5 So what did you do to prepare for topic  
6 number 15, which is "your knowledge of the facts and  
7 circumstances surrounding the sale of the loan  
8 underlying the first deed of trust to any other entity"  
9 [as read]?

10 **A. I reviewed NationStar's system of record for**  
11 **the time period surrounding the -- I apologize. That**  
12 **would be -- I'm sorry; that would be a question for**  
13 **Freddie Mac.**

14 Q. Okay. So you reviewed your business records  
15 and did not see anything; is that right?

16 **A. That's correct. Any -- anything to do with**  
17 **any other entities would be a question for Freddie Mac**  
18 **or whatever entity that might be, NationStar wouldn't**  
19 **have any of those records from Freddie Mac or other**  
20 **entities.**

21 Q. Topic number 16 is "your knowledge of the  
22 transfer of servicing rights for the loans underlying  
23 the first" -- [as read]. What did you do to prepare for  
24 that topic?

25 **A. I reviewed NationStar's system of record for**

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1 **when the servicing rights were transferred, and I**  
2 **reviewed the single family seller and servicing guide.**

3 Q. Anything else?

4 **A. Other than just generally reviewing the system**  
5 **from the time of the servicing transfer in July of 2012,**  
6 **no.**

7 Q. Is NationStar a subservicer for Freddie Mac?

8 **A. Not that I could find any evidence of.**

9 Q. If NationStar were a subservicer for Freddie  
10 Mac, would the investor code indicate that or would your  
11 records indicate that there was a subservicing  
12 relationship?

13 MS. MORGAN: Objection; calls for  
14 speculation.

15 **A. It depends on loan to loan and what policy was**  
16 **in place when the servicing rights transferred, or when**  
17 **subservicing rights transferred. But in this situation,**  
18 **on this loan, I didn't see any evidence to support**  
19 **NationStar being a subservicer.**

20 Q. (BY MS. EBRON) Have you seen that in other  
21 files? So what type of evidence would you look for to  
22 see if there was a subservicer relationship?

23 MS. MORGAN: Objection; scope.

24 **A. It's situational to the investor and the file.**

25 **There may be notes -- I mean, there's a multitude of --**

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<p>1 of ways that one could ascertain that information out of</p> <p>2 LSAMS alone, let alone the pooling and servicing</p> <p>3 agreement SharePoint.</p> <p>4 Q. (BY MS. EBRON) Okay. I'm just asking because</p> <p>5 I deposed someone the other day -- not from</p> <p>6 NationStar -- who said that from within their system, it</p> <p>7 would -- the master servicer as the investor within</p> <p>8 their system. So that's just why I was asking that of</p> <p>9 you for NationStar.</p> <p>10 A. Gotcha.</p> <p>11 Q. Okay. What did you do to prepare for topic</p> <p>12 number 17, which is "your knowledge of any pooling and</p> <p>13 services agreements applicable to the first deed of</p> <p>14 trust" [as read]?</p> <p>15 A. I think we've gone over this multiple times,</p> <p>16 but I reviewed the coding on the main page of the</p> <p>17 collection history profile in LSAMS, which is in</p> <p>18 Exhibit 2 on page NSM00475. And I went to the pooling</p> <p>19 and servicing agreement SharePoint site, and by using</p> <p>20 that code, I was able to find that -- because this is a</p> <p>21 Freddie Mac loan and there is no pooling and servicing</p> <p>22 agreement, there is a -- it points us, instead, to the</p> <p>23 single family seller and servicing guide, which is in</p> <p>24 acting in place of a pooling and servicing agreement.</p> <p>25 And as I also stated, I believe in the prior deposition</p> <p style="text-align: right;">Page 58</p>	<p>1 the dates it was within a securitized trust, and</p> <p>2 documents or other evidence contained in your business</p> <p>3 records supporting this testimony" [as read]?</p> <p>4 A. There was -- I didn't -- well, I reviewed the</p> <p>5 SharePoint site, which would normally have a loan</p> <p>6 schedule if it's part of a securitized trust. Also, it</p> <p>7 would have a more nuanced investor code on page</p> <p>8 NSM00475. It wouldn't just say Freddie Mac.</p> <p>9 It would have -- it would be more of a</p> <p>10 code. It would be less obvious if it was in a</p> <p>11 securitized trust. It would normally have the number of</p> <p>12 certificates at a minimum. So I didn't see any evidence</p> <p>13 that it was part of a securitized trust.</p> <p>14 Q. Can you state with 100 percent certainty that</p> <p>15 at the time of the association foreclosure sale, that</p> <p>16 the loan was not contained within a securitized trust?</p> <p>17 A. That would be a question for Freddie Mac. As</p> <p>18 I sit here today, no, I cannot say with 100 percent</p> <p>19 certainty whether it was or was not. Freddie Mac has</p> <p>20 their own policies and procedures for when loans are in</p> <p>21 securitized trusts and when they're not, but I don't</p> <p>22 know those guidelines or policies and procedures.</p> <p>23 Q. So it's possible, even though you did not see</p> <p>24 any indication within your business records that the</p> <p>25 loan was within a securitized trust at the time of the</p> <p style="text-align: right;">Page 60</p>
<p>1 on this, that that was a semantics issue, because, in a</p> <p>2 sense, even though it's not titled a pooling and</p> <p>3 servicing agreement, the single family seller/servicing</p> <p>4 guide is the servicing agreement.</p> <p>5 Q. Right. So the difference between -- one of</p> <p>6 the differences between a pooling and servicing</p> <p>7 agreement and the Freddie Mac single family</p> <p>8 seller/servicing guide is that there's signature pages</p> <p>9 for the servicer and for the investor on the pooling and</p> <p>10 services agreement, right?</p> <p>11 MS. MORGAN: Objection; scope.</p> <p>12 A. Typically.</p> <p>13 Q. (BY MS. EBRON) Okay. Is there anything</p> <p>14 within NationStar's business records that indicates</p> <p>15 that, at the time of the association foreclosure sale,</p> <p>16 NationStar agreed to be the servicer and Freddie Mac</p> <p>17 agreed that NationStar would be the servicer?</p> <p>18 A. As I've already answered, I didn't see</p> <p>19 anything like that, but I have no reason to believe that</p> <p>20 Freddie Mac wasn't the servicer from when NationStar</p> <p>21 received the loan in July of 2012 until we sit here</p> <p>22 today, they're still the investor on the loan.</p> <p>23 Q. Okay. So what did you do to appear for topic</p> <p>24 number 18, which is "whether the loan underlying the</p> <p>25 first deed of trust was pulled into a securitized trust,</p> <p style="text-align: right;">Page 59</p>	<p>1 association foreclosure sale?</p> <p>2 A. I'm just saying that there's -- I can't say</p> <p>3 with certainty one way or the other. I can only say</p> <p>4 where it's at right now.</p> <p>5 Q. What do you mean where it's at right now?</p> <p>6 A. Right now, it doesn't appear in our system to</p> <p>7 be a part of a securitized trust. That's not to say it</p> <p>8 was or it was not at the time of the association sale.</p> <p>9 I don't know. That would be a question for Freddie Mac.</p> <p>10 Q. Okay. So when you were looking -- when we</p> <p>11 were looking at the screen shot from NationStar's system</p> <p>12 in Exhibit 2, Bates stamped NSM00475, there was no</p> <p>13 information after the number 472, and then also have</p> <p>14 FHLMC, that you weren't quite sure what it meant?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. How do you know that doesn't mean that</p> <p>17 it was in a securitized trust?</p> <p>18 A. That's what I --</p> <p>19 MS. MORGAN: Objection; form.</p> <p>20 A. And as I've stated, I don't know one way or</p> <p>21 the other if it was in a securitized trust at the time</p> <p>22 of the sale. I've never claimed to know one way or the</p> <p>23 other throughout this deposition.</p> <p>24 Q. (BY MS. EBRON) Okay. You mentioned that you</p> <p>25 had read through Ms. Janati's deposition transcript; is</p> <p style="text-align: right;">Page 61</p>

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<p>1 that correct?</p> <p>2     <b>A. Yes.</b></p> <p>3     Q. Besides her mentioning of the pooling and</p> <p>4 servicing agreement that was applicable to this loan,</p> <p>5 did you see any other testimony that stood out to you as</p> <p>6 being potentially misleading or inaccurate, not quite</p> <p>7 right?</p> <p>8             MS. MORGAN: Objection; form and exceeds</p> <p>9 the scope.</p> <p>10    <b>A. And I would need to have the deposition in</b></p> <p>11 <b>front of me in order to begin to give you an answer to</b></p> <p>12 <b>that.</b></p> <p>13    Q. (BY MS. EBRON) Okay. I just was wondering if</p> <p>14 there was anything else that you recalled besides the</p> <p>15 pooling and servicing agreement, which you brought up.</p> <p>16    <b>A. And based on the topics provided to me, that</b></p> <p>17 <b>seemed to be the -- the part of her testimony that</b></p> <p>18 <b>applied to what these topics are about.</b></p> <p>19    Q. Okay. Around that same testimony, she had</p> <p>20 also suggested that the loan had been securitized, so</p> <p>21 that's why I was asking.</p> <p>22             MS. MORGAN: Objection; form, and to the</p> <p>23 extent that it may misstate Ms. Janati's testimony.</p> <p>24    <b>A. Yeah, I don't -- I don't have that.</b></p> <p>25    Q. (BY MS. EBRON) I'll just read the testimony</p> <p style="text-align: right;">Page 62</p>	<p>1 in the pooling and services agreement?</p> <p>2             MS. MORGAN: I just object to the extent</p> <p>3 that he's already provided testimony in response to his</p> <p>4 knowledge of the securitization or lack thereof.</p> <p>5    <b>A. Yeah, I mean...</b></p> <p>6    Q. (BY MS. EBRON) I just asked if you -- if it</p> <p>7 stood out to you?</p> <p>8    <b>A. It -- it did not.</b></p> <p>9    Q. Okay. That's all.</p> <p>10            I'm going to reserve the right to recall</p> <p>11 to the extent that additional documents are disclosed.</p> <p>12            MS. MORGAN: And we'll reserve the right</p> <p>13 to object to that.</p> <p>14            MS. EBRON: Right. I'm just -- I think</p> <p>15 that there's some testimony that was given that</p> <p>16 documents were not produced for, but that -- powers of</p> <p>17 attorney, the investor, et cetera.</p> <p>18            Actually, I do have one another question.</p> <p>19    Q. (BY MS. EBRON) Have you seen the milestones</p> <p>20 for this loan?</p> <p>21    <b>A. No, I have not.</b></p> <p>22            MS. EBRON: That is all for now.</p> <p>23            Can I please get a copy of the transcript.</p> <p>24            THE REPORTER: Yes, ma'am.</p> <p>25            MS. MORGAN: I have two quick questions.</p> <p style="text-align: right;">Page 64</p>
<p>1 really quick.</p> <p>2            It's page 57, starting line 8, I asked the</p> <p>3 question: "And what in your system specifically lets</p> <p>4 you know that it's a Freddie Mac loan?"</p> <p>5            Answer: "In the servicing system that we</p> <p>6 use, LSAMS, when you go into account, it does say up on</p> <p>7 the screen, FHLMC, which means securitized by Freddie.</p> <p>8 We call it Freddie loans" [as read].</p> <p>9            That's -- that's what I was referring to.</p> <p>10   <b>A. I mean, there's --</b></p> <p>11            MS. MORGAN: I'll object that that doesn't</p> <p>12 indicate a time frame.</p> <p>13   <b>A. I also think that that may be an issue of --</b></p> <p>14            MS. MORGAN: Well, don't --</p> <p>15   <b>A. I --</b></p> <p>16            MS. MORGAN: I don't want you to</p> <p>17 speculate.</p> <p>18   <b>A. Yeah, I don't want to talk -- because that</b></p> <p>19 <b>wasn't one of the topics here, that's something -- I</b></p> <p>20 <b>don't want to state what she was thinking when she</b></p> <p>21 <b>answered that.</b></p> <p>22    Q. (BY MS. EBRON) Okay. So whether the loan was</p> <p>23 securitized is actually topic number 18. But would I be</p> <p>24 correct to understand that her testimony about the loan</p> <p>25 being securitized is not something that stood out to you</p> <p style="text-align: right;">Page 63</p>	<p>1            EXAMINATION</p> <p>2 BY MS. MORGAN:</p> <p>3    Q. Keith, in your review of NationStar system of</p> <p>4 record, did you find anything at all leading you to</p> <p>5 believe that this loan is not currently owned by Freddie</p> <p>6 Mac?</p> <p>7    <b>A. No, I did not.</b></p> <p>8    Q. And in your review of NationStar system of</p> <p>9 record, did you find anything at all that would lead you</p> <p>10 to believe that the loan was not owned by Freddie Mac in</p> <p>11 April of 2013?</p> <p>12   <b>A. No, I did not.</b></p> <p>13            MS. MORGAN: Okay. That's all I have.</p> <p>14            MS. EBRON: Thank you.</p> <p>15            Do you have --</p> <p>16            THE REPORTER: Are we off? Are we done?</p> <p>17            MS. EBRON: No.</p> <p>18            THE REPORTER: I'm sorry.</p> <p>19            FURTHER EXAMINATION</p> <p>20 BY MS. EBRON:</p> <p>21    Q. Do you have a list of notes that you took</p> <p>22 before the deposition today?</p> <p>23    <b>A. Yeah, but I've taken a significant amount of</b></p> <p>24 <b>notes on them. I mean, they're just handwritten notes</b></p> <p>25 <b>that I --</b></p> <p style="text-align: right;">Page 65</p>

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<div>1 Q. Right.</div> <div>2 A. I don't know how I would --</div> <div>3 Q. So am I correct to understand that the notes</div> <div>4 that you took in preparation for today's deposition</div> <div>5 would include dates of servicing, dates of origination,</div> <div>6 that type of thing?</div> <div>7 A. I mean, I have the date of origination. I</div> <div>8 have the date of servicing transfer, the date of</div> <div>9 assignment, another servicing transfer, another</div> <div>10 assignment, the date that the deed of trust was</div> <div>11 re-recorded, the HOA sale, and the HOA foreclosure deed</div> <div>12 being recorded.</div> <div>13 Q. Okay. Anything else?</div> <div>14 A. The homeowner's name, the loan number, Freddie</div> <div>15 Mac is the investor, today's date, and endorsements on</div> <div>16 the note.</div> <div>17 Q. Okay. Thank you.</div> <div>18 MS. MORGAN: Are we done?</div> <div>19 MS. EBRON: Yes.</div> <div>20 MS. MORGAN: Okay.</div> <div>21 (Proceedings concluded at 1:31 p.m.)</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 66</div>	

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: NORTHSTART MORTGAGE, LLC BY AND THROUGH

3 KEITH KOVALIC DATE: SEPTEMBER 22, 2017

4 PAGE LINE CHANGE REASON

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I, NORTHSTART MORTGAGE, LLC BY AND THROUGH KEITH KOVALIC, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

NORTHSTART MORTGAGE, LLC BY AND  
THROUGH KEITH KOVALIC

THE STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, on

this day personally appeared NORTHSTART MORTGAGE, LLC BY  
AND THROUGH KEITH KOVALIC, known to me (or proved to me  
under oath or through \_\_\_\_\_)  
(description of identity card or other document)) to be  
the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that they executed the  
same for the purposes and consideration therein  
expressed.

Given under my hand and seal of office this

day of \_\_\_\_\_, 2017.

NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

1     STATE OF TEXAS         )  
2     COUNTY OF DALLAS     )

3             I, LISA C. HUNDT, a Certified Shorthand Reporter in  
4     and for the State of Texas, hereby certify that,  
5     pursuant to the agreement hereinbefore set forth, there  
6     came before me on the 22nd day of September, A.D, 2017,  
7     at 11:34 a.m., at the office of Akerman, located at 2001  
8     Ross Avenue, Suite 3600, in the City of Dallas, State of  
9     Texas, the following named person, to-wit: NORTHSTART  
10    MORTGAGE, LLC BY AND THROUGH KEITH KOVALIC, who was by  
11    me duly cautioned and sworn to testify to the truth, the  
12    whole truth, and nothing but the truth of his knowledge  
13    touching and concerning the matters in controversy in  
14    this cause; and that he was thereupon carefully examined  
15    upon his oath and his examination reduced to writing  
16    under my supervision; that the deposition is a true  
17    record of the testimony given by the witness, same to be  
18    sworn and subscribed by said witness before any Notary  
19    Public, pursuant to the agreement of the parties; and  
20    that the amount of time used by each party at the  
21    deposition is as follows:

22             Ms. Melanie D. Morgan - 0 hours, 1 minute,

23             Ms. Diana S. Ebron - 1 hour, 50 minutes;

24             I further certify that I am neither attorney nor  
25    counsel for, nor related to or employed by, any of the

1 parties to the action in which this deposition is taken,  
2 and further, that I am not a relative or employee of any  
3 attorney or counsel employed by the parties hereto, or  
4 financially interested in the action.

5 I further certify that before the completion of the  
6 deposition, \_\_\_X\_\_\_ the Deponent, and/or \_\_\_\_\_ the  
7 Plaintiff/Defendant, \_\_\_X\_\_\_ did \_\_\_\_\_ did not request  
8 to review the transcript.

9 In witness whereof, I have hereunto set my hand and  
10 affixed my seal this 16th day of October, A.D. 2017.

11  
12  
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15 \_\_\_\_\_  
16 LISA C. HUNDT, CSR, RPR, CLR  
17 Texas CSR No. 6533  
18 Expiration Date: 12/31/18  
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# Exhibit C

**Scaturro, Tenesa (Assoc-Las)**

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**From:** Diana Ebron <diana@kgelegal.com>  
**Sent:** Tuesday, September 12, 2017 11:41 AM  
**To:** Morgan, Melanie (Ptr-Las); Scaturro, Tenesa (Assoc-Las)  
**Cc:** Jackie Gilbert; Karen Hanks; Moonlight Stroll; Michael L. Sturm  
**Subject:** A-13-684715-C Moonlight Stroll/Gutierrez-Deposition of Countrywide, Nationstar, and Freddie Mac

Hi Melanie and Tenesa,

We need to set the deposition of Countrywide, Nationstar and Freddie Mac in this case. We deposed Nationstar a few years ago, but would like to know if you would agree to a second deposition because of the new documents that were previously withheld and now disclosed. Please let me know of available dates.

Thanks,  
Diana

**Diana S. Ebron, Esq.**

**KIM GILBERT EBRON**

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## Scaturro, Tenesa (Assoc-Las)

---

**From:** Diana Ebron <diana@kgelegal.com>  
**Sent:** Tuesday, September 12, 2017 5:15 PM  
**To:** Scaturro, Tenesa (Assoc-Las); Morgan, Melanie (Ptnr-Las)  
**Cc:** Jackie Gilbert; Karen Hanks; Michael L. Sturm; de715b910+matter1020072626@maildrop.clio.com  
**Subject:** RE: DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

Thanks!

**From:** Tenesa.Scaturro@akerman.com [mailto:Tenesa.Scaturro@akerman.com]  
**Sent:** Tuesday, September 12, 2017 5:15 PM  
**To:** Diana Ebron <diana@kgelegal.com>; melanie.morgan@akerman.com  
**Cc:** Jackie Gilbert <jackie@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; Michael L. Sturm <Mike@kgelegal.com>; de715b910+matter1020072626@maildrop.clio.com; Tenesa.Scaturro@akerman.com  
**Subject:** RE: DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

I've sent initial through third supplemental disclosure via sendthisfile.com.

**From:** Diana Ebron [mailto:diana@kgelegal.com]  
**Sent:** Tuesday, September 12, 2017 5:06 PM  
**To:** Scaturro, Tenesa (Assoc-Las) <Tenesa.Scaturro@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Jackie Gilbert <jackie@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; Michael L. Sturm <Mike@kgelegal.com>; Moonlight Stroll <de715b910+matter1020072626@maildrop.clio.com>  
**Subject:** DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

Hi Tenesa and Melanie,

I can only find email notifications for the initial and third supplemental disclosures in this case. It looks like the first and second supplemental disclosures may be Lubawy's expert report (which we had from an expert disclosure) and documents produced by the association. Can you forward those? Also, have you made any other disclosures? If so, can you forward?

Thanks,  
Diana

**From:** efilingmail@tylerhost.net [mailto:efilingmail@tylerhost.net]  
**Sent:** Friday, July 28, 2017 4:36 PM  
**To:** Diana Ebron <diana@kgelegal.com>  
**Subject:** Notification of Service for Case: A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344



# Notification of Service

Case Number: A-13-684715-C  
Case Style: Ignacio Gutierrez, Plaintiff(s)vs.SFR  
Investments Pool 1 LLC, Defendant(s)  
Envelope Number: 1285344

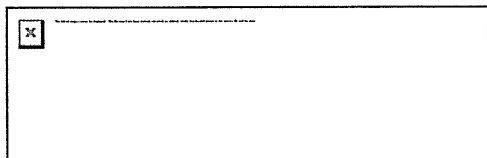
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Filing Details	
Case Number	A-13-684715-C
Case Style	Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s)
Date/Time Submitted	7/28/2017 4:32 PM PST
Filing Type	Service Only
Filing Description	Third Supplement To Initial Disclosure Of Documents And Witnesses
Filed By	Ariel Stern
Service Contacts	<p>SFR Investments Pool 1 LLC:</p> <p>KGE E-Service List (<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>)</p> <p>Diana Cline Ebron (<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>)</p> <p>KGE Legal Staff (<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>)</p> <p>Michael Sturm (<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>)</p> <p>SFR Investments Pool 1 LLC:</p> <p>KGE E-Service List (<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>)</p> <p>Diana Cline Ebron (<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>)</p> <p>KGE Legal Staff (<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>)</p> <p>Michael Sturm (<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>)</p> <p>SFR Investments Pool 1 LLC:</p> <p>KGE E-Service List (<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>)</p> <p>Diana Cline Ebron (<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>)</p>

	<p>KGE Legal Staff (<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>)</p> <p>Michael Sturm (<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>)</p> <p>Other Service Contacts not associated with a party on the case:</p> <p>"Darren T. Brenner, Esq." . (<a href="mailto:darren.brenner@akerman.com">darren.brenner@akerman.com</a>)</p> <p>Akerman Las Vegas Office . (<a href="mailto:akermanlas@akerman.com">akermanlas@akerman.com</a>)</p> <p>Diana Cline Ebron . (<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>)</p> <p>E-Service for Kim Gilbert Ebron . (<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>)</p> <p>Michael L. Sturm . (<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>)</p> <p>P. Sterling Kerr . (<a href="mailto:psklaw@aol.com">psklaw@aol.com</a>)</p> <p>Richard J. Vilkin . (<a href="mailto:richard@vilkinlaw.com">richard@vilkinlaw.com</a>)</p> <p>Tomas Valerio . (<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>)</p>
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# **Exhibit B**



**DECLARATION OF MELANIE D. MORGAN**

I, Melanie D. Morgan, Esq. declare as follows:

1. I am a partner at Akerman LLP and am admitted to practice law in the State of Nevada.

2. I am counsel for Nationstar Mortgage LLC in this action.

3. I make this declaration in support of Nationstar's opposition to SFR's counter-motion to strike.

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. On September 12, 2017 at 11:41 a.m., counsel for SFR, Diana Ebron, sent an email to me and Tenesa Scaturro, another attorney in my office, stating, "We need to set the deposition [sic] of Countrywide, Nationstar **and Freddie Mac** in this case." (Ex. 1)

6. That same day, September 12, 2017 at 5:06 p.m., Ms. Ebron sent a second email to me and M [redacted] notifications for the initial and third supplemental [redacted] and second supplemental disclosures may be Luba [redacted] (an expert disclosure) and documents produced by [redacted] ? Also, have you made any other disclosures? I [redacted]

EX B

7. [redacted] in an email stating, "I've sent initial through third s [redacted]" (Ex. 2, at 5:15 email).

[Signature]

---

8. After this September 12, 2017 email exchange, Ms. Ebron never contacted my office again asking to a witness from Freddie Mac in this case.

9. It was always Nationstar's intent to disclose a witness for Freddie Mac upon remand, and at all times during the September 12, 2017 email exchange I thought we had done so.

10. I did not realize that a witness for Freddie Mac had not been disclosed until November 29, 2017, when I read SFR's motion for summary judgment. My office immediately disclosed a witness for Freddie Mac that same day.

11. To date, Ms. Ebron has not asked to depose Freddie Mac, other than in the September 12, 2017 email Ms. Ebron sent before she realized Nationstar had inadvertently failed to disclose a witness for Freddie Mac.

12. My office has a number of active cases in litigation with SFR and Ms. Ebron's office involving loans owned by either Fannie Mae or Freddie Mac. It is my office's practice to disclose a witness for either Fannie Mae or Freddie Mac in these cases.

13. Upon Ms. Ebron's request, we held a meet and confer conference on November 30, 2017. During the call, I explained that the failure to disclose a witness for Freddie Mac was an honest mistake, and that I had been under the belief that the witness had been disclosed. I also explained that SFR is not prejudiced because it has known for years that Freddie Mac has claimed to own the loan at issue and because there is no trial date set. Ms. Ebron asked that I voluntarily withdraw the disclosure, which I declined. Ms. Ebron never requested a deposition of Freddie Mac during the call.

14. Upon information and belief, Ms. Ebron thought that a witness for Freddie Mac witness had been disclosed on September 12, 2017 when she sent the email asking for available

dates to depose Freddie Mac. After Ms. Ebron asked for all discloses later that same day, which my office provided, she realized that the witness had not been disclosed. Upon information and belief, it was at this point that SFR chose to make a strategic decision to remain silent until filing its motion for summary judgment.

15. Neither Nationstar nor my office is “using gamesmanship” to try to deprive SFR of its right to challenge the evidence of Freddie Mac’s ownership of this loan. The failure to disclose a witness for Freddie Mac until November 29, 2017 was an honest mistake, which was remedied immediately by way of the November 29, 2017 disclosure.

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

DATED this 10<sup>th</sup> day of January, 2018.

/s/ Melanie D. Morgan  
Melanie D. Morgan

# **EXHIBIT 1**

# **EXHIBIT 1**

**Scaturro, Tenesa (Assoc-Las)**

---

**From:** Diana Ebron <diana@kgelegal.com>  
**Sent:** Tuesday, September 12, 2017 11:41 AM  
**To:** Morgan, Melanie (Ptnr-Las); Scaturro, Tenesa (Assoc-Las)  
**Cc:** Jackie Gilbert; Karen Hanks; Moonlight Stroll; Michael L. Sturm  
**Subject:** A-13-684715-C Moonlight Stroll/Gutierrez-Deposition of Countrywide, Nationstar, and Freddie Mac

Hi Melanie and Tenesa,

We need to set the deposition of Countrywide, Nationstar and Freddie Mac in this case. We deposed Nationstar a few years ago, but would like to know if you would agree to a second deposition because of the new documents that were previously withheld and now disclosed. Please let me know of available dates.

Thanks,  
Diana

**Diana S. Ebron, Esq.**

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Direct: (702) 629-3200

Fax: (702) 485-3301

Cell: (702) 351-3612

# **EXHIBIT 2**

# **EXHIBIT 2**

## Scaturro, Tenesa (Assoc-Las)

---

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**Sent:** Tuesday, September 12, 2017 5:15 PM  
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**Cc:** Jackie Gilbert; Karen Hanks; Michael L. Sturm; de715b910+matter1020072626@maildrop.clio.com  
**Subject:** RE: DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

Thanks!

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**Subject:** RE: DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

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**Cc:** Jackie Gilbert <jackie@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; Michael L. Sturm <Mike@kgelegal.com>; Moonlight Stroll <de715b910+matter1020072626@maildrop.clio.com>  
**Subject:** DISCLOSURES NEEDED- A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

Hi Tenesa and Melanie,

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Thanks,  
Diana

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**Sent:** Friday, July 28, 2017 4:36 PM  
**To:** Diana Ebron <diana@kgelegal.com>  
**Subject:** Notification of Service for Case: A-13-684715-C, Ignacio Gutierrez, Plaintiff(s)vs.SFR Investments Pool 1 LLC, Defendant(s) for filing Service Only, Envelope Number: 1285344

# **EXHIBIT 3**

# **EXHIBIT 3**





## Notification of Service

Case Number: A-13-684715-C  
Case Style: Ignacio Gutierrez, Plaintiff(s) vs. SFR  
Investments Pool 1 LLC, Defendant(s)  
Envelope Number: 1285344

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-13-684715-C
Case Style	Ignacio Gutierrez, Plaintiff(s) vs. SFR Investments Pool 1 LLC, Defendant(s)
Date/Time Submitted	7/28/2017 4:32 PM PST
Filing Type	Service Only
Filing Description	Third Supplement To Initial Disclosure Of Documents And Witnesses
Filed By	Ariel Stern
Service Contacts	SFR Investments Pool 1 LLC:  KGE E-Service List ( <a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a> )  Diana Cline Ebron ( <a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a> )  KGE Legal Staff ( <a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a> )  Michael Sturm ( <a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a> )  SFR Investments Pool 1 LLC:  KGE E-Service List ( <a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a> )  Diana Cline Ebron ( <a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a> )  KGE Legal Staff ( <a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a> )  Michael Sturm ( <a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a> )  SFR Investments Pool 1 LLC:  KGE E-Service List ( <a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a> )  Diana Cline Ebron ( <a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a> )

KGE Legal Staff ([staff@kgelegal.com](mailto:staff@kgelegal.com))

Michael Sturm ([mike@kgelegal.com](mailto:mike@kgelegal.com))

Other Service Contacts not associated with a party on the case:

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Akerman Las Vegas Office . ([akermanlas@akerman.com](mailto:akermanlas@akerman.com))

Diana Cline Ebron . ([diana@kgelegal.com](mailto:diana@kgelegal.com))

E-Service for Kim Gilbert Ebron . ([eservice@kgelegal.com](mailto:eservice@kgelegal.com))

Michael L. Sturm . ([mike@kgelegal.com](mailto:mike@kgelegal.com))

P. Sterling Kerr . ([psklaw@aol.com](mailto:psklaw@aol.com))

Richard J. Vilkin . ([richard@vilkinlaw.com](mailto:richard@vilkinlaw.com))

Tomas Valerio . ([staff@kgelegal.com](mailto:staff@kgelegal.com))

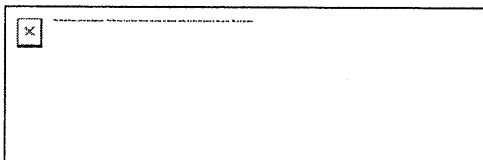
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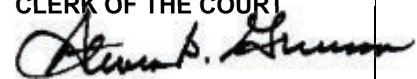
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# **TAB 20**



**RPLY**

DIANA S. EBRON, ESQ.  
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*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES, INC.;  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION; KB HOME MORTGAGE  
COMPANY, a foreign corporation, DOE  
Individuals I through X, ROE Corporations and  
Organizations I through X,

Defendants.

And Related Claims

Case No. A-13-684715-C

Dept. No. XVII

**SFR INVESTMENTS POOL 1, LLC'S  
REPLY IN SUPPORT OF COUNTER  
MOTION TO STRIKE**

**Hearing Date: January 17, 2018**

**Hearing Time: 8:30 a.m.**

SFR Investments Pool 1, LLC ("SFR") hereby replies in support of its motion to strike Exhibit B to Bank's motion, "Federal Home Loan Mortgage Corporation's ["Freddie Mac's"] Declaration in Support of Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment" because neither Freddie Mac nor Dean Meyer were disclosed within the original or the extended discovery period. This reply is based on the following memorandum of points and authorities, the papers and pleadings on file herein, including SFR's motion for summary judgement and SFR's opposition to Nationstar's motion to reopen discovery and oral argument heard by the Court at the hearing on this matter.

...

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

In Nationstar's opposition to SFR's counter-motion to strike the late disclosure of Freddie Mac as a witness and the declaration of Dean Meyer, it boldly states, that "Nationstar's disclosure was timely as Nevada's Rules of Civil Procedure do not mandate that supplements to initial disclosures be made before the discovery cutoff date." Nationstar cites to NRCP 16.1 in support of this statement, but fails to point to any language that could potentially allow disclosures well after the close of discovery, at the summary judgment phase. Similarly, it fails to provide any case law to support its position.

Nationstar should be held to its position that it does not need Freddie Mac to be a party or to produce evidence as a witness in this case. It should not be allowed to slip in a new witness after the close of discovery, cutting off any opportunity of SFR to depose that witness. Nationstar's opposition to SFR's counter-motion to strike is essentially a motion to reopen discovery that must be denied. Nationstar has failed to show good cause for an extension of discovery as required by NRCP 16(b). Nationstar's counsel's declaration fails to explain how it "inadvertently" failed to name Freddie Mac as a witness in any of its initial or five supplemental disclosures signed pursuant to NRCP 11, despite making multiple revisions to the witness section of the disclosure. Nationstar does not fully explain why it purportedly did not learn of its failure to disclose until November 29, 2017 when SFR references the non-disclosure in its motion for summary judgment filed on November 16, 2017.

In addition to its failure to show good cause, Nationstar's bad faith is apparent on the face of its briefs. If Nationstar truly "inadvertently failed to disclose Freddie Mac as a witness," it would at least offer to attempt to mitigate the prejudice to SFR caused by its late disclosure. But it does not. Instead it asks for discovery to "be reopened for the limited purpose of allowing Nationstar to disclose a Freddie Mac witness." It appears Nationstar is using gamesmanship to try to deprive SFR of its right to properly challenge the purported evidence by waiting until well after the time SFR could have subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information to this litigation.

1 As the Nevada Court of Appeals explained, “[d]isregard of the [scheduling] order would  
2 undermine the court's ability to control its docket, disrupt the agreed-upon course of the  
3 litigation, and reward the indolent and the cavalier.” *Nutton v. Sunset Station, Inc.*, 131 Nev.  
4 Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) (citing *Johnson v. Mammoth Recreations,*  
5 *Inc.*, 975 F.2d 604, 610 (9th Cir.1992).) In this case, as outlined below, Nationstar has  
6 disregarded the deadlines in the scheduling orders over and over again. Nationstar’s failure to  
7 comply with the requirements of NRCP 16.1 has already caused extensive delay and duplicative  
8 costs for SFR that would have been unnecessary if Nationstar had properly disclosed documents  
9 in the first instance. Granting Nationstar’s instant motion would “reward the indolent and  
10 cavalier.” Nationstar’s motion should be denied, and SFR’s countermotion to strike the rogue  
11 declaration of Freddie Mac attached to Nationstar’s motion for summary judgment should be  
12 granted.

## 13 **II. BACKGROUND**

14 Nationstar first appeared in this litigation in September 2013 by filing a motion to dismiss  
15 SFR’s claims. The motion was ultimately granted. On November 25, 2014, a stipulation and  
16 order vacating the order granting Nationstar’s motion to dismiss with prejudice and entering an  
17 order denying the motion to dismiss was filed. On December 22, 2014, the parties submitted a  
18 joint case conference report. On December 31, 2014, a scheduling order was entered that set the  
19 close of discovery on August 6, 2015 and a dispositive motion on September 8, 2015.

20 Although SFR granted an extension of the initial disclosure deadline from November 20,  
21 2014 to December 30, 2014, Nationstar failed to make its initial disclosures until July 9, 2015.  
22 The initial disclosures failed to mention Freddie Mac as an entity “likely to have information  
23 discoverable under Rule 26(b)” as required by NRCP 16.1(a)(1)(A). The documents attached to  
24 Nationstar’s initial disclosures were limited to “Recorded documents for APN 179-31-714-046.”

25 On July 27, 2015, Nationstar made its first supplemental disclosures adding only  
26 “Documents produced responsive to subpoena duces tecum served upon by Nevada Association  
27 Services, Inc.” Again, Nationstar failed to include Freddie Mac as having any discoverable  
28 information or any documents evidencing Freddie Mac’s purported interest.

1 Later, after the close of discovery and four days before the dispositive motion deadline,  
2 on September 4, 2015, Nationstar made its second supplemental disclosure which again did not  
3 mention Freddie Mac as a potential witness. Similar to the previous disclosures, Nationstar's  
4 second supplemental disclosure failed to provide any documents showing Freddie Mac's  
5 purported interest in the Deed of Trust—instead, it disclosed an expert report and “Documents  
6 produced responsive to Subpoena Duces Tecum served upon Horizon Heights Homeowners  
7 Association on July 22, 2015.”

8 On September 8, 2015, SFR filed its motion for summary judgment. Nationstar failed to  
9 file any dispositive motion by the deadline. Nationstar filed a “counter motion” for summary  
10 judgment 20 days after the dispositive motion deadline. SFR's motion was ultimately granted.

11 This matter was remanded from the Nevada Supreme Court with very simple  
12 instructions. This Court was to conclude “whether Freddie owned the loan in question, or  
13 whether Nationstar had a contract with Freddie Mac or the FHFA to service the loan in  
14 question.” *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758 (Nev.  
15 2017). As a result of the remand, the Bank had one job: prove that Freddie owned the loan and  
16 that the Bank had a right to service this loan on behalf of Freddie.

17 Although it was SFR's position that discovery should not be reopened, at a July 19, 2017  
18 status check, Nationstar requested and received 90 days of additional discovery to produce the  
19 evidence it failed to produce in nearly four previous years of litigation. *See* July 19, 2017 Status  
20 Hearing Transcript, attached as **Exhibit A**.

21 In its argument to obtain additional time for discovery, Nationstar's counsel explained  
22 that it needed to make additional disclosures and acknowledged that once Nationstar made those  
23 disclosures, SFR should have the opportunity to do “anything and everything they need—they  
24 believe is necessary to evaluate that evidence” including take depositions. *Id.* at 4:5-17. SFR's  
25 counsel confirmed that SFR would need to take depositions of “whoever they're going to  
26 disclose.” *Id.* at 4:21.

27 Importantly, at the same hearing, counsel for Nationstar also expressed its position that  
28 the evidence previously produced, “in the form of testimony from Nationstar saying it was the

1 servicer and it—and that Freddie owns the loan” was enough to prove the servicing relationship  
2 and Freddie’s ownership. *Id.* at 3:21-4:4.

3 After the status check, on July 28, 2017, Nationstar made its third supplemental  
4 disclosures adding that Nationstar’s witness would testify as to Freddie Mac’s ownership and  
5 disclosing several hundred pages of documents not previously disclosed. Freddie Mac was not  
6 named as a witness. On September 19, 2017, Nationstar made its fourth supplemental  
7 disclosures, adding three additional witnesses, but not Freddie Mac. The fourth supplemental  
8 disclosure also added several documents. On the last day of discovery, October 17, 2017,  
9 Nationstar made its fifth supplemental disclosure, listing, but not producing a “Payoff statement”  
10 and updating its computation of damages.

11 Although SFR had previously gone through the expense of deposing Nationstar, during  
12 the extended post-remand discovery period, SFR had to depose Nationstar a second time due to  
13 the hundreds of pages of documents disclosed post-remand. SFR’s position has always been that  
14 Freddie Mac does not actually have an interest in the loan underlying the Deed of Trust or any  
15 relevant information to this case. The reason SFR did not notice the deposition of Freddie Mac  
16 during the discovery period was because Nationstar had not disclosed Freddie Mac as a witness.  
17 Additionally, Nationstar changed the description of the testimony that it would provide to  
18 include “Freddie Mac’s ownership.” It appeared that the Bank would rely on its own witness to  
19 attempt to prove both Freddie Mac’s purported ownership and its servicing/agency relationship  
20 with Freddie Mac/FHFA. It was this change in the description of Nationstar’s testimony,  
21 combined with Nationstar’s consistent position that Freddie Mac was not necessary to the  
22 litigation in this case and several other cases that led SFR to believe Nationstar’s strategy was to  
23 attempt to prove Freddie Mac’s ownership and the servicing relationship through testimony from  
24 Nationstar alone. Nationstar attempts to shift the blame onto SFR, claiming that SFR is somehow  
25 responsible and not prejudiced by Nationstar’s failure to disclose because SFR purportedly knew  
26 the non-disclosure was “inadvertent.” It most certainly did not. If Nationstar truly believed it  
27 had disclosed Freddie Mac as a witness, it would have given available dates for Freddie Mac’s  
28 deposition after counsel’s first email. It did not.



1 The undersigned counsel was surprised by the testimony of Nationstar during the second  
2 deposition and the witnesses position that he could not testify about any of the documents it  
3 disclosed that purportedly show an interest by Freddie Mac. By then, there was no longer time  
4 in discovery to subpoena Freddie Mac. Nationstar makes a big deal about SFR not following up  
5 again

6 On November 15, 2017 and November 16, 2017, Nationstar and SFR filed their motions  
7 for summary judgment. SFR's motion included a reference to Nationstar's inability to  
8 authenticate certain documents because Nationstar's witness had testified that he could not do so  
9 and Freddie Mac had not been disclosed as a witness. Nationstar's motion included a declaration  
10 from Dean Meyer, employee of Freddie Mac.

11 On November 29, 2017 at 6:33 pm, Nationstar served its sixth supplemental disclosure  
12 which named Freddie Mac as a witness. In a meet and confer, even though SFR explained that it  
13 would be prejudiced by the inability to depose Freddie Mac due to the late disclosure, Nationstar  
14 insisted the late disclosure was "harmless." During the meet and confer, counsel for SFR  
15 confirmed Nationstar's position that it would not allow a deposition of Freddie Mac, despite the  
16 late disclosure.

### 17 **III. LEGAL ARGUMENT**

18 The Nevada Rules of Civil Procedure "shall be construed and administered to secure the  
19 *just, speedy, and inexpensive determination of every action.*" NRCP 1 (emphasis added).  
20 Allowing Nationstar to keep its rogue exhibits by effectively reopening discovery at this late date  
21 to make a disclosure it had every opportunity to make—and was required to make—during two  
22 separate discovery periods is not just. Further it would encourage Nationstar to continue to cause  
23 delay and added expense in similar cases.

24 In its opposition to SFR's counter-motion to strike, Nationstar fails to address the fact  
25 that NRCP 16.1(a)(1)(A) required the Bank to provide the "name and, if known, the address and  
26 telephone number of each individual likely to have information discoverable under Rule 26(b),  
27 including for impeachment or rebuttal, identifying the subjects of the information" within 14  
28 days after the Rule 16.1(b) conference, which in this case was held on November 6, 2014.

1 Similarly, Nationstar failed to address SFR's argument that pursuant to NRC  
2 16.1(e)(3), the Court "shall impose upon the party or a party's attorney, or both, appropriate  
3 sanctions in regard to the failure(s) as are just, including the following: (A) Any of the sanctions  
4 available pursuant to Rule 37(b)(2) and Rule 37(f); (B) **An order prohibiting the use of any**  
5 **witness, document or tangible thing which should have been disclosed, produced, exhibited**  
6 **or exchanged pursuant to Rule 16.1(a).**" (emphasis added).

7 In its motion to re-open discovery, Nationstar quotes EDCR 2.35, explaining that a  
8 request to extend a discovery deadline less than 20 days prior to the deadline "shall not be  
9 granted unless the moving party, attorney or other person demonstrates the failure to act was the  
10 result of excusable neglect." But Nationstar does not explain in its motion how its failure to  
11 timely move to extend the discovery deadline constitutes excusable neglect in this case.

12 "Excusable neglect" has been defined as follows:

13 A failure—which the law will excuse—to take some proper step at the proper  
14 time (esp. in neglecting to answer a lawsuit) **not because of the party's own**  
15 **carelessness, inattention, or willful disregard of the court's process,** but  
16 because of some unexpected or unavoidable hindrance or accident or because of  
reliance on the care and vigilance of the party's counsel or on a promise made by  
the adverse party.

17 *Clark v. Coast Hotels & Casinos, Inc.*, No. 62603, 2014 WL 3784262, at \*3–4 (Nev. July 30,  
18 2014)(unpublished) (citing *Black's Law Dictionary* 1133 (9th ed.2009)).(emphasis added).

19 Nationstar's sole explanation appears to be that it was careless or just not paying attention  
20 to the disclosures its counsel signed and served on SFR. This does not constitute excusable  
21 neglect, even if that were the standard for granting Nationstar's motion. Instead, the standard is  
22 found under NRC 16(b), which would apply even if the motion were timely under EDCR 2.35,  
23 which it is not. Pursuant to NRC 16(b),

24 the judge, or a discovery commissioner shall . . . enter a scheduling order that  
25 limits the time: (1) To join other parties and to amend the pleadings; (2) To file  
and hear motions; and (3) To complete discovery.

26 A schedule shall not be modified except by leave of the judge or a discovery  
27 commissioner **upon a showing of good cause.**

28 (emphasis added).

1 In *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 972 (Nev. App.  
2 2015), the Court of Appeals of Nevada noted there is a non-exclusive four-factor test to  
3 determine whether good cause exists: “(1) the explanation for the untimely conduct; (2) the  
4 importance of the requested untimely action; (3) the potential prejudice in allowing the untimely  
5 conduct; and (4) the availability of a continuance to cure such prejudice.” *citing S&W Enters.,*  
6 *LLC v. SouthTrust Bank of Ala, N.A.*, 315 F.3d 533, 536 (5th Cir. 2003). However, because the  
7 factors are non-exclusive, “**ultimately, if the moving party was not diligent in at least**  
8 **attempting to comply with the deadline, ‘the inquiry should end.’”** *Id.* (emphasis added),  
9 *citing Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609, (9th Cir. 1992) and *Perfect*  
10 *Pearl Co. v. Majestic Pearl & Stone, Inc.*, 889 F.Supp.2d 453, 457 (S.D.N.Y. 2012) (“A party  
11 fails to show good cause when the proposed amendment rests on information that the party  
12 knew, or should have known, in advance of the deadline.”). Additionally, “**carelessness is not**  
13 **compatible with a finding of diligence and offers no reason for a grant of relief.”** *Id.*  
14 (emphasis added).

15 Here, Nationstar has not provided any evidence of good cause. Nationstar provides no  
16 adequate explanation of its repeated failure to disclose Freddie Mac as a witness within the  
17 discovery period. Instead, it offers only carelessness as an excuse—“Nationstar fully intended to  
18 disclose a Freddie Mac witness, and in fact, thought it had done so until November 29, 2017.”  
19 Even taking this excuse at face-value, this failure can only be explained by carelessness when  
20 Nationstar served multiple disclosures post-remand in which the witness disclosures were both  
21 added to and modified. **Nationstar was not diligent, so the inquiry should end.**

22 Even if the Court looks beyond Nationstar’s failure to be diligent, which it should not,  
23 Nationstar does not meet any of the factors for good cause. **First**, Nationstar has failed to  
24 provide a believable explanation of its failure to timely name Freddie Mac as a witness,  
25 particularly since it has taken the position multiple times that it does not need Freddie Mac to put  
26 on its case. It is more likely that Nationstar intentionally left Freddie Mac off as a witness  
27 because it wanted to prevent SFR from obtaining a deposition of Freddie Mac. **Second**,  
28 Nationstar has not explained the importance of adding Freddie Mac as a witness, especially since

1 over the years of litigation in this case, Nationstar has repeatedly taken the position that Freddie  
2 Mac is not necessary. **Third**, allowing Nationstar to add Freddie Mac as a witness after  
3 discovery has closed and summary judgment briefing is complete (or should be complete)  
4 prejudices SFR. SFR has not had the opportunity to depose Freddie Mac. Had Nationstar timely  
5 listed Freddie Mac as a witness, SFR would have taken Freddie Mac's deposition. **Fourth**, a  
6 continuance would not cure the prejudice caused by granting Nationstar's request to reopen  
7 discovery "for the limited purpose of allowing Nationstar to disclose a Freddie Mac witness."  
8 Nationstar has not, and cannot meet any of the factors required to show good cause.

9 Any attempt by Nationstar to benefit from its late disclosure should be denied in its  
10 entirety and SFR's motion to strike should be granted pursuant to NRCP 37(c)(1), which  
11 provides that:

12 **A party that without substantial justification fails to disclose information**  
13 **required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery**  
14 **as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to**  
15 **use as evidence at a trial, at a hearing, or on a motion any witness or information**  
16 **not so disclosed.**

17 NRCP 37(c)(1)(emphasis added). Nationstar seems to argue that its failure to disclose is  
18 "harmless" because Freddie Mac's ownership was central to the remanded case, so SFR should  
19 have known that Nationstar's failure was "inadvertent." Banks like Nationstar litigate their cases  
20 in a way that does not always make sense to SFR. They take the position that certain key  
21 documents and witnesses (at least those SFR believes are key to the banks' case) are irrelevant  
22 and unnecessary. These banks resist discovery into the very documents and testimony they need  
23 to meet their burdens in this case and then, on the eve of trial, realize they should have just  
24 answered SFR's discovery requests and deposition topics. SFR has been subjected to trial by  
25 ambush on multiple occasions due to late bank disclosures. This Court should not sanction this  
26 behavior in this case.

#### 27 **IV. CONCLUSION**

28 For the reasons stated above and in SFR's counter motion to strike filed along with SFR's  
opposition to Nationstar's motion for summary judgment, this Court should enter an order

1 striking Exhibit B to Nationstar's motion for summary judgment, along with all argument based  
2 thereon.

3 Dated this 12th day of January 2018

4 **KIM GILBERT EBRON**

5 By: /s/ Diana S. Ebron, Esq.  
6 DIANA S. EBRON, ESQ.  
7 Nevada Bar No. 10580  
8 7625 Dean Martin Drive, Suite 110  
9 Las Vegas, Nevada 89139-5974  
10 Telephone: (702) 485-3300  
11 Facsimile: (702) 485-3301  
12 *Attorney for Defendant/Counterclaimant/  
13 Cross-Claimant,  
14 SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of January 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF COUNTER MOTION TO STRIKE**

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:

"Darren T. Brenner, Esq." .	darren.brenner@akerman.com
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Tomas Valerio .	staff@kgelegal.com

/s/ Diana S. Ebron  
an employee of  
KIM GILBERT EBRON

Ex. A

# EXHIBIT A

Ex. A

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO.: A-13-684715-C

DEPT. XVII

# TRANSCRIPT OF PROCEEDINGS

Defendant.

And all related claims

## STATUS CHECK: SUPREME COURT REMAND

DARREN T. BRENNER, ESQ.

ZACHARY CLAYTON, ESQ.

Case Number: A-13-684715-C



1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 19, 2017

2 [Proceedings commenced at 8:30 a.m.]

3 THE COURT: Anyone else?

4 MR. BRENNER: Good morning, Your Honor, Darren Brenner for Nationstar.

5 MR. CLAYTON: And good morning, Your Honor, Zachary Clayton for SFR  
6 Investments.

7 THE COURT: And this is a status check, a Supreme Court remand. Did we  
8 need any supplemental briefing or where are we at on this case? I understand from  
9 the remand I got to make a determination on whether a regulated entity owned the  
10 loan in question; correct?

11 MR. BRENNER: I think --

12 MR. CLAYTON: Go ahead.

13 MR. BRENNER: -- Judge Bixler did it on your behalf, --

14 THE COURT: Oh.

15 MR. BRENNER: -- if that makes a difference, but, Your Honor, you --

16 THE COURT: I like that when you have a senior judge appear, when it's a  
17 reverse or remand they put the originating judge on this, so --

18 MR. BRENNER: Of course.

19 THE COURT: -- okay.

20 MR. BRENNER: Of course. You know, Your Honor, there are a lot of judges  
21 who rule this way. This the first order we have gotten on the HERA preemption issue  
22 and it's -- as you've probably seen, it's not dispositive. It only resolves the issue of  
23 standing and it says there's two factual issues that remain; ownership and the  
24 servicing relationship between the servicer and the GSE. And then there's a legal  
25 issue that remains. The Supreme Court decided it was still going to leave whether

1 the legal issue of federal preemption to the district court and not resolve that issue.

2           What I can tell Your Honor is this is, not surprisingly, the first order -- it's  
3 one of the first cases that addressed the issue. We do not brief them the same way  
4 and we do not use the same evidence that we used to in order to address the  
5 issues. I think what my client would like to have is an opportunity to present the  
6 evidence in the form it would today based on the actual issues presented and  
7 decided for the first time by the Supreme Court, and then re-brief the matter and that  
8 would require some additional disclosures on our part.

9           If Your Honor wasn't willing to do that at a status check, and I think it's  
10 the easiest way is just to re-open deadlines and do it today, but if you weren't willing  
11 to do it a status check then I think we would at least need some additional briefing  
12 and the opportunity to explain why 56(f) relief is appropriate in this circumstance  
13 given how everything has changed.

14           MR. CLAYTON: And if I may, Your Honor, I agree with Counsel's description  
15 of the case from the Nevada Supreme Court. However, being that factual issues is  
16 the -- really the servicing relationship and then ownership, those -- that's all  
17 evidence that should be presented at the underlying trial. I mean this is a quiet title  
18 action. So, while I agree with briefing, I do not think we need to re-open discovery. I  
19 think we can get right to the briefing in deciding these issues.

20           THE COURT: Specifically, what discovery are you seeking?

21           MR. BRENNER: Let me tell you what happened in this case, Your Honor.  
22 We -- the evidence we presented was in the form of testimony from Nationstar  
23 saying it was the servicer and it -- and that Freddie owns the loan. And you  
24 probably saw the concurrence from Judge Stigler. She said that's enough to prove it  
25 and think -- and I think the Supreme Court decided it. The Supreme Court didn't say,

1 no, that's not enough. The Supreme Court remanded on the procedural issue of the  
2 Court didn't decide whether that's enough and I -- and we want the Court to decide  
3 first. So, it's not that we don't think that's enough. It's that we want it to be  
4 consistent.

5           So, what we do today is -- that's different two years later after this is all  
6 developed and especially if we have this new opinion, is we supply testimony from a  
7 corporate representative of Freddie. We supply all of the servicing guides. We  
8 supply the business records that the individual from Freddie relies on. And really  
9 what we're trying to do is just get to the merits here and this is how its evolved two  
10 years since this motion after dealing with these issues, and ultimately, yes, Counsel  
11 is right that that was the record that was presented to the Court, but I think there's  
12 this unique situation of Nevada HOA where there is no precedence, where  
13 everything is a moving target. We just want to submit the best record to the Court so  
14 it can be decided on the merits. And absolutely, no problem; once we make those  
15 disclosures with Plaintiff doing anything and everything they need -- they believe is  
16 necessary to evaluate that evidence, take depositions, do what it is that they think  
17 they need to do in order to assess.

18           MR. CLAYTON: Well, I would just say that in a quiet title action it's always  
19 been you had to present evidence of your interest in the property superior to other  
20 parties, so that should have been the underlying record. However, if the Court is  
21 inclined to grant them, we would need to take depositions of their -- whoever they're  
22 going to disclose.

23           THE COURT: How much time do you need?

24           MR. BRENNER: I think we could do it in 90 days.

25           THE COURT: All right, we'll re-open discovery for 90 days, thereafter either

1 party is free to file any new briefing on this matter; okay?

2 MR. CLAYTON: Thank you.

3 THE COURT: All right, thank you, Counsel.

4 MR. BRENNER: Thank you, Your Honor.

5 THE COURT: And I remember when I saw this, I didn't remember ruling on  
6 this and so that's why -- but they put my name on it, so.

7 MR. CLAYTON: Thank you, Your Honor.


8 MR. BRENNER: Thank you, Your Honor.

9 THE COURT: Thank you.

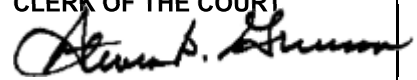
10  
11 [Proceedings concluded at 8:35 a.m.]

12 \* \* \* \* \*

13  
14 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
15 audio/video recording in the above-entitled case to the best of my ability.

16   
17 CYNTHIA GEORGILAS  
18 Court Recorder/Transcriber  
19 District Court Dept. XVII  
20  
21  
22  
23  
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# **TAB 21**



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

IGNACIO GUTIERREZ,	)	
	)	CASE NO. A-13-684715
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. XVII
	)	
SFR INVESTMENTS POOL 1, LLC,	)	
KB HOME MORTGAGE COMPANY,	)	<b>Transcript of Proceedings</b>
	)	
Defendants.	)	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

WEDNESDAY, JANUARY 17, 2018

APPEARANCES:

For the Plaintiff: NO APPEARANCES, ESQ.

For SFR: DIANA CLINE EBRON, ESQ.  
KAREN HANKS, ESQ.

For Nationstar: MELANIE MORGAN, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 WEDNESDAY, JANUARY 17, 2018 AT 9:31 A.M.

2

3 THE COURT: *Gutierrez, SFR.*

4 MS. MORGAN: Yes. Melanie Morgan for Nationstar.

5 MS. HANKS: Karen Hanks for SFR Investments Pool  
6 1, LLC.

7 MS. EBRON: Diana Ebron for SFR Investments Pool  
8 1, LLC.

9 THE COURT: Thank you. And this is Nationstar's  
10 Renewed Motion for Summary Judgment and then we also have a  
11 Counter Motion as well, but --

12 MS. MORGAN: Yes, Your Honor. As you know, this  
13 is a matter on remand following a published opinion and the  
14 issue on remand is Freddie Mac's ownership of this loan.  
15 In support of our Motion for Summary Judgment, we disclosed  
16 a declaration of Dean Meyer and Mr. Meyer's declaration  
17 sets forth details concerning Freddie Mac's ownership, how  
18 long it's owned the loan, who the servicers were, and,  
19 essentially, how it was tracked in Freddie Mac's system.

20 The MITA [phonetic] screenshots attached as  
21 Exhibit 1 in the second column shows that the loan with was  
22 funded in August 22<sup>nd</sup>, 2005. That's when Freddie Mac  
23 obtained its ownership interest. Freddie Mac purchased the  
24 loan from Bank of America in 2005. Its participation  
25 percentage is shown as 1 percent. That means it's 100

1 percent Freddie Mac owned. Bank of America serviced the  
2 loan, which was Freddie Mac owned, from August 22<sup>nd</sup>, 2005  
3 through July 16<sup>th</sup>, 2012 and that's when Nationstar began  
4 servicing it and, again, the record will reflect that as  
5 well. Nationstar was servicing on behalf of Freddie Mac at  
6 the time of the HOA foreclosure in April 2013. And the  
7 MITA [phonetic] screenshots attached to Mr. Meyer's  
8 declaration show that Nationstar was the servicer at the  
9 time and was servicing at the time that these screenshots  
10 were printed out.

11 All of these business records were disclosed  
12 during the time of discovery. Counsel had the opportunity  
13 to depose Nationstar in this case not once but twice and  
14 Nationstar's testimony was consistent with Freddie Mac's  
15 testimony. Now, Nation -- SFR takes issue with the fact  
16 that Freddie Mac was not disclosed as a witness and,  
17 admittedly, Freddie Mac -- we thought we had disclosed  
18 Freddie Mac as a witness. As soon as it was remanded, we  
19 realized on November 29<sup>th</sup> that we had not and, on that same  
20 day, we disclosed a witness for Freddie Mac.

21 And, you know, we meant to disclose it earlier.  
22 We didn't realize that the Freddie Mac witness hadn't been  
23 disclosed, but there's no prejudice in this case. And, in  
24 fact, NRCP 26(e)(1) says that a party is under a duty to  
25 supplement if it learns that information is complete -- is



1 incomplete, I'm sorry, and if the information is not  
2 otherwise been made known to the other parties. Well, SFR  
3 has known for years that this -- well, they don't agree  
4 that it's a Freddie Mac loan, but they've known for years  
5 that we've contended that this is a Freddie Mac loan. This  
6 is not new information. Nationstar testified as to Freddie  
7 Mac's ownership the first time it was deposed. It  
8 testified to Freddie Mac's ownership the second time it was  
9 deposed.

10           And, in fact, SFR wanted to depose Freddie Mac in  
11 this case. SFR's counsel e-mailed my office on September  
12 12<sup>th</sup> saying we need to depose Freddie Mac, Nationstar, and I  
13 think the other one was Countrywide. That same day, SFR's  
14 counsel e-mailed me again saying: I only see your first --  
15 I think they said first and third supplemental disclosures.  
16 Have you made any other disclosures? We e-mailed them all  
17 of our disclosures and, at that time, SFR realized, because  
18 we just gave them all of our disclosures again, that we  
19 hadn't disclosed a Freddie Mac witness.

20           We went forward with the second deposition of  
21 Nationstar. SFR didn't bring up deposing Freddie Mac again  
22 and sat on that information until they filed their Motion  
23 for Summary Judgment which, of course, if that's how they  
24 want to litigate and that's how they want to strategize,  
25 they don't have a duty to tell us, you know, you didn't

1 disclose this person. If they don't want to disclose them  
2 that's fine. They don't have to disclose Freddie Mac, but  
3 what you can't do is sit on the information and then --  
4 knowingly for months and then come in and claim some kind  
5 of prejudice. And on that basis, on that strategic  
6 decision to sit on that information try to exclude the  
7 affidavit of Mr. Meyer.

8           Again, the business records were disclosed. This  
9 is not any kind of surprise that this is a Freddie Mac  
10 loan.

11           Now, importantly, this is the same type of  
12 information that the courts relied on in *Berezovsky*, in  
13 *Elmer*. The declaration and the screenshots from the  
14 enterprise that indicate when the enterprise became the  
15 owner of the loan and, you know, we've set that all out.  
16 There's no competing affidavits or information that some  
17 other entity owns the loan. So, to that extent, it's  
18 un rebutted that this is a Freddie Mac loan.

19           And, again, it seems that the real thing that SFR  
20 is attempting to rely on at this point is that a Freddie  
21 Mac witness wasn't disclosed until November 29<sup>th</sup>. I'll just  
22 point out, we don't even have a trial date yet. We did  
23 file a Motion to Reopen Discovery that's being heard by the  
24 Discovery Commissioner on February 14<sup>th</sup> for -- and the  
25 Motion, the basis is for the sole purpose of just

1 disclosing that one witness. We can open discovery for 30  
2 minutes while I put together -- you know? I mean, that's -  
3 - for all we know, that's it. The witness was disclosed.

4 Again, there's no prejudice here and, you know,  
5 when we look at the issue on remand, it's: Did Freddie Mac  
6 own this loan? And we've provided the unrebutted evidence  
7 that indeed Freddie Mac does own this loan. And, so,  
8 there's nothing -- I mean, summary judgment is warranted in  
9 this case.

10 THE COURT: All right. Thank you.

11 MS. HANKS: Your Honor, I'm going to just -- we  
12 have a Motion for Summary Judgment too, but I want to  
13 address the Counter Motion to Strike because that's really  
14 what it boils down to because it's our position that you  
15 can't even consider anything that Ms. Morgan just argued  
16 because she's relying on the affidavit of Dean Meyer, who  
17 wasn't disclosed.

18 And, so, -- and I want to back up because I want  
19 to give them some context. This is a 2013 case. 2013.  
20 And here we are in 2018 back from remand from the Supreme  
21 Court which said you've got to prove the contractual  
22 servicer relationship and you have to prove ownership and  
23 yet they actually stand before you and say it -- we didn't  
24 realize we didn't have the witness to prove that. I find  
25 it absurd and then to say -- and she does correctly

1 recognize that I don't -- we don't have the burden to tell  
2 you you're not proving your case.

3 And, so, that's where we are. The burden of proof  
4 is on them. It's their claim. It's their defense.  
5 They're saying 46.17J3 app[lies and yet as a threshold  
6 question, the Nevada Supreme Court said: Okay. We agree  
7 with you. You can have a sub servicer bring this claim,  
8 but you have to prove the contractual service relationship  
9 between the sub servicer and Freddie Mac and then you have  
10 to prove that Freddie Mac actually owned it. Those are the  
11 threshold questions and then they remanded it back.

12 And, so, -- and then they don't meet their burden.  
13 If you look at this case as to what they disclosed, they  
14 did not disclose a witness that could authenticate those  
15 documents. While they disclosed the documents from Freddie  
16 Mac, they did not disclose the witness who could testify  
17 about them. And essentially said -- in fact, actually  
18 identified Nationstar as the witness who was going to  
19 testify about all of that. That's what they did. That's  
20 the key here. Their disclosure said: Nationstar was going  
21 to testify about all of those documents, the ownership of  
22 Freddie Mac, and the contractual servicer relationship.  
23 That's how they identified that witness. And they had  
24 taken the position throughout the course of this  
25 litigation, all the way up to the Nevada Supreme Court,

1 that Freddie Mac does not need to be here.

2           So, when we decide to notice a deposition of  
3 Nationstar after the remand, we fully expected to be able  
4 to get questions -- answers to our questions about the  
5 documents they produced and those two key questions that  
6 were on remand. And then when we get in there, Mr. Kovalic  
7 says: I can't testify about those Freddie Mac documents.  
8 I've never seen them. I'm not aware of how Freddie Mac  
9 maintains their records. And, so, all he could testify  
10 about was one sole screenshot from Nationstar's records  
11 that have an acronym that he said identifies Freddie Mac.  
12 That's it. He knows nothing about the loan of what Freddie  
13 Mac did after they supposedly purchased it. He can't  
14 answer any questions about whether it was securitized. He  
15 can't answer questions of how the loan was handled once it  
16 was in the Freddie Mac system. He basically tells us: I  
17 can't answer any of those questions.

18           And based on that, and based on their disclosures,  
19 discovery closes and we file a Motion for Summary Judgment  
20 saying they haven't done what they were supposed to do.  
21 They didn't do it before and they still haven't done it  
22 after remand. And now they come -- and once we notify them  
23 of that, once they see that in the Motion for Summary  
24 Judgment, then we get the 1129 2017 disclosure. It's after  
25 we file our Motion for Summary Judgment that they finally

1 say: Oh, crap. We messed up. Now we've got to identify  
2 Freddie Mac.

3 And, interestingly, when Ms. Ebron had the 2.34 or  
4 the 2.47, I think, whatever you want to call it at this  
5 point, but had the meet and confer to do the Counter Motion  
6 to Strike, Ms. Ebron asked: Are you not even suggesting  
7 that you would allow a deposition of Freddie? In other  
8 words, are you not even offering to rectify the prejudice  
9 to SFR at this point, to offer a deposition of Freddie Mac?  
10 And Ms. -- my understanding from the meet and confer is  
11 that the Bank said: No. That -- we're not offering that.  
12 So, that's where we stood.

13 And, so, -- but now they want to say: Well, now,  
14 you, SFR, get ambushed, because that's essentially what it  
15 is. And so here we are in a Motion for Summary Judgment  
16 phase and we get ambushed and we're not able to depose a  
17 witness or even do further discovery into documents that  
18 were disclosed because they did the gamesmanship of only  
19 identifying Nationstar and then have the audacity to say:  
20 We don't have contrary evidence. Well, we couldn't do  
21 discovery on it because you didn't produce a witness or  
22 identify a witness.

23 So, Your Honor, that is really the threshold issue  
24 for us at this juncture. We don't believe that if you cut  
25 that out, which is Exhibit B, basically, you will not be

1 able to find judgment in their favor because all they have  
2 produced -- if you cut out B, if you strike B and grant our  
3 Motion, Counter Motion to Strike all the declarations of  
4 Dean Meyer and the exhibits that he tries to authenticate,  
5 you have a screenshot from Nationstar which says nothing  
6 about a contractual servicer relationship. I understand  
7 there's a screenshot that identifies you as a sub servicer,  
8 but there should be a contract and you didn't produce it.  
9 That still hasn't been produced.

10           And then you also haven't produced anything  
11 because you -- because Keith Kovalic has confirmed he  
12 cannot testify about the ownership. And we have offered  
13 statements made by Freddie Mac in the FAQ where they are  
14 telling borrowers when they get letters that notify that  
15 Freddie Mac has purchased your loan, they say: No, we sell  
16 it into a trust. We sell it. That's their words. We sell  
17 it and we don't own it. That's the representations they  
18 have out there and that's Exhibit H7, Your Honor.

19           And, so, they -- so that's really what you have  
20 before you. You have nothing in indicating the contractual  
21 servicer relationship because you have no contract. They  
22 didn't produce that. And you have nothing before you to  
23 show anything that Freddie Mac actually owns it because, at  
24 best, even if they claim to have owned it and purchased it,  
25 you have statements made by them, public statements that

1 you can find these on their websites, their FAQ, that say  
2 these letters that we sent to you identifying that we have  
3 purchased your loan, we do not own it. We sell it into a  
4 trust and it's held by the trust and securitized by the  
5 trust.

6 And, so, any of the information that they put in  
7 their Opposition that says: Here, look at Dean Meyer. He  
8 explains they took it out of the trust, again, that goes to  
9 the Motion to Strike. You cannot consider that. They have  
10 nothing. Mr. Kovalic could not testify about the history  
11 and how this particular loan was handled once it was  
12 supposedly sold to Freddie Mac. And, so, there is where  
13 our position is that they have not met the threshold  
14 question to apply 4617(j)(3).

15 And, so, -- and I don't know if you want to hear  
16 the reset of the arguments. Obviously, the next layer of  
17 arguments is, even if you do, --

18 THE COURT: Why don't you go ahead on that, --

19 MS. HANKS: Okay. So even if --

20 THE COURT: -- in that regard?

21 MS. HANKS: Okay. So, even if you do, we have  
22 issues of fact with respect to whether -- let's say we get  
23 past the threshold question of they are able to assert  
24 4617(j)(3). They've met the -- at least the threshold of  
25 what the Supreme Court said they had to meet, then you have



1 the problem of consent and due process. And, so, they are  
2 -- and I recently argued this. It's up at the Nevada  
3 Supreme Court right now. It's the -- I know it as the  
4 *Christine Bew* [phonetic] case. It's a Saticoy Bay case  
5 that's -- it's *Fannie Mae*, I think, *versus Saticoy Bay* or  
6 *Saticoy Bay versus Fannie Mae*. And, in that case, we  
7 argued that the Fannie May now -- and they're the same as  
8 Freddie Mac because they're acting as servicers. They  
9 consented to foreclosure and they admitted in those  
10 pleadings that they have no problem with foreclosure and  
11 the same is true for Freddie Mac. There would be issues of  
12 fact as to whether they consented to the foreclosure.

13 Now, they rewrite the statute and even have come  
14 up with a coined phrase of Federal Foreclosure Bar and then  
15 they change the language of the statute and say: Well, we  
16 didn't consent to extinguishment. Well, that's not what  
17 the statute says. It's not how it reads. It's talking  
18 about foreclosure.

19 And I believe nowhere in these papers do you have  
20 any evidence before you that Freddie Mac did not consent to  
21 the foreclosure. So what you have is an issue of fact if -  
22 - even if you think they have survived Motion for Summary  
23 Judgment, which we think you can grant summary judgment in  
24 favor of SFR because of the owner -- the lack of proof of  
25 ownership and contractual servicing relationship, but even

1 if you got to the point where 46.17(j)(3) applies, at a  
2 minimum, there's issues of fact as to whether there was  
3 consent. And I -- and the reason being is they want to  
4 rewrite the statute and there's nothing under what they've  
5 provided where they have said: We didn't consent to the  
6 foreclosure. What you possibly have is a breakdown in the  
7 sub servicer/servicer relationship between Freddie Mac and  
8 Nationstar or Freddie Mac and Bank of America, whoever was  
9 servicing it at the time of the sale, they did not do what  
10 they were supposed to do by the directive. But -- and  
11 that's -- you find that in the guide.

12           They've agreed to be bound by the super priority  
13 portions. It's in our statute. Their portion is six  
14 months versus nine months. All of that is within NRS 116's  
15 framework and they have consented to that framework. A  
16 long history of consent to that framework. There's no  
17 dispute that they have no qualms with an HOA having an  
18 ability to foreclose because it protects property values.  
19 They want an HOA to be able to foreclose on the property  
20 next door just as much as the -- a first deed of trust  
21 holder because it will protect the values of the property  
22 as opposed to allowing properties to go into disarray and  
23 have an HOA not be able to maintain its community. So  
24 they've never had a problem with foreclosure. They've  
25 never had a problem with Nevada's framework. They've

1 always been at the table. Their sub servicers have always  
2 been at the table in negotiating that statute and even when  
3 it was amended in 2009 they were present in terms of their  
4 sub servicers like Nationstar, Bank of America. They were  
5 all here and they agreed to that framework. Where the  
6 breakdown is conveniently now post *SFR* decision and post  
7 the 2015 era, they realized we had a breakdown and our sub  
8 servicers didn't do what they were supposed to do and allow  
9 an extinguishment when no one even contemplated that would  
10 happen because it wasn't supposed to happen. They're  
11 supposed to pay the super priority, foreclose, and the  
12 interest would be protected.

13           And, so, they have attached or they try to claim:  
14 Well, see, the 2015 press release statement of the FHFA is  
15 evidence that they didn't consent. Well, that's a hearsay  
16 statement. We object to that. That's not evidence this  
17 Court should consider. It was made at the time where there  
18 was litigation pending in both the District Court -- in the  
19 Eighth Judicial District Court and also the United States  
20 District Court and where FHFA was actually a party and  
21 where Fannie May and Freddie Mac were parties. And, so,  
22 our position is that's a hearsay statement. It doesn't  
23 meet the business records section. It wasn't made at a --  
24 in a normal business practice. It was definitely made for  
25 the purposes of furthering the litigation argument that was

1 already being postured in both State Court and Federal  
2 Court.

3           So, because of that, Your Honor, you have no  
4 evidence before you that proves or that doesn't create the  
5 basically -- summarily you can say Freddie Mac did not  
6 consent to a foreclosure, assuming you get past the  
7 contractual servicer and ownership problems.

8           And, so, Your Honor, they've also -- we also have  
9 issues of fact or problems with the assignments here. And,  
10 so, all of these things cut against their argument that you  
11 can ignore the fact that Freddie Mac is not listed.

12           I want to address the *Berezovsky* argument. It's  
13 not binding on this Court. It is a Ninth Circuit decision  
14 but that case was distinct in terms of its differences from  
15 this case. Berezovsky was the purchaser. He filed the  
16 Motion for Summary Judgment early in that case before  
17 discovery had closed and then he conceded or waived the  
18 right to further discovery. So that is noted in the  
19 *Berezovsky* decision. It's in a footnote where they say  
20 this is why we accept the evidence that the Freddie Mac has  
21 offered and it is not in any way did *Berezovsky* say this  
22 evidence will always win the day or where you have a party  
23 who is challenging it, like we have here, a Motion to  
24 Strike, or other challenges to it, that that would not  
25 defeat a Motion for Summary Judgment.

1           So, it's very important to keep that in mind  
2 because they do like to come in here and say: See,  
3 Berezovsky said here's the lay of the land, you don't need  
4 to go any further. But just because I didn't represent Mr.  
5 Berezovsky, I don't know the basis why they took that  
6 strategy, but just because one party might not make an  
7 argument in one case doesn't mean it's waived in another  
8 case. And, so, we are definitely differently postured.

9           We certainly are not saying that we didn't need  
10 discovery. We actually came -- if you'll recall, Your  
11 Honor, when we came back from remand, objected to any  
12 discovery. We said: Look, you were posturing that this  
13 was your defense from the beginning. You knew you had to  
14 prove it. You took the position that you didn't need to  
15 prove it, I guess. That's on you. And, so, just because  
16 we got remanded from the Court on the standing issue, we  
17 should not have to reopen discovery. You disagreed and you  
18 did reopen it and yet they still didn't do what they were  
19 supposed to do. So, they should not be able to do it after  
20 the fact, especially after we've now filed a second set of  
21 Motions for Summary Judgment. You shouldn't -- you should  
22 only decide it on the lay of the land, which is only a sub  
23 servicer screenshot from Nation star, which does not prove  
24 the contractual service relationship or the ownership of  
25 Freddie Mac and the guide, which is available online.

1 I mean, by their take, I could literally, myself  
2 personally, pull the guide and all of a sudden I have a  
3 contractual servicer relationship with everybody and that's  
4 what they're suggesting. It's a public record. You go  
5 online and you can look at it. You can look at multipole  
6 years of it. They change it over time. I can pull a 2012  
7 version or a 2015 version and that's all -- that is the sum  
8 total of the evidence before you in terms of if you strike  
9 anything that they have tried to produce as part of the  
10 Sixth Supplement and having Dean Meyer.

11 THE COURT: All right. Thank you. Ms. Morgan, if  
12 I do strike the Sixth Supplement, where are we at?

13 MS. MORGAN: Well, if you strike the Sixth  
14 Supplement, we still have all of the business records.  
15 And, so, you know, we still have the affidavit of Dean  
16 Meyer that we attached to the Motion for Summary Judgment  
17 which can still be considered. If the Court disagrees, we  
18 have the business records, which we will authenticate, you  
19 know, during the trial.

20 You know, that's where we are, but, I mean, I  
21 guess, the point is that under 26(e)(1), it wasn't even an  
22 untimely disclosure. And Ms. Hanks was not on that meet  
23 and confer telephone call. I was. And SFR did not ask to  
24 depose Freddie Mac during that call and they haven't  
25 reached out to me by e-mail trying to depose Freddie Mac.

1 Instead, they've taken the position that Freddie Mac wasn't  
2 timely disclosed. So, they're not trying to get any  
3 further discovery from Freddie Mac. I mean, that's the  
4 position they're taking. Ms. Hanks just said they didn't  
5 want discovery from the point of the remand. So, you know,  
6 they didn't ask for a deposition of Freddie Mac during that  
7 call and, if that's the issue, we can address that. If  
8 they want a deposition of Freddie Mac, we can address that.

9 THE COURT: And, just so you know, my question  
10 wasn't necessarily that I'm going to, you know, strike or  
11 not consider the Sixth Supplement, I just wanted to see  
12 what my -- the alternative arguments are. So, just so you  
13 know, just wanted to review it further.

14 So, anything else, Ms. Morgan?

15 MS. MORGAN: Oh, well, the servicer guide does  
16 reflect the contractual relationship and we don't just have  
17 the guide out there in a vacuum. Mr. Kovalic for  
18 Nationstar testified that that's the guide that they use to  
19 govern the servicing relationship between Nationstar and  
20 Freddie Mac.

21 We -- you know, there was a lot said during Ms.  
22 Hanks' argument and most of it is fully briefed. I don't  
23 agree that there's evidence that somehow FHFA consented to  
24 this foreclosure or to the extinguishment of the deed of  
25 trust. Of course, the guide does speak to the fact that

1 servicers are to protect Freddie Mac's interest, but  
2 nowhere is there any consent to any extinguishment of the  
3 deed of trust or a super priority foreclosure. There's a  
4 big difference between foreclosure that doesn't extinguish  
5 the deed of trust and one that does. And there's, you  
6 know, no evidence here that Freddie Mac, that Nationstar,  
7 FHFA ever consented to a super priority foreclosure, which  
8 would result in the extinguishment of the deed of trust.  
9 So, there's a bit of some parsing of words on SFR's part  
10 there.

11           The -- there was mention of securitization of the  
12 Freddie Mac loan. It was not securitized at the time of  
13 the HOA foreclosure sale and we provided evidence of that.

14           We never said that Nationstar was going to be the  
15 party to authenticate these Freddie Mac documents. And,  
16 you know, to do so would be pretty odd since our Nationstar  
17 witness testified that he can't truthfully -- I mean, he  
18 can't authenticate the Freddie Mac documents as they had  
19 them in front of him at the deposition. That doesn't mean  
20 we can't, you know, call whichever 30(b)(6), you know,  
21 representative that we feel necessary to authenticate those  
22 documents if we have to, but, at this point, we don't have  
23 a trial date. You know, SFR doesn't want to get to the  
24 discovery of evidence of Freddie Mac ownership because, you  
25 know, they don't want this to be a Freddie Mac owned loan.



1 And I understand that. So they're looking to capitalize  
2 off of an honest mistake. And I get that. That's  
3 litigation, but if we want to get to the truth and the  
4 facts, then, you know, the appropriate way to do it would  
5 be to recognize the affidavit as proper and it is proper  
6 under Rule 26(e)(1).

7 Again, we would be perhaps in a different  
8 situation if the documents hadn't been disclosed. The  
9 documents have been disclosed. SFR -- again, SFR has known  
10 for years, Freddie Mac loan. So, there's no surprise.  
11 They made the strategic decision not to pursue a deposition  
12 of Freddie Mac.

13 THE COURT: All right. Thank you.

14 MS. EBRON: If I may, Your Honor? I was on the  
15 call with Ms. Morgan. I specifically asked: Are you  
16 telling me that you're not offering to have a deposition of  
17 Freddie Mac since you made this mistake? And she said:  
18 No. SFR is not prejudiced. It's a harmless error. We're  
19 not offering any type of deposition.

20 And, so, that -- I guess that's their position.  
21 We can go ahead and not make the disclosures that we should  
22 have made back in 2013, 2014, at least in 2016, before  
23 discovery closed, and it's harmless. I would believe it  
24 more that it was just a complete oversight if we haven't  
25 faced so much resistance over depositions, particularly of

1 Freddie Mac and Fannie Mae in these cases. This isn't the  
2 only case. The idea that Freddie Mac is always disclosed  
3 in these cases is not accurate. That is not accurate.  
4 They leave them out as much as possible and we've had  
5 several cases where we're like: Hey, Freddie Mac should be  
6 a party. No, no, no. We're going to object to that.  
7 We're going to file motions against that. I mean, that  
8 happened in this very case. Freddie Mac is the one who  
9 should be here. No. They didn't include them and they  
10 fought against it. So, this has been what they've been  
11 saying.

12           They did change their witness lineup. They  
13 disclosed other witnesses and what they did in one of their  
14 supplemental disclosures after remand was change the  
15 description of Nationstar's testimony to include the  
16 ownership. I was actually shocked when I got to the  
17 deposition of Mr. Kovalic of Nationstar and he took the  
18 position that he had no ability to authenticate any of  
19 these documents or talk about any of these documents. It  
20 was the 30(b)(6) witness of Nationstar. We had topics. We  
21 asked for information about the documents that they would  
22 use to prove Freddie Mac's interest. I've listed out the  
23 specific documents that were disclosed and they could have  
24 gotten somebody up to speed if they took the position that  
25 the servicers or the sub servicer could go ahead and act on

1 behalf of Freddie Mac, which is what their position was at  
2 the Nevada Supreme Court. We're a servicer. We have this  
3 agency relationship, so we should be able to do all things  
4 Freddie Mac, all things FHFA. I disagree with that. I  
5 disagree with the Nevada Supreme Court's position on that,  
6 of course, but, you know, if that's the way they were  
7 posturing the case.

8           And part of the reason why I think it is  
9 gamesmanship is the issue of Countrywide as well. I had  
10 the e-mail asking for a deposition of Nationstar,  
11 Countrywide, Bank of America because Bank of America ad  
12 Countrywide, they were the ones that were actually the  
13 servicer at the time of the sale. Nationstar came around  
14 after the fact. And, so, they knew I wanted to take those  
15 three depositions. So, I look at the disclosures and their  
16 disclosures still listed, you know, counsel for Countrywide  
17 as well. I send out the notices for Nationstar and  
18 Countrywide, they never ask me: Hey, where is your notice  
19 for Freddie Mac? We've got to get that on schedule. It's  
20 really difficult to schedule them. They didn't say  
21 anything. I'm sure they were just waiting around waiting  
22 for me not to depose Freddie Mac as well.

23           What I do get is me following-up on a Countrywide  
24 deposition notice. I'm like: Hey, I haven't heard  
25 anything from you. Typically I hear from you about the

1 topics listed and if you wanted to change it to  
2 videoconferencing, anything like that. I hear nothing from  
3 them. So, I follow-up. And after I do that, there's a  
4 gap, and then I hear from them: Well, Countrywide isn't a  
5 party because Countrywide didn't appeal. So, they're not  
6 there anymore. So, I'm like: Oh, okay. My bad. Now it's  
7 too late to subpoena Bank of America. So, I go without  
8 that deposition because they chose to do it this way and to  
9 take that position where they're not going to immediately -  
10 - when I say, I want to do the deposition of Countrywide,  
11 they don't tell me: Oh, well, you need to subpoena them.  
12 They don't say anything like that.

13           So, this all goes into why. I honestly believe  
14 they're going to change -- try to prove their case with the  
15 Nationstar witness and try to keep us from doing discovery  
16 in this case.

17           We did request, in our Motion, if you're going to  
18 consider Dean Meyer's affidavit at all, it's not  
19 appropriate to do -- it is prejudicial to SFR just  
20 accepting it right now today. There would have to be  
21 something that would -- you know, counsel keeps mentioning:  
22 Well, there's no trial date, there's no trial date. And  
23 that's true. And the only reason that's relevant or would  
24 be relevant is if there was time to make it right. They  
25 don't want to make it right. They want to just ambush us.

1 They don't want to offer a deposition of Freddie Mac. They  
2 want to offer their evidence without any chance for us to  
3 do the appropriate discovery on it.

4 And if you -- Your Honor has any questions about  
5 that, or about the meets and confers, or the history of  
6 this particular discovery in this case, then I'd be happy  
7 to answer them.

8 The reason why we said we didn't want discovery  
9 was because discovery should have been closed. They would  
10 have had none of these documents from Freddie Mac. They  
11 would not have any testimony to support any of these claims  
12 of ownership, that the loan wasn't securitized, any of  
13 that. They wouldn't have any of that if it hadn't been  
14 reopened after remand. They should have done it and it  
15 violates the rules that they didn't do it with their  
16 initial disclosures back in -- I think like November of  
17 2014 or 2013.

18 THE COURT: Anything further, Ms. Morgan?

19 MS. MORGAN: Yes, Your Honor. I have -- I really  
20 take offense to -- it's more than a suggestion that I'm  
21 perjuring myself and not being truthful with the Court when  
22 I say Freddie Mac was inadvertently not disclosed. They're  
23 saying --

24 THE COURT: I'm not interpreting anyone being  
25 dishonest here.

1 MS. MORGAN: No. It was not --

2 THE COURT: I mean, I just --

3 MS. MORGAN: -- gamesmanship. It was an accident.  
4 I mean, I honestly thought they had been disclosed. So,  
5 this wasn't some kind of a gamesmanship or a tactic. No.  
6 It wasn't at all.

7 And, again, it's not even an untimely disclosure  
8 under Rule 26. So, --

9 THE COURT: All right. Different issue than the  
10 previous HOA case here. Again, I'm going to put this on  
11 the Chamber's Calendar for January 31<sup>st</sup> for a written  
12 decision by the Court. I appreciate counsel. Interesting  
13 issues here on this matter. Thank you very much for your  
14 time this morning.

15 MS. MORGAN: Thank you.

16

17 PROCEEDING CONCLUDED AT 10:04 A.M.

18 \* \* \* \* \*

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1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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20

21 KRISTEN LUNKWITZ

22 INDEPENDENT TRANSCRIBER

23

24

25

# **TAB 22**



**REGISTER OF ACTIONS****CASE No. A-13-684715-C****Ignacio Gutierrez, Plaintiff(s) vs. SFR Investments Pool 1 LLC,  
Defendant(s)**§  
§  
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§

Case Type: **Title to Property**  
 Subtype: **Quiet Title**  
 Date Filed: **07/08/2013**  
 Location: **Department 17**  
 Cross-Reference Case Number: **A684715**  
 Supreme Court No.: **69400**  
**75890**

**PARTY INFORMATION**

<b>Counter Claimant</b>	<b>Nevada Association Services, Inc.</b>	<b>Lead Attorneys</b> <b>Richard J. Vilkin</b> Retained 702-873-5868(W)
<b>Counter Claimant</b>	<b>SFR Investments Pool 1 LLC</b>	<b>Howard C. Kim</b> Retained 702-485-3300(W)
<b>Counter Defendant</b>	<b>Countrywide Home Loans Inc</b>	<b>Darren T. Brenner</b> Retained 702-634-5000(W)
<b>Counter Defendant</b>	<b>Nationstar Mortgage LLC</b>	<b>Ariel E. Stern</b> Retained 702-634-5000(W)
<b>Defendant</b>	<b>KB Home Mortgage Company</b>	
<b>Defendant</b>	<b>SFR Investments Pool 1 LLC</b>	<b>Howard C. Kim</b> Retained 702-485-3300(W)
<b>Plaintiff</b>	<b>Gutierrez, Ignacio</b>	<b>Preston S. Kerr</b> Retained 702-451-2055(W)
<b>Third Party Defendant</b>	<b>Countrywide Home Loans Inc</b>	<b>Darren T. Brenner</b> Retained 702-634-5000(W)
<b>Third Party Defendant</b>	<b>Nationstar Mortgage LLC</b>	<b>Ariel E. Stern</b> Retained 702-634-5000(W)
<b>Third Party Plaintiff</b>	<b>SFR Investments Pool 1 LLC</b>	<b>Howard C. Kim</b> Retained 702-485-3300(W)

**EVENTS & ORDERS OF THE COURT**

01/31/2018	<b>Decision</b> (3:00 AM) (Judicial Officer Villani, Michael) Third Party Defendant Nationstar Mortgage, LLC's Renewed Motion For Summary Judgment Defendant SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgement and Counter Motion to Strike
	<b>Minutes</b>

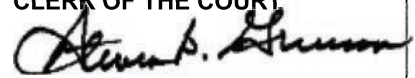
01/31/2018 3:00 AM

- Nationstar Mortgage, LLC s (Nationstar) Renewed Motion for Summary Judgment and SFR Investments Pool 1, LLC s (SFR) Motion for Summary Judgment and Countermotion to Strike came before this Court on the January 17, 2018 oral calendar. The Court having further reviewed the pleadings, files, and argument finds as follows: Summary judgment is appropriate when the pleadings and other evidence on file demonstrate no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012). SFR s previous Motion for Summary Judgment was granted by Senior Judge Bixler on October 21, 2015, and the Order granting the same was entered on November 10, 2015. Judge Bixler s decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The question on remand is whether Freddie Mac owned the loan in question, or whether Nationstar had a contract with Freddie Mac or the FHFA to service the loan in question. Nationstar s Renewed Motion for Summary Judgment Freddie Mac Ownership / Federal Foreclosure Bar The Nevada Supreme Court held in Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, that in order to have standing, the party seeking relief [must have] a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party. 133 Nev. Adv. Op. 34 (2017)(citing Schwartz v. Lopez, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894 (2016). Here, Nationstar had standing to bring the instant action because it was the servicer of the loan as evidenced with the screen shots provided of Freddie Mac s computer data base. The Court FIND ownership of the property in question was established in the Deed of Trust recorded on 7/20/05, attached as Exhibit A to Nationstar s instant motion, identifies Freddie Mac (at the bottom of each page) and puts all parties on notice of Freddie Mac s interest. Additionally, this Deed of Trust was disclosed previously during the discovery period. Finally, in its opposition, SFR failed to provide proof that Fannie May consented to the sale. The Court FURTHER FINDS, based upon the Federal Foreclosure Bar (12 U.S.C. 4617(j)(3)), the foreclosure at issue was preempted by Federal law. Commercially Unreasonable Sale Nationstar contends the sales price at the HOA foreclosure sale was grossly inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus, fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing Long v. Towne, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982) ) See also Centeno v. JP Morgan Chase Bank, N.A., 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18, 2016) (unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression... ) See also Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is in addition proof of some element of fraud, unfairness, or oppression (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada, courts retain the power to grant equitable relief from a defective [association] foreclosure sale when appropriate .... Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc., 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there must also be a showing of fraud, unfairness, or oppression. Id. (citing Long, 98 Nev. 11, 639 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. Id. at 1114 (finding courts must consider the entirety of the circumstances that bear upon the equities ). Here, Nationstar contends that in addition to the grossly inadequate sales price, the lack of notice of the sale to Nationstar made the sale unfair and oppressive. The Court, however, does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or oppression applies to the seller (HOA) and purchaser (Plaintiff), not whatever mistake may have occurred by the HOA. See Golden v. Tomiyasu, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the foreclosing trustee and bidders, not fraud, unfairness, or oppression in the

underlying trustee s substantive actions). See also Centeno v. JP Morgan Chase Bank, N.A., 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression... ) Because Nationstar failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT FINDS the sale in question was commercially reasonable. However, as previously mentioned, the Federal Foreclosure Bar applies in the instant matter, and the foreclosure at issue was preempted by Federal law. Therefore, COURT ORDERED Nationstar Mortgage, LLC s Motion for Summary Judgment GRANTED. SFR s Motion for Summary Judgment For the reasons stated in granting Nationstar s motion, SFR s Motion for Summary Judgment is DENIED. SFR s Countermotion to Strike Finally, SFR s Countermotion to Strike the declaration from the Freddie Mac employee is MOOT. Counsel for Nationstar is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties. CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/02/07/18.

[Return to Register of Actions](#)

# **TAB 23**



**ORD**

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*Attorneys for Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**[PROPOSED] ORDER GRANTING  
NATIONSTAR MORTGAGE LLC'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

AKERMAN LLP

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

1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim  
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or  
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and  
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and  
6 Judgment.

### 7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home  
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration  
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,  
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a  
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the  
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.  
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed  
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the  
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008  
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which  
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal  
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and  
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed  
26 of Trust to Nationstar.

1           7.       At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the  
2       Loan for Freddie Mac.

3           8.       The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as  
4       owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the  
5       **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.  
6       Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries  
7       for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to  
8       Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9           9.       The Guide provides:

10                   For each Mortgage purchased by Freddie Mac, the Seller and the Servicer  
11                   agree that Freddie Mac may, at any time and without limitation, require  
12                   the Seller or the Servicer, at the Seller's or the Servicer's expense, to make  
13                   such endorsements to and assignments and recordations of any of the  
14                   Mortgage documents so as to reflect the interests of Freddie Mac.

15       Guide at 1301.10.

16           10.      The Guide also provides:

17                   The Seller/Servicer is not required to prepare an assignment of the  
18                   Security Instrument to Freddie Mac. However, *Freddie Mac may, at its  
19                   sole discretion and at any time, require a Seller/Servicer, at the  
20                   Seller/Servicer's expense, to prepare, execute and/or record assignments  
21                   of the Security Instrument to Freddie Mac.*

22       Guide at 6301.6 (emphasis added).

23           11.      The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie  
24       Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25           12.      Accordingly, the Guide also provides for a temporary transfer of possession of the  
26       note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.  
27       However, when in "physical or constructive possession of a Note," the Servicer must "follow  
28       prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at  
29       8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the  
30       servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at  
31       3302.5.

13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (HOA Sale). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 utilizing the "Sales Comparison approach."

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.



22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

### **CONCLUSIONS OF LAW**

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, <sup>or</sup> and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

### **Freddie Mac Ownership / Federal Foreclosure Bar**

1           4.       The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*  
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest  
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case  
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.  
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan  
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like  
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8           5.       With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**  
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for  
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with  
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of  
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from  
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to  
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].  
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to  
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17           6.       Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a  
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of  
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.  
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21           7.       Unless FHFA gives its consent, the federal protection shall be given full effect, which  
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly  
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy  
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*  
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the  
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove  
27 a negative, i.e., that the product was not altered.")  
28

1           8.       FHFA's April 21, 2015 statement confirms that there was no such consent here. In  
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore  
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's  
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.  
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, \*3 (D. Nev. Feb. 27, 2017) (citing and relying on  
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7           9.       At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and  
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's  
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.  
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*  
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4  
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of  
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the  
14 note owner's power to enforce its interest under the security instrument, because the note owner can  
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these  
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17           10.       Freddie Mac's interest in Property secured by the Deed of Trust was a property  
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA  
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.  
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21           11.       Because the Court grants summary judgment in Nationstar's favor based upon 12  
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23       **Fraud, Unfairness, or Oppression Surrounding the Sale**

24           10.       Nationstar contends that the sales price obtained at the HOA Sale was grossly  
25 inadequate and was commercially unreasonable.

26           11.       To set aside an association foreclosure sale on a theory of commercial  
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or  
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,  
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
3 see also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18,  
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for  
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); see also *Golden v. Tomiyasu*, 79  
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be  
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in  
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the  
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”  
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold  
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;  
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639  
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to  
15 consider any other factor bearing on the equities, including actions or inactions of both parties  
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of  
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,  
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression  
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by  
22 the HOA. See *Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the  
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee’s  
24 substantive actions); see also *Centeno*, 2016 WL 1122449, at \*1 (holding “a low sales price is not a  
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).  
26  
27  
28

14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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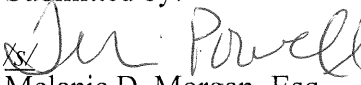
**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

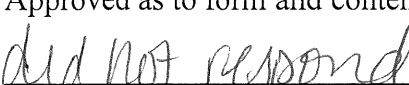
**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that SFR's interest in the Property, if any, is subject to the Deed of Trust.

  
 DISTRICT COURT JUDGE

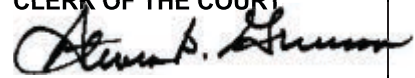
Submitted by:

  
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Approved as to form and content by:

  
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# **TAB 24**



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13 *Attorneys for Nationstar Mortgage, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 IGNACIO GUTIERREZ, an individual,

17 Plaintiff,

18 vs.

19 SFR INVESTMENTS POOL 1, LLC; NEVADA  
20 ASSOCIATION SERVICES, INC.; HORIZON  
21 HEIGHTS HOMEOWNERS ASSOCIATION;  
22 KB HOME MORTGAGE COMPANY, a foreign  
23 corporation; DOE Individuals I through X; ROE  
24 Corporations and Organizations I through X,

25 Defendants.

26 SFR INVESTMENTS POOL 1, LLC, Nevada  
27 Limited Liability Company,

28 Counter-Claimant and Third Party Plaintiff,

29 vs.

30 IGNACIO GUTIERREZ, an individual;  
31 NATIONSTAR MORTGAGE, LLC, a Delaware  
32 limited liability company; COUNTRYWIDE  
33 HOME LOANS, INC., a foreign corporation;  
34 DOES I through X; and ROES 1-10, inclusive,

35 Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVII

**NOTICE OF ENTRY OF ORDER  
GRANTING NATIONSTAR MORTGAGE  
LLC'S RENEWED MOTION FOR  
SUMMARY JUDGMENT**

AKERMAN LLP

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

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE**  
3 **LLC’S RENEWED MOTION FOR SUMMARY JUDGMENT** was entered on this 11<sup>th</sup> day of  
4 April, 2018 a copy of which is attached hereto as **Exhibit A**.

5 DATED: April 11, 2018

7 **AKERMAN LLP**

9 /s/Tenesa Powell

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Tenesa Powell, Esq.

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*Attorneys for Nationstar Mortgage LLC*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 11th day of April, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY [PROPOSED] ORDER GRANTING NATIONSTAR MORTGAGE LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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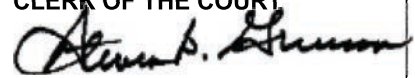
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/s/Christine Weiss  
An employee of Akerman LLP

# **EXHIBIT A**

# **EXHIBIT A**



**ORD**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**[PROPOSED] ORDER GRANTING  
NATIONSTAR MORTGAGE LLC'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

AKERMAN LLP

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1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim  
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or  
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and  
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and  
6 Judgment.

### 7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home  
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration  
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,  
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a  
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the  
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.  
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed  
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the  
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008  
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which  
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal  
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and  
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed  
26 of Trust to Nationstar.

1           7.       At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the  
2       Loan for Freddie Mac.

3           8.       The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as  
4       owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the  
5       **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.  
6       Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries  
7       for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to  
8       Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9           9.       The Guide provides:

10                   For each Mortgage purchased by Freddie Mac, the Seller and the Servicer  
11                   agree that Freddie Mac may, at any time and without limitation, require  
12                   the Seller or the Servicer, at the Seller's or the Servicer's expense, to make  
13                   such endorsements to and assignments and recordations of any of the  
14                   Mortgage documents so as to reflect the interests of Freddie Mac.

15       Guide at 1301.10.

16           10.      The Guide also provides:

17                   The Seller/Servicer is not required to prepare an assignment of the  
18                   Security Instrument to Freddie Mac. However, *Freddie Mac may, at its*  
19                   *sole discretion and at any time, require a Seller/Servicer, at the*  
20                   *Seller/Servicer's expense, to prepare, execute and/or record assignments*  
21                   *of the Security Instrument to Freddie Mac.*

22       Guide at 6301.6 (emphasis added).

23           11.      The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie  
24       Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25           12.      Accordingly, the Guide also provides for a temporary transfer of possession of the  
26       note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.  
27       However, when in "physical or constructive possession of a Note," the Servicer must "follow  
28       prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at  
29       8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the  
30       servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at  
31       3302.5.

13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (HOA Sale). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 *utilizing the "Sales Comparison approach."*

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.

22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

### **CONCLUSIONS OF LAW**

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, <sup>or</sup> and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

### **Freddie Mac Ownership / Federal Foreclosure Bar**

1           4.       The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*  
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest  
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case  
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.  
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan  
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like  
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8           5.       With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**  
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for  
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with  
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of  
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from  
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to  
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].  
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to  
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17           6.       Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a  
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of  
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.  
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21           7.       Unless FHFA gives its consent, the federal protection shall be given full effect, which  
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly  
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy  
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*  
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the  
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove  
27 a negative, i.e., that the product was not altered.")  
28



1           8.       FHFA's April 21, 2015 statement confirms that there was no such consent here. In  
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore  
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's  
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.  
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, \*3 (D. Nev. Feb. 27, 2017) (citing and relying on  
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7           9.       At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and  
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's  
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.  
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*  
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4  
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of  
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the  
14 note owner's power to enforce its interest under the security instrument, because the note owner can  
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these  
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17           10.       Freddie Mac's interest in Property secured by the Deed of Trust was a property  
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA  
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.  
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21           11.       Because the Court grants summary judgment in Nationstar's favor based upon 12  
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23       **Fraud, Unfairness, or Oppression Surrounding the Sale**

24           10.       Nationstar contends that the sales price obtained at the HOA Sale was grossly  
25 inadequate and was commercially unreasonable.

26           11.       To set aside an association foreclosure sale on a theory of commercial  
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or  
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,  
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
3 see also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18,  
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for  
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); see also *Golden v. Tomiyasu*, 79  
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be  
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in  
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the  
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”  
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold  
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;  
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639  
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to  
15 consider any other factor bearing on the equities, including actions or inactions of both parties  
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of  
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,  
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression  
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by  
22 the HOA. See *Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the  
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee’s  
24 substantive actions); see also *Centeno*, 2016 WL 1122449, at \*1 (holding “a low sales price is not a  
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).  
26  
27  
28

14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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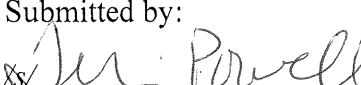
**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

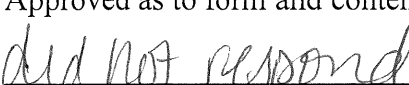
**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that SFR's interest in the Property, if any, is subject to the Deed of Trust.

  
 DISTRICT COURT JUDGE

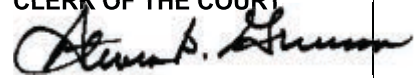
Submitted by:

  
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Approved as to form and content by:

  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES INC.,  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY, a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X,

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC., a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
foreign corporation; DOES I-X; and ROES 1-  
10, inclusive,

Counter-Defendant/ Third Party Defendants.

Case No. A-13-684715-C

Dept. No. XVII

**NOTICE OF APPEAL**

PLEASE TAKE NOTICE that SFR INVESTMENTS POOL 1, LLC hereby appeals from the following orders:

1. Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment, entered on April 11, 2018; and
2. All orders made appealable thereby.

DATED May 14, 2018.

**HOWARD KIM & ASSOCIATES**

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*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of May 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **NOTICE OF APPEAL** 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:

"Darren T. Brenner, Esq." . darren.brenner@akerman.com

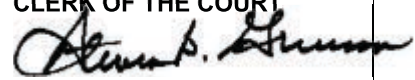
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/s/ Jessica E. Brown  
An employee of KIM GILBERT EBRON

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*Attorney for Defendant/Counterclaimant/Third-Party Plaintiff,  
SFR Investments Pool 1, LLC*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES, INC.;  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION; KB HOME MORTGAGE  
COMPANY, a foreign corporation; DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X,  
  
Defendants.

Case No.: A-13-684715-C  
Dept. No.: XVII

**AMENDED CASE APPEAL STATEMENT**

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
  
Counterclaimant/  
Third-Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
foreign corporation; DOES I-X; and ROES 1-  
10, inclusive,



Counter-Defendant/  
Third-Party Defendants.

NEVADA ASSOCIATION SERVICES, INC.,

Counterclaimant,

vs.

IGNACIO GUTIERREZ,

Counter-Defendant.

**AMENDED CASE APPEAL STATEMENT**

**1. Name of appellant filing this case appeal statement:**

Defendant/Counter-claimant/Third Party Plaintiff SFR Investment Pool 1, LLC

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Michael P. Villani

**3. Identify each appellant and the name and address of counsel for each appellant:**

*Attorney for Defendant/Counterclaimant/Third-Party Plaintiff,  
SFR Investments Pool 1, LLC*

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**4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

*Appellate Counsel Unknown; Trial Counsel for Respondent Nationstar Mortgage,  
LLC*

ARIEL E. STERN, ESQ.

MELANIE D. MORGAN, ESQ.

TENESA POWELL, ESQ.

AKERMAN, LLP

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134-6375

(702) 634-5000

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

6. **Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained counsel

7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Retained counsel

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

N/A

9. **Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:**

Complaint filed July 8, 2013

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

Former homeowner Ignacio Gutierrez filed a complaint for wrongful foreclosure and declaratory judgment after defendant Horizon Heights Homeowners Association ("Association") foreclosed on the subject property pursuant to NRS 116.3116 et seq, and SFR purchased the property at a publically held-foreclosure auction. SFR filed an answer and brought counter-claims against Gutierrez and third-party complaint against third-party defendants Nationstar Mortgage, LLC and Countrywide Home Loans, LLC for quiet title/declaratory judgment, injunctive relief, and, in the alternative, unjust enrichment. Mr. Gutierrez was eventually dismissed from the case.

The district court originally entered summary judgment in favor of SFR, which the Bank appealed. This Court authored a published opinion in that case, *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Adv. Op. 34 (June 22, 2017).

Following remittitur, both parties moved for summary judgment and the District Court heard arguments on the motions on January 3, 2018. On April 11, 2018, the District Court granted Nationstar's Motion for Summary Judgment, and a notice of the order was served the same day.

11. **Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.**

Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, Case No.: 69400

**12. Indicate whether this appeal involves child custody or visitation:**

N/A

**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

SFR is always willing to talk settlement but believes the likelihood is low in this case, as there are legal issues of first impression remaining regarding whether § 4617(j)(3) applies to this case.

DATED May 14, 2018.

**KIM GILBERT EBRON**

/s/ Jacqueline A. Gilbert

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*Attorney for Defendant/Counterclaimant/*

*Third-Party Plaintiff,*

*SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of May 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **AMENDED CASE APPEAL STATEMENT** 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:

"Darren T. Brenner, Esq." . darren.brenner@akerman.com

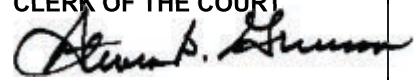
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/s/ Jessica E. Brown  
An employee of KIM GILBERT EBRON

# **TAB 27**



1 **SB**

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13 *Attorneys for Nationstar Mortgage, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 IGNACIO GUTIERREZ, an individual,

17 Plaintiff,

18 vs.

19 SFR INVESTMENTS POOL 1, LLC; NEVADA  
20 ASSOCIATION SERVICES, INC.; HORIZON  
21 HEIGHTS HOMEOWNERS ASSOCIATION;  
22 KB HOME MORTGAGE COMPANY, a foreign  
23 corporation; DOE Individuals I through X; ROE  
24 Corporations and Organizations I through X,

25 Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**NATIONSTAR MORTGAGE LLC'S  
SUPPLEMENTAL BRIEFING  
FOLLOWING REMAND**

26 SFR INVESTMENTS POOL 1, LLC, Nevada  
27 Limited Liability Company,

28 Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

...

...

## **INTRODUCTION**

This case was remanded so the Court can clarify whether there existed a sufficient basis to deny, impliedly, SFR's January 2018 motion to strike the declaration of Freddie Mac employee Dean Meyer. The district court<sup>1</sup> had sufficient justification for that decision because any such disclosure was harmless. This Court, on remand, should now expressly state this in a new order that also reconfirms the April 2018 order granting Nationstar's motion for summary judgment.

In vacating the district court's order granting Nationstar's motion for summary judgment, the Nevada Supreme Court did not question the ultimate merits of the district court's decision. To the contrary, the Nevada Supreme Court confirmed that the evidentiary record in this case was sufficient for summary judgment in Nationstar's favor under its controlling decision in *Daisy Trust v. Wells Fargo Bank, N.A.*, 445 P.3d 846 (Nev. 2019). Rather, the Nevada Supreme Court remanded the case because it could not determine from the record whether the district court's implied decision not to strike Dean Meyer's declaration was based on a determination that any delayed disclosure was substantially justified or harmless.

The record shows that any delayed disclosure was harmless. Accordingly, Nationstar respectfully requests the Court expressly hold that any failure to disclose a Freddie Mac witness was harmless, and otherwise reconfirm the district court's prior ruling granting Nationstar's summary judgment motion. In the alternative, the Court should reopen discovery for the limited purpose of allowing a deposition of Mr. Meyer, which would alleviate any potential prejudice to SFR and permit the parties to finally conclude this case with dispositive motions.

## **PROCEDURAL HISTORY**

In July 2013, the borrower on the loan at issue filed a complaint against SFR and other parties for wrongful foreclosure and declaratory relief. SFR then filed a third-party complaint against Nationstar seeking to quiet title to the property at issue. In July 2015, Nationstar answered SFR's complaint, raising the preemptive effect of 12 U.S.C. § 4617(j)(3), the Federal Foreclosure Bar, as an affirmative defense—an affirmative defense that necessarily put SFR on notice of the fact

---

<sup>1</sup> Nationstar refers to the court who originally heard this matter before the department reassignment on January 7, 2019 as the "district court" to avoid confusion and to this department as the "Court."

1 that Nationstar intended to prove that Freddie Mac or Fannie Mae owned the subject loan. The  
2 district court granted summary judgment in favor of SFR in November 2015, denying Nationstar's  
3 counter-motion for summary judgment, on the grounds that Nationstar lacked standing to assert the  
4 Federal Foreclosure Bar. But the Nevada Supreme Court reversed that order in a published decision,  
5 holding that the plain language of the Housing and Economic Recovery Act of 2008 (HERA), Pub.  
6 L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) allows an authorized servicer  
7 to raise the Federal Foreclosure Bar on FHFA's behalf. *Nationstar Mortg., LLC v. SFR Invs. Pool I,*  
8 *LLC*, 396 P.3d 754, 757-58 (Nev. 2017). The Nevada Supreme Court then remanded for a  
9 determination of Nationstar's relationship with Freddie Mac. *Id.* at 757-58.

10 In July 2017, the district court reopened discovery for a brief period. Nationstar timely  
11 produced the documents Mr. Meyer relied on in his declaration with its third and fourth  
12 supplemental disclosures, on July 28, 2017, and September 19, 2017, respectively. Despite knowing  
13 the basis for Nationstar's arguments and having received Freddie Mac's business records during the  
14 discovery period, SFR never noticed a deposition of a Freddie Mac witness.

15 The parties then filed cross-motions for summary judgment on November 15 and 16, 2017.  
16 Nationstar's motion included the declaration of Mr. Meyer, which relied on the previously disclosed  
17 Freddie Mac business records. (*See* Nationstar's Renew. Mot. for Summ. J., at Ex. B.) On  
18 November 29, 2017, Nationstar served its sixth supplemental disclosures which named Freddie  
19 Mac's corporate representative as an individual with knowledge of Freddie Mac's ownership of the  
20 Loan. SFR's December 2017 opposition to Nationstar's Motion for Summary Judgment was  
21 accompanied by a motion to strike Mr. Meyer's declaration.

22 After briefing and a hearing on the cross-motions for summary judgment, the district court  
23 awarded summary judgment to Nationstar and denied SFR's motion for summary judgment. (*See*  
24 Order, April 11, 2018, reattached here as **Ex. A.**) SFR appealed and the Nevada Supreme Court then  
25 vacated and remanded that decision with respect to the basis for the implied denial of SFR's motion  
26 to strike. (*See* **Ex. B**, Remand Order, October 24, 2019.)

27 . . .

28 . . .



## ARGUMENT

The issue before this Court upon remand is narrow: was Nationstar’s delayed disclosure of a Freddie Mac corporate representative as a witness substantially justified or harmless? It was. The only delay was the mere formality of noting the corporate witness in a disclosure; SFR knew long before the parties filed their 2017 motions for summary judgment that Freddie Mac’s evidence would be at issue in the case and had ample opportunity to depose Freddie Mac’s witness, if it had wished. Therefore, the delay was harmless, and the district court was correct to impliedly reject SFR’s motion to strike. This Court should do so again, expressly, now.

The timing of Nationstar’s disclosure of Dean Meyer as Freddie Mac’s witness did not prejudice SFR in the slightest. Nationstar disclosed Freddie Mac’s corporate representative as an individual with knowledge of Freddie Mac’s ownership of the Loan on November 29, 2017. Its failure to disclose Freddie Mac’s corporate witness prior to that time was inadvertent. But upon realizing its mistake, Nationstar supplemented its disclosures pursuant to Nevada Rule of Civil Procedure 26(e)(1).

SFR admitted to the Nevada Supreme Court that “the documents attached to the Dean Meyer declaration had been disclosed during discovery.” (**Ex. C**, SFR’s Op. Br. at 8.) It knew for years that Nationstar intended to prove Freddie Mac owned the Loan; that was the subject of the prior round of dispositive motions in 2015 and the Nevada Supreme Court’s published decision in this case from 2017. And as a repeat litigant in Nevada HOA foreclosure cases, with dozens of pending cases in both state and federal courts, SFR should have anticipated that a corporate representative was likely to testify in support of Freddie Mac’s records. Accordingly, SFR could have noticed the deposition of a corporate representative of Freddie Mac during the discovery period afforded by the district court; it certainly did not need to be told that a corporate representative of Freddie Mac could be a relevant witness.

SFR has deposed Mr. Meyer in at least five cases already. *See SFR Invs. Pool 1, LLC v. Bank of America, N.A.*, No. A-14-696138-C (Nev. Dist. Ct.); *SFR Invs. Pool 1, LLC v. Bank of America, N.A.*, No. A-14-696561-C (Nev. Dist. Ct.); *M&T Bank v. SFR Invs. Pool 1, LLC*, 2:17-cv-01867 (D. Nev.); *SFR Invs. Pool 1, LLC v. Washington Mutual Bank, FA*, No. A-12-672769-C (Nev.

1 Dist. Ct.); and *Ocwen Loan Servicing, LLC v. SFR Invs. Pool 1, LLC*, 2:17-cv-01757 (D. Nev.). In  
2 none of these cases has SFR identified anything in those depositions that have caused a court to  
3 question whether there are any material issues with Freddie Mac’s business records or testimony that  
4 would preclude summary judgment. As a result, SFR is itself well-versed in the interpretation of  
5 Freddie Mac’s records; it did not need to rely on Dean Meyer’s explanation to understand what those  
6 records show. SFR suffered no prejudice from the late disclosure.

7 The only prejudice SFR could pinpoint to the Nevada Supreme Court is that it “was never  
8 afforded the opportunity to conduct discovery as to Mr. Meyer’s Declaration or exhibits.” (**Ex. C**,  
9 SFR’s Op. Brief at 16.) But because the declaration served only to present, authenticate, and explain  
10 business records that had been timely disclosed, which identify the servicer and the fact that Freddie  
11 Mac owned the Deed of Trust on the date of the HOA Sale—exactly the sort of evidence the Nevada  
12 Supreme Court deemed sufficient to support summary judgment in *Daisy Trust*—deposing Mr.  
13 Meyer would have been “[dis]proportional to the needs of the case.” *See* NRCP 26(b)(1). Nor  
14 would Mr. Meyer’s deposition be necessary to test the veracity and admissibility of the evidence.  
15 The Nevada Supreme Court already has found materially identical business records and declaration  
16 testimony sufficient to prove an Enterprise’s property interest. *Daisy Trust*, 445 P.3d at 849-51.

17 To the extent SFR suffered any prejudice by the late disclosure of a corporate representative  
18 of Freddie Mac, SFR could easily have cured that prejudice by seeking Rule 56(d) relief and  
19 requesting an opportunity to depose a witness about the business records. But it failed to do so,  
20 instead moving to strike. This suggests that SFR is more interested in winning on a technicality than  
21 in further discovery into the business records and Freddie Mac’s property interest.

22 Accordingly, this Court should issue an order expressly holding that any late disclosure of a  
23 Freddie Mac corporate representative as a witness was harmless, supporting the denial of SFR’s  
24 motion to strike. Given the fact that the Nevada Supreme Court has already confirmed that  
25 Nationstar’s evidence is sufficient for summary judgment in its favor, (**Ex. B**, Remand Order,  
26 October 24, 2019, at 1), any other outcome would deprive the parties a resolution on the merits for  
27 the sake of a harmless procedural error. In the alternative, this Court can deny the motion to strike  
28 and remedy any prejudice by reopening discovery for the limited basis of giving SFR an opportunity

1 to take a deposition of Freddie Mac's corporate representative, followed by renewed motions for  
2 summary judgment.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should issue a decision granting Nationstar's Motion for  
5 Summary Judgment which also expressly rejects SFR's Motion to Strike. In the alternative, the  
6 Court should order a limited reopening of discovery and set a schedule for new motions for summary  
7 judgment.

8 DATED January 29th, 2020.

9 **AKERMAN LLP**

10 /s/ Donna M. Wittig

11 MELANIE D. MORGAN, ESQ.

12 Nevada Bar No. 8215

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15 1635 Village Center Circle, Ste. 200

16 Las Vegas, Nevada 89134

17 *Attorneys for Nationstar Mortgage LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 29th day of January, 2020, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S SUPPLEMENTAL BRIEFING FOLLOWING REMAND**, in the following manner:

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

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**LAW OFFICES OF RICHARD VILKIN, P.C.**

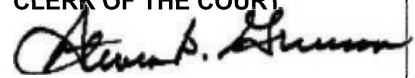
Richard J. Vilkin	richard@vilkinlaw.com
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I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena

An employee of AKERMAN LLP

# **EXHIBIT A**



**ORD**

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*Attorneys for Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a Delaware  
limited liability company; COUNTRYWIDE  
HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C  
Dept.: XVII

**[PROPOSED] ORDER GRANTING  
NATIONSTAR MORTGAGE LLC'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim  
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or  
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and  
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and  
6 Judgment.

### 7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home  
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration  
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,  
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a  
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the  
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.  
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed  
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the  
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008  
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which  
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal  
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and  
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed  
26 of Trust to Nationstar.

1           7.       At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the  
2       Loan for Freddie Mac.

3           8.       The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as  
4       owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the  
5       **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.  
6       Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries  
7       for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to  
8       Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9           9.       The Guide provides:

10                   For each Mortgage purchased by Freddie Mac, the Seller and the Servicer  
11                   agree that Freddie Mac may, at any time and without limitation, require  
12                   the Seller or the Servicer, at the Seller's or the Servicer's expense, to make  
13                   such endorsements to and assignments and recordations of any of the  
14                   Mortgage documents so as to reflect the interests of Freddie Mac.

15       Guide at 1301.10.

16           10.      The Guide also provides:

17                   The Seller/Servicer is not required to prepare an assignment of the  
18                   Security Instrument to Freddie Mac. However, *Freddie Mac may, at its  
19                   sole discretion and at any time, require a Seller/Servicer, at the  
20                   Seller/Servicer's expense, to prepare, execute and/or record assignments  
21                   of the Security Instrument to Freddie Mac.*

22       Guide at 6301.6 (emphasis added).

23           11.      The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie  
24       Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25           12.      Accordingly, the Guide also provides for a temporary transfer of possession of the  
26       note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.  
27       However, when in "physical or constructive possession of a Note," the Servicer must "follow  
28       prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at  
29       8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the  
30       servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at  
31       3302.5.



13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (HOA Sale). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 utilizing the "Sales Comparison approach."

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.

22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

### **CONCLUSIONS OF LAW**

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, <sup>or</sup> and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

### **Freddie Mac Ownership / Federal Foreclosure Bar**

1           4.       The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*  
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest  
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case  
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.  
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan  
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like  
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8           5.       With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**  
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for  
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with  
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of  
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from  
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to  
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].  
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to  
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17           6.       Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a  
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of  
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.  
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21           7.       Unless FHFA gives its consent, the federal protection shall be given full effect, which  
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly  
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy  
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*  
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the  
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove  
27 a negative, i.e., that the product was not altered.")  
28

1           8.       FHFA's April 21, 2015 statement confirms that there was no such consent here. In  
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore  
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's  
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.  
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, \*3 (D. Nev. Feb. 27, 2017) (citing and relying on  
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7           9.       At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and  
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's  
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.  
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*  
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4  
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of  
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the  
14 note owner's power to enforce its interest under the security instrument, because the note owner can  
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these  
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17           10.       Freddie Mac's interest in Property secured by the Deed of Trust was a property  
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA  
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.  
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21           11.       Because the Court grants summary judgment in Nationstar's favor based upon 12  
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23       **Fraud, Unfairness, or Oppression Surrounding the Sale**

24           10.       Nationstar contends that the sales price obtained at the HOA Sale was grossly  
25 inadequate and was commercially unreasonable.

26           11.       To set aside an association foreclosure sale on a theory of commercial  
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or  
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,  
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
3 see also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18,  
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for  
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); see also *Golden v. Tomiyasu*, 79  
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be  
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in  
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the  
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”  
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold  
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;  
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639  
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to  
15 consider any other factor bearing on the equities, including actions or inactions of both parties  
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of  
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,  
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression  
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by  
22 the HOA. See *Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the  
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee’s  
24 substantive actions); see also *Centeno*, 2016 WL 1122449, at \*1 (holding “a low sales price is not a  
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).  
26  
27  
28

14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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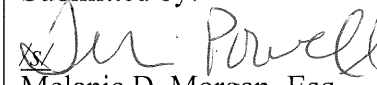
**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

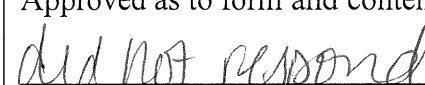
**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that SFR's interest in the Property, if any, is subject to the Deed of Trust.

  
 DISTRICT COURT JUDGE

Submitted by:

  
 Melanie D. Morgan, Esq.  
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# **EXHIBIT B**

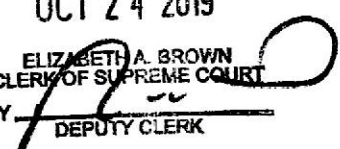
IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Appellant,  
vs.  
NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 75890

**FILED**

OCT 24 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER VACATING AND REMANDING**

This is an appeal from a district court order granting summary judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we vacate and remand.<sup>1</sup>

Having considered the parties' arguments and the record, we conclude that the district court may have erred in granting summary judgment for respondent. Respondent supported its summary judgment motion with computer printouts from Freddie Mac's database and attempted to authenticate those printouts with a declaration from Dean Meyer, which this court recently recognized is sufficient to satisfy NRS 51.135's standard for admissibility. *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev., Adv. Op. 30, 445 P.3d 846, 849 (2019). However, appellant filed a motion to strike Dean Meyer as a witness and his accompanying declaration on the ground that Dean Meyer had not been listed as a witness


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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.



and that the declaration had not been provided during the course of discovery. Although the district court's written order granting summary judgment could be construed as impliedly denying the motion, there is no evidence in the record from which we could confidently infer that the district court based any such denial on a conclusion that the delayed disclosures were substantially justified or harmless. NRCP 37(c)(1) (2005) (recognizing that discovery sanctions are warranted for failure to comply with discovery obligations unless the failure was with "substantial justification" or if the noncompliance was "harmless"). This is particularly so because appellant asked to depose Mr. Meyer as an alternative to striking him and his declaration. Accordingly, we cannot affirm the district court's summary judgment based solely on *Daisy Trust* and the existing record.<sup>2</sup> We therefore

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, Sr. J.  
Douglas

<sup>2</sup>We decline appellant's request to order the district court to enter judgment in appellant's favor.

<sup>3</sup>The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Michael Villani, District Judge  
Kim Gilbert Ebron  
Akerman LLP/Las Vegas  
Fennemore Craig P.C./Reno  
Arnold & Porter Kaye Scholer LLP/Washington DC  
Eighth District Court Clerk

# EXHIBIT C

**Case No. 75890**

IN THE SUPREME COURT OF NEVADA

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

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Respondent.

Electronically Filed  
Nov 26 2018 09:43 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court, Clark County  
The Honorable MICHAEL VILLANI, District Judge  
District Court Case No. A-13-684715-C

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**APPELLANT'S OPENING BRIEF**

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### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

Appellant, SFR Investments Pool 1, LLC, is a privately held limited liability company and there is no publicly held company that owns 10% or more of SFR Investments Pool 1, LLC's stock.

In district court, SFR Investments Pool 1, LLC ("SFR") was represented by Howard C. Kim, Esq., Jacqueline A. Gilbert, Esq., Diana Cline Ebron, Esq. and Karen L. Hanks, Esq. of Kim Gilbert Ebron fka Howard Kim & Associates. The same attorneys represent SFR on appeal.

DATED this 20th day of November, 2018.

**KIM GILBERT EBRON**

/s/Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

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### **JURISDICTIONAL STATEMENT**

This Court has jurisdiction pursuant to NRAP 3A, as the Order granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment, entered on April 11, 2018, notice of entry of which was entered the same day, disposed of all claims remaining in the case.<sup>1</sup> SFR timely appealed on May 14, 2018. (5JA\_1136-1137.)

### **ROUTING STATEMENT**

This case should stay with the Nevada Supreme Court pursuant to NRAP 17(a)(13)-(14), because it raises issues of first impression. First is the type of evidence that can be used to prove and conclude a given loan is "owned" by Fannie Mae or Freddie Mac such that 12 U.S.C. 4617(j)(3) applies. Here, the district court in making its findings and conclusions on the record stated it was relying solely on the footer on the deed of trust stating the document was prepared on a Nevada—Single Family – Fannie Mae/Freddie Mac UNIFORM INSTRUMENT – MERS. This issue was never raised by either party and therefore, SFR did not have an

---

<sup>1</sup> Gutierrez's claims against the Association and NAS were dismissed by Order entered on February 14, 2014. (5JA\_1155-1156.) The same order resolved NAS's claims against Gutierrez. (Id.) SFR and Gutierrez stipulated to dismiss their respective claims against each other by order entered on May 9, 2014. (5JA\_1144-1147.)

opportunity to address the issue at the district court level.<sup>2</sup> Furthermore, this appeal raises issues of first impression that have not yet been adjudicated in a published opinion of this Court: (1) the breadth and scope of *In re Monteirh*,<sup>3</sup> when the parties are not merely in a creditor/debtor relationship as in that case and where the rights of a third party have intervened; and (2) whether the “federal foreclosure Bar” acts to defeat a third-party’s rights when Freddie Mac is not the beneficiary of record and a property interest does not attach as to third parties until recorded. These issues may be resolved by cases already pending before the Court,<sup>4</sup> but as yet there is no binding case law on point.

While some of the evidentiary issues raised in this appeal may presumptively be routed to the Court of Appeals, this is an issue that arises so often in these NRS 116 cases – where SFR has had to deal with trial/hearing by ambush related to purported Fannie/Freddie ownership with documents never produced in discovery and which are inadmissible due to failure of authentication/foundation that this Court

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<sup>2</sup> This serves as the basis for SFR’s concurrently filed Motion to Supplement the Record, to provide testimony from witnesses for both Fannie and Freddie as to the nature of the form. Evidence that would have been produced had the issue arisen in the district court.

<sup>3</sup> 131 Nev. \_\_\_, 354 P.3d 648 (2015).

<sup>4</sup> *SFR Investments Pool 1, LLC v. Green Tree Servicing, LLC*, Case No. 72010, on the issue of whether a deed of trust is property of the FHFA for purposes of 4617(j)(3) when its interest is not recorded in Fannie or Freddie’s name as required to attach as to third parties. *See also Nationstar Mortgage, LLC v. Guberland LLC-Series 3*, Case No. 70546 (same).

should retain the case. In too many of these cases the Rules of Civil Procedure and evidentiary standards are ignored or violations excused, where they would not be in other types of cases, such as personal injury.

Finally, this Court should determine the sufficiency of electronic records, especially provided only as partial screen shots to “prove” GSE “ownership” of a note or deed of trust where the public records provide otherwise.

### **ISSUES PRESENTED FOR REVIEW**

1. Whether the footer on a deed of trust stating that the document is Nevada—  
Single Family – Fannie Mae/Freddie Mac UNIFORM INSTRUMENT –  
MERS, is proof of Freddie Mac’s actual interest in the loan or deed of trust.
2. Whether the district court erred in failing to consider and rule on SFR’s  
Motion to Strike evidence that was unjustifiably disclosed even after the  
extended discovery period the Bank requested.
3. Whether summary judgment was appropriate when the evidence relied on  
for proof of Freddie Mac’s purported ownership of the loan and deed of  
trust, and the purported servicing relationship between Freddie Mac and  
Nationstar was inadmissible, unreliable and contradicted by witness  
testimony.

### **STATEMENT OF THE CASE**

The real property located at 663 Moonlight Stroll Street, Henderson, Nevada 89002 (the “Property”) was subject to foreclosure pursuant to the provisions of Nev. Rev. Stat. § (“NRS”) 116.3116, *et seq.* Specifically, Horizon Heights Homeowners Association (the “Association”), through its foreclosure agent, Nevada Association Services, Inc. (“NAS”) foreclosed on its lien for delinquent homeowner’s association assessments on April 5, 2013, resulting in a sale at public auction to SFR Investments Pool 1, LLC (“SFR”) as the highest bidder.

On July 8, 2013, former homeowner, Ignacio Gutierrez (“Gutierrez”), filed its Complaint against SFR, NAS, the Association, and original lender KB Home Mortgage Company for wrongful foreclosure and declaratory relief. (1JA\_0001-0010). On August 2, 2013, SFR filed an Answer to Complaint, Counterclaim against Gutierrez, and Third Party Complaint against Nationstar Mortgage, LLC (“the Bank”)<sup>5</sup> and Countrywide Home Loans, Inc. (“Countrywide”) for Quiet Title, Unjust Enrichment and Injunctive Relief. (1JA\_0011-0026.) Bank of America (“BANA”), claiming it was successor in interest to third-party defendant Countrywide, filed an Answer to SFR’s Third Party Complaint on October 8, 2014.

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<sup>5</sup> Unless otherwise stated, “the Bank” includes Nationstar and its predecessors in interest.

(1JA\_44-48.) Although later alleging that Federal National Mortgage Corporation (“Freddie Mac”) had owned the loan and the deed of trust since August of 2005, and that MERS as nominee assigned the deed of trust to BANA, BANA, who was allegedly an agent of Freddie Mac, did not assert any of these facts or an affirmative defense of 12 U.S.C. § 4617(j)(3) (“Federal Foreclosure Bar” or “Bar”). (1JA\_68, ¶¶ 2-3.) It was not until Nationstar filed its answer, almost a year later, that the Bank asserted that the Deed of Trust as to this Property was precluded from extinguishment by the Bar. (1JA\_0049, 54.)

The district court originally entered summary judgment in favor of SFR concluding that Nationstar lacked standing to raise the Bar as a defense.<sup>6</sup> The Bank appealed.<sup>7</sup> This Court authored a published opinion in that case, holding a servicer of a regulated entity (such as Freddie Mac) has standing to raise the Bar.<sup>8</sup> However, the Court remanded for the district court to determine (1) whether the Federal Home Loan Mortgage Corporation (“Freddie Mac”) had an ownership interest in the loan and (2) whether there was an actual, contractual relationship between Nationstar and Freddie Mac.<sup>9</sup> The Court also remanded to allow Nationstar to introduce

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<sup>6</sup> *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. \_\_\_, 396 P.3d 754, 756 (2017).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 758.

<sup>9</sup> *Id.*

evidence to support any equitable claim.<sup>10</sup>

Following remittitur, and over SFR's objection, on July 19, 2017, the district court granted the Bank's motion to reopen discovery for 90 days—until October 17, 2017—to allow it to supplement disclosures and therefore, allow SFR to depose additional witnesses based on those disclosures. (*See* 1JA\_59-61.) Despite having this extra time, the Bank failed to disclose Dean Meyer, an employee of Freddie Mac, or his Declaration. (4JA\_886.)

On November 15, 2017, the Bank filed a Motion for Summary Judgment against SFR SFR's claims. (1JA\_0062-2JA\_0336.) In it, the Bank relied on Mr. Meyer's undisclosed declaration in an attempt to authenticate Freddie Mac's computer screen shots. (1JA\_0113-119.) On November 16, 2017, SFR filed its Motion for Summary Judgment against the Bank on its claims and against the Bank's claims. (2JA\_0337-4JA\_0852.) On December 14, 2017, SFR opposed the Bank's Motion for Summary Judgment and filed a Countermotion to Strike the belatedly disclosed Declaration of Dean Meyer, employee of Freddie Mac, and all arguments related to it. (4JA\_0853-0930.) The declaration executed on November 10, 2017, well after the close of the extended discovery period and well before it was ultimately belatedly disclosed on November 29, 2017, after hours, almost 45

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<sup>10</sup> *Id.*

days after the end of extended discovery. (*See* 1JA\_0119; 4JA\_886.)

Following full briefing and a hearing held on January 17, 2018, the district court took the matter under advisement, and issued its detailed minute order on January 31, 2018. (5JA\_1080-1111.) The district court granted summary judgment in favor of the Bank. (5JA\_1111-1120.) It found, based on the footer on the deed of trust stating it was a Nevada—Single Family – Fannie Mae/Freddie Mac UNIFORM INSTRUMENT – MERS, that Federal National Mortgage Corporation (“Freddie Mac”) “owned” the loan and deed of trust. (5JA\_1109.) The Bank did not raise the form deed of trust as evidence of proof in its motion for summary judgment. (*See generally*, 1JS\_0062-2JA\_0336.) Thus, SFR did not have the opportunity to brief the issue in its opposition or in its reply. (*See generally*, 4JA\_0853-0930; 4JA\_0943-0950.) The district court also found that Nationstar was Freddie’s servicer based on screen shots from Nationstar’s computer system, and that SFR had not shown that Federal Housing Finance Agency (“FHFA”) had consented to the foreclosure and, therefore, the Bar applied. (*See* 5JA\_1109, 1116, 1117, 1118.) Thus, SFR took title to the Property subject to the deed of trust. (*See* 5JA\_1109, 1120.) As to the equity claims, the district court found that the Bank failed to provide actual evidence of fraud, oppression or unfairness as to the conduct of the sale and, therefore the sale was “commercially reasonable,” that there was no basis to set aside the sale. (5JA\_1120.) The District Court also denied as moot SFR’s



Countermotion to Strike, based on its decision to determine Freddie's ownership based on the form deed of trust. (5JA\_1107-1110).

### **FACTUAL BACKGROUND**

In addition to the facts presented in the Statement of the Case related to the proceedings, SFR presents the following undisputed facts:

<b>DATE</b>	<b>FACTS</b>
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
March 30, 2003	Association perfected and gave notice of its lien by recording its Declaration of CC&Rs as Instrument No. 20030630002850. <sup>11</sup>
July 20, 2005	Ignacio Gutierrez obtained title to the Property through a Grant Bargain Sale Deed recorded as Instrument No. 200507200004599. <sup>12</sup>
July 20, 2005	First Deed of Trust ("FDOT") in favor of KB Home Mortgage Company recorded as Instrument No. 200507200004600, naming MERS as the nominee beneficiary. <sup>13</sup>
July 10, 2012	Association recorded Notice of Delinquent Assessments as Instrument No. 201207100001296 <sup>14</sup>
August 30, 2012	Association recorded Notice of Default. <sup>15</sup>
November 28, 2012	Assignment of First Deed of Trust to Nationstar recorded. <sup>16</sup>
February 20, 2013	Association recorded a Notice of Foreclosure Sale. <sup>17</sup>

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<sup>11</sup> 2JA\_0363-0364.

<sup>12</sup> 2JA\_0365-0375.

<sup>13</sup> 1JA\_0089-0111.

<sup>14</sup> 2JA\_0400-0401.

<sup>15</sup> 2JA\_0402-0404.

<sup>16</sup> 2JA\_0405-406.

<sup>17</sup> 2JA\_0407-0409.

April 5, 2013	Association foreclosure sale took place and SFR placed winning bid of \$11,000.00. <sup>18</sup>
April 8, 2013	<p>Association foreclosure deed vesting title in SFR recorded as Instrument No. 201304080001036.<sup>19</sup></p> <p>As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.</p> <p>SFR has no reason to doubt the recitals in the Foreclosure Deed — if there were any issues with delinquency or noticing, none of these were communicated to SFR.<sup>20</sup></p> <p>Further, neither SFR, nor its manager, have any relationship with the Association besides owning property within the community and bidding on properties at auction.<sup>21</sup></p> <p>Similarly, neither SFR, nor its manager, have any relationship with the Association’s agent beyond attending auctions and bidding on properties.<sup>22</sup></p>
Prior to April 8, 2013	<p>No release of the super-priority lien was recorded.<sup>23</sup></p> <p>No lis pendens was recorded by Nationstar.<sup>24</sup></p> <p>The Bank did not allege or argue it made any payment to the Association or NAS.<sup>25</sup></p> <p>Freddie Mac was never a recorded beneficiary on the deed of trust.<sup>26</sup></p>

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<sup>18</sup> 2JA\_0410-0413.

<sup>19</sup> *Id.*

<sup>20</sup> 2JA\_0414-0415, at ¶ 7.

<sup>21</sup> *Id.* at ¶ 8.

<sup>22</sup> *Id.* at ¶ 9.

<sup>23</sup> *Id.* at ¶ 10.

<sup>24</sup> *Id.* at ¶ 6.

<sup>25</sup> 1JA\_46-47, 51-54.

<sup>26</sup> *Id.* at 0068.

The disputed facts related to whether Freddie Mac “owned” the loan and the deed of trust. The district court did not rely on the Dean Meyer declaration, instead relying solely on the form deed of trust as proof of Freddie’s ownership. (5JA\_1109.) Thus, the district court denied SFR’s motion to strike as moot. (*Id.* at 1110.)

Also disputed was Nationstar’s alleged relationship with Freddie Mac as a servicer. The district court found Nationstar did service the loan based on a screen shot from Freddie Mac’s computer records which, as demonstrated below, are unreliable at best. The district court also found the relationship through Nationstar’s records, the same records Keith Kovalic, Nationstar’s Rule 30(b)(6) witness, was unable to authenticate, and could not lay foundation for. (2JA\_0348-350; .)

### **SUMMARY OF ARGUMENT**

Mortgage lenders and their agents, like the Bank, bet on their interpretation of NRS 116.3116(2) and refused to accept that their FDOT could be extinguished by a homeowners association’s superpriority lien—something unanimously decided by this Court in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014). After mortgage borrowers had defaulted on their loans, lenders delayed their own foreclosures at the expense of the associations, who went years without being paid any money for the services they provided. As such, the associations were forced to foreclose on their liens for unpaid assessments. It was the lenders’ arrogance and (in)action that led to the loss of their collateral – not

the state's actions, and certainly not the actions of SFR.

The foreclosure deed recitals provided that the subject foreclosure sale was properly noticed and conducted; this resulted in the extinguishment of the Bank's FDOT. Moreover, there was never any indication whatsoever that Freddie Mac, or any entity other than the recorded beneficiaries, owned the Note and FDOT. As such, the District Court erred in granting Nationstar's Motion for Summary Judgment, forcing SFR to take the Property subject to the FDOT, for the following reasons:

**First**, the Bank failed to bring any admissible evidence that Freddie Mac had an ownership interest in the Property. While the documents attached to the Dean Meyer declaration had been disclosed during discovery, the declaration which was necessary to attempt to authenticate the documents and lay foundation was not. Without that, Freddie's alleged ownership could not begin to be proven. When SFR moved to strike the declaration, the district court found what it deemed to alternative admissible evidence of Freddie's ownership: the deed of trust. The district court erroneously found that the form proved such ownership, and any inference of such should have been in the light most favorable to SFR. As none of the parties raised this as evidence of such ownership, and the Bank never asserted it in its statement of undisputed facts, SFR had no opportunity to brief the issue. Thus, as seen in the testimony attached to SFR's Motion to Supplement the Record, filed concurrently

herewith, the district court erred in relying on this form deed of trust. To the extent the Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment ("Order") says otherwise, then it belies the district courts deeming SFR's Motion to Strike as moot. If the Court relied on the Dean Meyer declaration to authenticate any documents for ownership, it would have denied SFR's Motion to Strike outright, which it did not do, either in the minute order or in the Order.

This Court too, should deem the declaration and any argument supported by the declaration as inadmissible. The Bank claimed it inadvertently forgot to attach the declaration to its motion for summary judgment. But the failure was not inadvertent. The declaration was not even executed until after the motion was filed. It could not have been a simple oversight of not attaching it at the time of filing. The declaration did not exist. This Court should not countenance such blatant disregard for the rules of both evidence and discovery under NRCP.

Without admissible evidence of Freddie's ownership, the grant of summary judgment in favor of the Bank based on the Bar must be reversed.

**Second,** because the Bank failed to provide admissible evidence of Freddie's ownership or interest in the loan and deed of trust, the Bank's assertions as to alleged servicer relationship are immaterial. But to the extent this Court deems otherwise, the Bank failed to bring admissible evidence that Nationstar had an actual, contractual servicer relationship with Freddie Mac as to this Property. The district

court relied on Freddie Mac's screen shots to prove the relationship. But the Bank's Rule 30(b)(6) witness, Keith Kovalic, could not testify to any of Freddie's documents. Nor could he authenticate and lay foundation for the screen shot from Nationstar's computer system. The Bank attempted to rely heavily on Freddie Mac's Servicing Guide as proof of its relationship. But that public document does not create such a relationship. If it did, anyone who downloads and reads the document could claim such a relationship without providing more. The evidence provided by Nationstar was insufficient to prove any relationship and was not admissible due to lack of authentication and foundation.

#### **STANDARD OF REVIEW**

While this Court reviews "summary judgment de novo, without deference to the findings of the lower court[.]" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is only appropriate with the moving party is entitled to judgement as a matter of law. *Id.* at 731, 121 P.3d at 1031; see also NRCP 56(c). In ruling on a motion for summary judgment the court must view all evidence and reasonable inferences drawn from it in the light most favorable to the non-moving party. *Humphries v. New York-New York Hotel & Casino*, 133 Nev. \_\_\_, \_\_\_, 403 P.3d 358, 360 (2017), *citing Wood*, 121 Nev. at 729, 121 P.3d at 1029. Additionally, it also relies upon a number of presumptions in Nevada law regarding the validity of the foreclosure sale and deed, and the conclusive recitals contained in