

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS BAHAM, AN INDIVIDUAL,
Appellant(s),

vs.

BAYVIEW LOAN SERVICING, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS,
LLC, A FOREIGN LIMITED LIABILITY
COMPANY; AND THE BANK OF NEW
YORK MELLON, F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2005-2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,
Respondent(s),

Electronically Filed
Apr 19 2021 02:10 p.m.
Case No: A-19-795762-C
Consolidated with A-19-810458-C
Elizabeth A. Brown
Docket No: 82621 Clerk of Supreme Court

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
DENNIS BAHAM, PROPER PERSON
6017 GUILD CT.
LAS VEGAS, NV 89131

ATTORNEY FOR RESPONDENT
DARREN T. BRENNER, ESQ.
7785 W. SAHARA AVE., STE 200
LAS VEGAS, NV 89117

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State of California
County of Ventura

On JAN 23 2012 before me, Shannon Steeg, Notary Public, personally appeared
Swarupa Slee

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

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

WITNESS my hand and official seal.

Notary Public: Shannon Steeg
My Commission Expires: May 17, 2013



(Seal)

EXHIBIT C

EXHIBIT C

APN# 12514810039

Inst #: 201109130004087

Fees: \$18.00

N/C Fee: \$25.00

09/13/2011 02:51:02 PM

Receipt #: 911636

Requestor:

FIRST AMERICAN NDTs

Recorded By: CHR Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

LOAN MODIFICATION AGREEMENT
(Type of Document)

**Recording Requested By and
When Recorded Return To:**

*First American Title
Loss Mitigation Title Services-LMTS
P.O. Box 27670
Santa Ana, CA 92799
Attn: LMTS
FAT# 6818426*

STATE: NEVADA
COUNTY: CLARK

This page added to provide additional information required by NRS 111.312 Sections 1-2.
(Additional recording fee applies) This cover page must be typed or printed.

RECORDING REQUESTED BY:
BAC Home Loans Servicing, LP
Attn Home Retention Division; CAG-919-01-43
400 National Way
Simi Valley, CA 93065

Loan #: 9362

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LOAN MODIFICATION AGREEMENT Fixed Interest Rate Balloon Step-Recorded

This Loan Modification Agreement ("Agreement"), made this 19th day of May 2011, between DENNIS BAHAM, and BAC Home Loans Servicing, LP (Lender), amends and supplements (1) the Mortgage, Deed of Trust, or Deed to Secure Debt (the Security Instrument), dated the 21st day of December 2004 and recorded on the 23rd day of December 2004 in Book No. None, Page No. None as Document No. 20041223-0002350 in the Official Records of Clark County, in the State of NEVADA, and (2) the Note bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as in the 'Property', located at 6017 GUILD CT, LAS VEGAS, NV 89131.

Original Principal \$629,629.27

Please see attached Exhibit "A"

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. As of the 1st day of July 2011, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U.S. \$720,797.08, consisting of the amount(s) loaned to the Borrower by Lender, which may include, but are not limited to, any past due principal payments, interest, fees and/or costs capitalized to date. All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.

Borrower understand that my monthly principal and interest payment for the Interest Bearing Principal Balance is being amortized over 480 months from the date of my first modification payment. However, the scheduled maturity date of my loan will remain unchanged. This means that even if I make all of the scheduled payments under this modification on time I will have a remaining balance at the maturity of my loan which is called a balloon payment, and I will need to make arrangements to pay this remaining balance.

2. The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender. Interest will be charged on the Unpaid Principal Balance from the 1st day of June 2011 of the modified term at the yearly rate of (See Below Schedule). The Borrower promises to make monthly payments of (See Below Schedule) beginning on the 1st day of July 2011. If on the 1st day of January 2035 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Maturity Date.

The payment schedule for this modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Type of Payment	Monthly Payment	Payment Begins on	Number of Monthly Payments
1-5	2.000%	6/1/2011	Principal and Interest	\$2,182.76	7/1/2011	60
6	3.000%	6/1/2016	Principal and Interest	\$2,535.86	7/1/2016	12
7	4.000%	6/1/2017	Principal and Interest	\$2,908.57	7/1/2017	12
8	4.875%	6/1/2018	Principal and Interest	\$3,247.96	7/1/2018	199

3. If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by the Security Instrument.

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

4. Borrower also will comply with all other covenants, agreements, and requirements of the Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are forever canceled, null and void, as of the date specified in paragraph No. 1 above:

(a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note, including, where applicable, the Timely Payment Rewards rate reduction, as described in paragraph 1 of the Timely Payment Rewards Addendum to Note and paragraph A.1. of the Timely Payment Rewards Rider. By executing this Agreement, Borrower waives any Timely Payment Rewards rate reduction to which Borrower may have otherwise been entitled; and

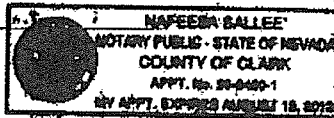
(b) all terms and provisions of any adjustable rate rider, or Timely Payment Rewards Rider, where applicable, or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

5. The Borrower will make such payments at PO Box 515503, Los Angeles, CA 90051-6803 or at such other place as the Lender may require.
6. Nothing in this agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument. Except as otherwise specifically provided in this Agreement, the Note and Security Instrument will remain unchanged, and the Borrower and Lender will be bound by, and comply with, all terms and provisions thereof, as amended by this Agreement.
7. In consideration of this Modification, Borrower agrees that if any document related to the Security Instrument, Note and/or Modification is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan as modified, or is otherwise missing, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary. If the original promissory note is replaced the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as Documents. Borrower agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement.

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

Dennis Baham
DENNIS BAHAM

6/13/11
Date



STATE OF Nevada
County OF Clark

On June 13, 2011 Before me, Nafessa Sallee Notary Public, personally appeared Dennis Baham

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

WITNESS my hand and official seal.

Signature Nafessa Sallee

Do Not Write Below This Line.

BAC Home Loans Servicing, LP

THIS SECTION IS FOR INTERNAL BANK OF AMERICA HOME LOANS SERVICING, LP USE ONLY

By Miguel Preciado

Dated: 8/16/11

STATE OF Nevada

County OF _____

On _____ Before me, _____ Notary Public, personally appear

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

WITNESS my hand and official seal.
Signature

see attached

ACKNOWLEDGMENT

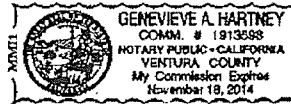
State of California
County of Ventura

On 08/16/2011 before me, Genevieve A. Hartney, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature G. A. Hartney (Seal)

BORROWER: DENNIS BAHAM
PROPERTY ADDRESS: 6017 GUILD CT
LAS VEGAS, NV 89131-2331

LEGAL DESCRIPTION EXHIBIT A

PARCEL I: LOT 39 IN BLOCK A OF FINAL MAP OF ELKHORN/JONES, A RESIDENTIAL PLANNED DEVELOPMENT AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114 OF PLATS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. RESERVING THEREFROM A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATES RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925 OF OFFICIAL RECORDS, AS THE SAME MAP FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II: A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATE RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

EXHIBIT D

EXHIBIT D

APN: 125-14-810-039
Recording Requested By:
First American Title Insurance Company

When Recorded Mail To:
First American Trustee Servicing Solutions,
LLC
6 Campus Circle, 2nd Floor
Westlake, TX 76262

Inst #: 201308140001812
Fees: \$223.00
N/C Fee: \$0.00
08/14/2013 02:20:37 PM
Receipt #: 1733398
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: MSH Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 125-14-810-039
TS No.: NV1300252029
VA/FHA/PMI No.: 9382
TSG No.: 7934213

NEVADA

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account into good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). **YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST MEDIATION HAS NOT EXPIRED.**

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2);

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

APN No.: 125-14-810-039
TS No.: NV1300252029
VA/FHA/PMI No.: 86239382
TSG No. 7934213

**NOTICE OF DEFAULT AND
ELECTION TO SELL UNDER DEED OF TRUST**

NEVADA

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

**THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2005-2
c/o First American Trustee Servicing Solutions, LLC
6 Campus Circle, 2nd Floor
Westlake, TX76262
877-276-1894**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That First American Trustee Servicing Solutions, LLC As Agent for the current beneficiary under a Deed of Trust dated 12/21/2004 executed by:

DENNIS BAHAM,

as Trustor to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC. as Beneficiary, recorded 12/23/2004, (as Instrument No.) 20041223-0002350, (in Book) (Page) , of Official Records in the Office of the Recorder of CLARK County, Nevada describing land therein as:

AS MORE FULLY DESCRIBED IN THE ABOVE MENTIONED DEED OF TRUST

Property Address: **6017 GUILD CT, LAS VEGAS NV 89131**
said obligations including ONE NOTE FOR THE ORIGINAL sum of **\$616,020.00**

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

**THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 9/1/2011 AND ALL
SUBSEQUENT INSTALLMENTS, TOGETHER WITH LATE CHARGES AS SET FORTH IN SAID
NOTE AND DEED OF TRUST, ADVANCES, ASSESSMENTS, FEES, AND/OR TRUSTEE FEES.
NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS A WAIVER OF ANY FEES OWING TO THE
BENEFICIARY UNDER THE DEED OF TRUST, PURSUANT TO THE TERMS OF THE LOAN
DOCUMENTS..**

This property is sold as-is. The lender is unable to validate the condition, defects or disclosure issues of said property and buyer waives the disclosure requirement under NRS 113.130 by purchasing at this sale and signing said receipt.

APN No.: 125-14-810-039
TS No.: NV1300252029
VA/FHA/PMI No.: 86239382
TSG No.: 7934213

NOTICE OF DEFAULT AND
ELECTION TO SELL UNDER DEED OF TRUST

NEVADA

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

Dated: AUG 09 2013

First American Trustee Servicing Solutions, LLC
6 Campus Circle, 2nd Floor
Westlake TX 76262

By: 
(signature)

Name: William Brown, Supervisor

Title: _____

First American Trustee Servicing Solutions, LLC MAY BE ACTING AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR
THAT PURPOSE.

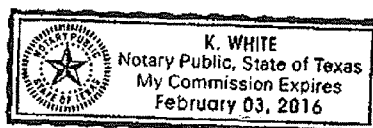
STATE OF TEXAS
COUNTY OF TARRANT

Before me, K. White on this day personally appeared William Brown
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that
this person executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 09 day of August, A.D., 2013

 (Notary Seal)

SEE ATTACHED DECLARATIONS



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Borrower(s): DENNIS BAHAM	Trustee Name and Address: First American Trustee Servicing Solutions, LLC 6 Campus Circle, 2nd Floor Westlake, TX 76262
Property Address: 6017 GUILD CT, LAS VEGAS NV 89131	Deed of Trust Document <u>Instrument No.</u> 20041223-0002350

STATE OF Texas)
) ss:
COUNTY OF Tarrant)

The affiant, Alicia Wood, being first duly sworn
upon oath and under penalty of perjury, attests as follows:

1. I am an employee of RESIDENTIAL CREDIT SOLUTIONS, INC.. I am duly authorized to make this Affidavit for THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2 in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit, as set forth in NRS 107.080(2)(c) and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is RESIDENTIAL CREDIT SOLUTIONS, INC.'s practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

First American Trustee Servicing Solutions, LLC		6 Campus Circle, 2nd Floor Westlake, TX 76262
Full Name		Street, City, State, Zip

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS- THROUGH CERTIFICATES, SERIES 2005-2		c/o RESIDENTIAL CREDIT SOLUTIONS, INC., 4708 MERCANTILE DRIVE, FT WORTH, TX 76137
Full Name		Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2		c/o RESIDENTIAL CREDIT SOLUTIONS, INC., 4708 MERCANTILE DRIVE, FT WORTH, TX 76137
Full Name		Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

RESIDENTIAL CREDIT SOLUTIONS, INC.		4708 MERCANTILE DRIVE, FT WORTH, TX 76137
Full Name		Street, City, State, Zip

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust. If the latter is applicable and the obligation or debt is an "instrument," as defined in NRS § 104.3103(2), the beneficiary, successor in interest to the beneficiary, or trustee entitled to enforce the obligation or debt is either: (1) the holder of the instrument constituting the obligation or debt; (2) a nonholder in possession of the instrument who has the rights of the holder; or (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued NRS § 104.3309.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) The amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: (800) 737-1192.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

RECORDED: 01/25/2012 AS INSTRUMENT/201201250000110

FROM: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
TO: THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS
TRUSTEE
FOR THE CERTIFICATE HOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN
TRUST
2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2

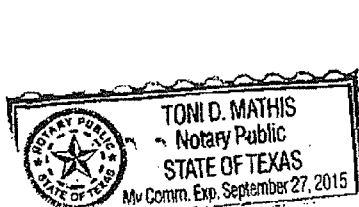
Signed By: [Signature]

Dated: August 7, 2013

Print Name: Alicia Wood

STATE OF Texas)
) ss:
COUNTY OF Tarrant)

On this 7th day of August, 2013, personally appeared before me, a Notary Public, in and for said County and State, Alicia Wood, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that ~~he~~/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.



[Signature] Toni D. Mathis
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

EXHIBIT E

EXHIBIT E

Civil/Criminal Case Records Search Results

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) Location : District Court Civil/Criminal [Help](#)

Record Count: 10

Search By: Party Party Search Mode: Name Last Name: baham First Name: dennis All All Sort By: Filed Date

Case Number	Citation Number	Style/Defendant Info	Filed/Location	Type/Status	Charge(s)
02A449761		Dennis Baham vs Las Vegas City Of	04/24/2002 Department 18	Civil Petition for Judicial Review Closed	
02A449787		Dennis Baham vs Las Vegas City Of	04/25/2002 Department 20	Civil Petition for Judicial Review Closed	
03A472005		Dennis Baham, Connie Williams vs Las Vegas City Of	08/11/2003 Department 28	Civil Petition for Judicial Review Closed	
A-15-17704-J		Dennis Baham, Petitioner(s) vs. Bank of New York Mellon, Respondent(s)	04/28/2015 Department 25	Foreclosure Mediation Case Closed	
A-15-729443-J		Dennis Baham, Petitioner(s) vs. Bank of New York Mellon, Respondent(s)	12/22/2015 Department 25	Foreclosure Mediation Case Closed	
A-17-756557-J		Dennis Baham, Petitioner(s) vs. Bank of New York Mellon, Respondent(s)	06/06/2017 Department 25	Foreclosure Mediation Case Closed	
A-18-775019-FM		Dennis Baham, Petitioner(s) vs. First American Trustee Servicing Solutions, Respondent(s)	05/24/2018 Department 7	Petition for Foreclosure Mediation Assistance Open	
A-19-795507-C		Dennis Baham, Plaintiff(s) vs. Bayview Loan Servicing, LLC, Defendant(s)	05/24/2019 Department 32	Other Civil Matters Closed	
A-19-795762-C		Dennis Baham, Plaintiff(s) vs. Bayview Loan Servicing, LLC, Defendant(s)	05/30/2019 Department 4	Other Title to Property Open	
A-20-810458-C		Dennis Baham, Plaintiff(s) vs. Bayview Loan Servicing LLC, Defendant(s)	02/13/2020 Department 11	Other Title to Property Open	

EXHIBIT F

EXHIBIT F

APN : 125-14-810-039

Recording Requested By :
First American Title Insurance Company

When Recorded Mail To :
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

TS No.: NV1400259949
VA/FHA/PMI No. NEVADA
TSG No. 8457622

Inst #: 20180426-0001051
Fees: \$290.00
04/26/2018 11:15:20 AM
Receipt #: 3385211
Requestor:
FIRST AMERICAN/ TRUSTEE SER
Recorded By: DROY Pgs: 8
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account into good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default, or both (1) and (2);

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

APN No.: 125-14-810-039
TS No.: NV1400259949
VA/FHA/PMI No.:
TSG No. 8457622

**NOTICE OF DEFAULT AND
ELECTION TO SELL UNDERDEED OF TRUST**

NEVADA

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

**THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2005-2
c/o First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063
866-429-5179**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That First American Trustee Servicing Solutions, LLC As Agent for the current beneficiary under a Deed of Trust dated 12/21/2004 executed by:

DENNIS BAHAM,

as Trustor to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.** as Beneficiary, recorded 12/23/2004, (as Instrument No.) 20041223-0002350, (in Book) (Page) , of Official Records in the Office of the Recorder of **CLARK County, Nevada** describing land therein as:

AS MORE FULLY DESCRIBED IN THE ABOVE MENTIONED DEED OF TRUST

Property Address: **6017 GUILD CT, LAS VEGAS NV 89131-2331**
said obligations including **ONE NOTE FOR THE ORIGINAL sum of \$616,020.00**

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

**THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 9/1/2011 AND ALL
SUBSEQUENT INSTALLMENTS, TOGETHER WITH LATE CHARGES AS SET FORTH IN SAID
NOTE AND DEED OF TRUST, ADVANCES, ASSESSMENTS, FEES, AND/OR TRUSTEE FEES.
NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS A WAIVER OF ANY FEES OWING TO THE
BENEFICIARY UNDER THE DEED OF TRUST, PURSUANT TO THE TERMS OF THE LOAN
DOCUMENTS..**

This property is sold as-is. The lender is unable to validate the condition, defects or disclosure issues of said property and buyer waives the disclosure requirement under NRS 113.130 by purchasing at this sale and signing said receipt.

APN No.: 125-14-810-039
TS No.: NV1400259949
VA/FHA/PMI No.:
TSG No. 8457622

NOTICE OF DEFAULT AND
ELECTION TO SELL UNDER DEED OF TRUST

NEVADA

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

Dated: 4-26-18

First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving TX75063

By DeeAnn Gregory
(signature)

Name: DeeAnn Gregory, Senior Manager

Title: _____

First American Trustee Servicing Solutions, LLC MAY BE ACTING AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT
PURPOSE.

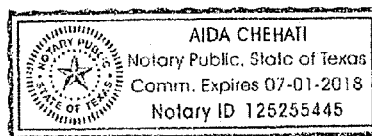
STATE OF TEXAS
COUNTY OF DALLAS

Before me, Aida Chehata on this day personally appeared DeeAnn Gregory
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that
this person executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of April, A.D., 2018

Aida Chehata (Notary Seal)

SEE ATTACHED DECLARATIONS



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Borrower(s): DENNIS BAHAM	Trustee Name and Address: First American Trustee Servicing Solutions, LLC 4795 Regent Blvd, Mail Code 1011-F Irving, TX 75063
Property Address: 6017 GUILD CT, LAS VEGAS NV 89131-2331	Deed of Trust Document <u>Instrument No.</u> 20041223-0002350

STATE OF Pennsylvania)
COUNTY OF Montgomery) ss:

The affiant, Randall Jackson, being first duly sworn
upon oath and under penalty of perjury, attests as follows:

1. I am an employee of BAYVIEW LOAN SERVICING, LLC. I am duly authorized to make this Affidavit for THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2 in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit, as set forth in NRS 107.080(2)(c) and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is BAYVIEW LOAN SERVICING, LLC's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

First American Trustee Servicing Solutions, LLC	4795 Regent Blvd, Mail Code 1011-F Irving, TX 75063
Full Name	Street, City, State, Zip

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2	c/o BAYVIEW LOAN SERVICING, LLC, 4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2	c/o BAYVIEW LOAN SERVICING, LLC, 4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

BAYVIEW LOAN SERVICING, LLC	4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust. If the latter is applicable and the obligation or debt is an "instrument," as defined in NRS § 104.3103(2), the beneficiary, successor in interest to the beneficiary, or trustee entitled to enforce the obligation or debt is either: (1) the holder of the instrument constituting the obligation or debt; (2) a nonholder in possession of the instrument who has the rights of the holder; or (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued NRS § 104.3309.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) The amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: (800)771-0299.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

RECORDED: 01/25/2012 AS INSTRUMENT: 201201250000110
FROM: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
TO: THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2.

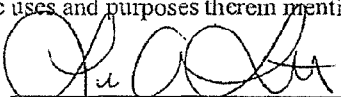
Signed By: 

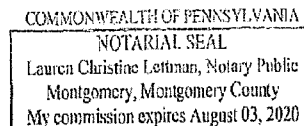
Dated: 12-13-17

Print Name: Randall Jackson

STATE OF Pennsylvania)
COUNTY OF Montgomery) ss:

On this 13th day of December, 2017, personally appeared before me, a Notary Public, in and for said County and State, Randall Jackson, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.


Lauren Christine Lettman
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE



Declaration of Mortgage Servicer Pursuant to Nevada Senate Bill 321

Mortgage Servicer: Bayview Loan Servicing, LLC, a Delaware Limited Liability Company

Borrower(s): DENNIS BAHAM

Property Address: 6017 GUILD CT LAS VEGAS, NV 89131

Loan No.:

T.S. No.:

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

1. ☒ The mortgage servicer has contacted the borrower pursuant to Nevada Senate Bill 321 Section 11.2 to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ "The mortgage servicer has tried with due diligence to contact the borrower(s) as required by NRS 107.510(5) (a) and NRS 107.510(5) (c)-(e), but has not made contact despite such due diligence. The telephone contact requirements under NRS 107.510(5) (b) were not attempted pursuant to the borrower's previously submitted request for cease communication. The due diligence efforts were satisfied on _____, 20____."
3. ☐ Despite the exercise of due diligence pursuant to Nevada Senate Bill 321 Section 11.4, the Mortgage servicer has been unable to contact the borrower to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
4. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to subdivision (c) of NRS Chapter 107.
5. ☐ The requirements of Nevada Senate Bill 321 do not apply due to the qualifications set forth in NRS Chapter 107:
 - a. _____ The loan is not secured by a first mortgage deed of trust that secures a loan or that encumbers real property.
 - b. _____ The real property is not occupied by the borrower(s).
 - c. _____ The secured property is exempt from due diligence, the borrower is deceased.
6. ☐ The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or By delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or the trustee.

The undersigned certifies that this declaration is accurate, complete and supported by competent and reliable evidence, which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company

Dated: 04/17/2018

By: _____

NAME: GREGORY HARRISON
State Declaration Processor Loss Mitigation - QA

EXHIBIT G

EXHIBIT G

275100

EXHIBIT B

FILED

MAY 24 2018

48

PETITION FOR FORECLOSURE MEDIATION ASSISTANCE FORM

CLERK OF COURT

Homeowner(s) Name(s): Dennis Baham
Address: 6017 Guild CT
City: Las Vegas, Nevada Zip: 89131
Phone: [REDACTED]
Email: [REDACTED]

A-18-775019-FM
PPFM
Petition for Foreclosure Mediation Assistance
4749333



Petitioner, In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

Dennis Baham
(Homeowner name)
AND First American Trustee Servicing
Solutions
(Additional homeowner names) Respondant

CASE NO.:
DEPT:

A18-775019-FM
XT

PETITION FOR FORECLOSURE MEDIATION ASSISTANCE

Petitioners hereby petition this Court, pursuant to the terms of Chapter 107 of the Nevada Revised Statutes, to grant them participation in the mediation program for homeowners facing foreclosure. Petitioners state as follows:

1. **Residence.** The home that is under foreclosure proceedings is in Clark County in the State of Nevada. Petitioner is the occupant and owner of this home.
2. **APN.** The assessor parcel number (APN) of the home is 125-14-810-039.
3. **Notice of Default.** The notice of default is attached to this petition. The notice was received within the last 30 days.
4. **Mediation Fee.** The required \$250 mediation fee is submitted herewith.

Petitioners hereby request that this Court allow participation in the foreclosure mediation assistance program.

5-24-18
Date
Dennis Baham
Homeowner Signature
Dennis Baham
Homeowner Printed Name
Petitioner, In Proper Person

Date

Additional Homeowner Signature

Additional Homeowner Printed Name

RECEIVED
MAY 24 2018
CLERK OF THE COURT

FIRST PETITIONER'S VERIFICATION

STATE OF NEVADA)
)
COUNTY OF Clark)

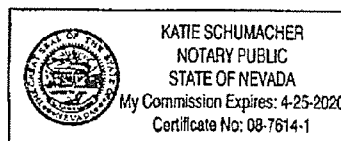
(Homeowner's name) Dennis Baham being first duly sworn
under penalty of perjury, deposes and says:

I am the Petitioner herein, and I have read the foregoing Petition for Foreclosure
Mediation Assistance and know the contents thereof; that the pleading is true to the best of my
own knowledge.

▶ Dennis Baham
(Homeowner's signature)

Signed and sworn to (or affirmed) before me on
(date) May 23, 2018 by (name) Dennis Baham

Katie Schumacher
Signature of notarial officer



STATE OF NEVADA)
)
COUNTY OF Clark)

On this 23rd day of May, 2018, personally appeared
before me, a Notary Public, (homeowner's name) Dennis Baham,
known or proved to me to be the person who executed the foregoing Petition for Foreclosure
Mediation Assistance, and who acknowledged to me that he/she did so freely and voluntarily
and for the uses and purposes herein stated.

CERTIFICATE OF SERVICE

I, Dennis Baham, hereby certify that on this date 5-24-18, I mailed copies of the foregoing "PETITION FOR FORECLOSURE MEDIATION ASSISTANCE" certified mail, return receipt requested, to the following parties at the addresses shown below:

Trustee

First American Trustee Servicing Solutions, LLC
4795 Regent BLVD, Mail Code 1011-F
Irving, Texas, 75063

Beneficiary

Bayview Loan Servicing, LLC
4425 Ponce De Leon, 5th Floor
Coral Gables, FL 33146

Home Means Nevada

3300 West Sahara Avenue, Suite ~~(FDD)~~ 480
Las Vegas, Nevada 89102

Other party of interest

Signed Dennis Baham

APN : 125-14-810-039

Recording Requested By :
First American Title Insurance Company

When Recorded Mail To :
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

TS No.: NV1400259949
VA/FHA/PMI No.
TSG No. 8457622

NEVADA

Inst #: 20180426-0001051

Fees: \$290.00

04/26/2018 11:15:20 AM

Receipt #: 3385211

Requestor:

FIRST AMERICAN/TRUSTEE SER

Recorded By: DROY Pgs: 8

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account into good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2);

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.



APN No.: 125-14-810-039
TS No.: NV1400259949
VA/FHA/FPMI No.:
TSG No. 8457622

**NOTICE OF DEFAULT AND
ELECTION TO SELL UNDER DEED OF TRUST**

NEVADA

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

**THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2005-2
c/o First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063
866-429-5179**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That First American Trustee Servicing Solutions, LLC As Agent for the current beneficiary under a Deed of Trust dated 12/21/2004 executed by:

DENNIS BAHAM,

as Trustor to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.** as Beneficiary, recorded 12/23/2004, (as Instrument No.) 20041223-0002350, (in Book) (Page) , of Official Records in the Office of the Recorder of **CLARK County, Nevada** describing land therein as:

AS MORE FULLY DESCRIBED IN THE ABOVE MENTIONED DEED OF TRUST

Property Address: 6017 GUILD CT, LAS VEGAS NV 89131-2331
said obligations including ONE NOTE FOR THE ORIGINAL sum of \$616,020.00

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

**THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 9/1/2011 AND ALL
SUBSEQUENT INSTALLMENTS, TOGETHER WITH LATE CHARGES AS SET FORTH IN SAID
NOTE AND DEED OF TRUST, ADVANCES, ASSESSMENTS, FEES, AND/OR TRUSTEE FEES.
NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS A WAIVER OF ANY FEES OWING TO THE
BENEFICIARY UNDER THE DEED OF TRUST, PURSUANT TO THE TERMS OF THE LOAN
DOCUMENTS..**

This property is sold as-is. The lender is unable to validate the condition, defects or disclosure issues of said property and buyer waives the disclosure requirement under NRS 113.130 by purchasing at this sale and signing said receipt.

APN No.: 125-14-810-039
TS No.: NV1400259949
VA/FHA/PMI No.:
TSG No. 8457622

NOTICE OF DEFAULT AND
ELECTION TO SELL UNDER DEED OF TRUST

NEVADA

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

Dated: 4-26-18

First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving TX75063

By

(signature)

Name: DeeAnn Gregory, Senior Manager

Title: _____

First American Trustee Servicing Solutions, LLC MAY BE ACTING AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT
PURPOSE.

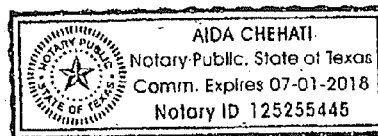
STATE OF TEXAS
COUNTY OF DALLAS

Before me, Aida Chehali on this day personally appeared DeeAnn Gregory
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that
this person executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of April, A.D., 2018

Aida Chehali (Notary Seal)

SEE ATTACHED DECLARATIONS



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Borrower(s): DENNIS BAHAM	Trustee Name and Address: First American Trustee Servicing Solutions, LLC 4795 Regent Blvd, Mail Code 1011-F Irving, TX 75063
Property Address: 6017 GUILD CT, LAS VEGAS NV 89131-2331	Deed of Trust Document Instrument No. 20041223-0002350

STATE OF Pennsylvania)

COUNTY OF Montgomery) ss:

The affiant, Randall Jackson, being first duly sworn
upon oath and under penalty of perjury, attests as follows:

1. I am an employee of BAYVIEW LOAN SERVICING, LLC. I am duly authorized to make this Affidavit for THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2 in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit, as set forth in NRS 107.080(2)(c) and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is BAYVIEW LOAN SERVICING, LLC's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

First American Trustee Servicing Solutions, LLC	4795 Regent Blvd, Mail Code 1011-F Irving, TX 75063
Full Name	Street, City, State, Zip

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2	c/o BAYVIEW LOAN SERVICING, LLC, 4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2	c/o BAYVIEW LOAN SERVICING, LLC, 4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

BAYVIEW LOAN SERVICING, LLC	4425 PONCE DE LEON, 5TH FLOOR, CORAL GABLES, FL 33146
Full Name	Street, City, State, Zip

APN: 125-14-810-039

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TS No. : NV1400259949




8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust. If the latter is applicable and the obligation or debt is an "instrument," as defined in NRS § 104.3103(2), the beneficiary, successor in interest to the beneficiary, or trustee entitled to enforce the obligation or debt is either: (1) the holder of the instrument constituting the obligation or debt; (2) a nonholder in possession of the instrument who has the rights of the holder; or (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued NRS § 104.3309.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) The amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: (800)771-0299.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

RECORDED: 01/25/2012 AS INSTRUMENT: 201201250000110
FROM: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
TO: THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2.

Signed By: 

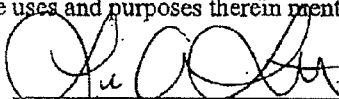
Dated: 12-13-17

Print Name: Randall Jackson

STATE OF Pennsylvania

COUNTY OF Montgomery) ss:

On this 13th day of December, 20 17, personally appeared before me, a Notary Public, in and for said County and State, Randall Jackson known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.



Lauren Christine Lettman

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

Lauren Christine Lettman, Notary Public
Montgomery, Montgomery County
My commission expires August 03, 2020

APN: 125-14-810-039

TS No.: NV1400259949

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Declaration of Mortgage Servicer Pursuant to Nevada Senate Bill 321

Mortgage Servicer: Bayview Loan Servicing, LLC, a Delaware Limited Liability Company

Borrower(s): DENNIS BAHAM

Property Address: 6017 GUILD CT LAS VEGAS, NV 89131

Loan No.:

T.S. No.:

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

1. ☒ The mortgage servicer has contacted the borrower pursuant to Nevada Senate Bill 321 Section 11.2 to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has tried with due diligence to contact the borrower(s) as required by NRS 107.510(5) (a) and NRS 107.510(5) (c)-(e), but has not made contact despite such due diligence. The telephone contact requirements under NRS 107.510(5) (b) were not attempted pursuant to the borrower's previously submitted request for cease communication. The due diligence efforts were satisfied on 20 .
3. ☐ Despite the exercise of due diligence pursuant to Nevada Senate Bill 321 Section 11.4, the Mortgage servicer has been unable to contact the borrower to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
4. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to subdivision (c) of NRS Chapter 107.
5. ☐ The requirements of Nevada Senate Bill 321 do not apply due to the qualifications set forth in NRS Chapter 107:
 - a. The loan is not secured by a first mortgage deed of trust that secures a loan or that encumbers real property.
 - b. The real property is not occupied by the borrower(s).
 - c. The secured property is exempt from due diligence, the borrower is deceased.
6. ☐ The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or By delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or the trustee.

The undersigned certifies that this declaration is accurate, complete and supported by competent and reliable evidence, which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company

Dated: 04/17/2018

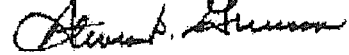
By: 

NAME: GREGORY HARRISON

State Declaration Processor Loss Mitigation - QA

EXHIBIT H

EXHIBIT H



MSFT
ANGELA H. DOWS, ESQ.
Nevada Bar No. 10339
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
E-Mail: adows@premierlegalgroup.com

DISTRICT COURT

CLARK COUNTY, NEVADA

Dennis Baham, Petitioner(s),

vs.

First American Trustee Servicing Solutions,
Respondent(s)

CASE NO.: A-18-775019-FM
DEPT NO.: 11

Foreclosure Mediation

MEDIATOR'S STATEMENT

Homeowner Last Name	Baham	Homeowner First Name	Dennis
Co-owner Last Name		Co-owner First Name	
Property Street Address	6017 Guild Court		
Property City	Las Vegas	State	NV
Zip Code	89131		

INSTRUCTIONS

- If no mediation is held: Please ensure the following are completed:
 - PART 2A: SUMMARY
 - PART 2F: MEDIATOR CERTIFICATION and
 - PART 5: MAILING CERTIFICATION
- If a mediation is held and no agreement is reached: please ensure the following are completed:
 - PART 1: SIGN-IN SHEET
 - PART 2A: SUMMARY
 - PART 2B: DISPOSITION
 - PART 2C: HOMEOWNER PARTICIPATION (if applicable)
 - PART 2D: LENDER PARTICIPATION (if applicable)
 - PART 2E: RECOMMENDATIONS FOR SANCTIONS (if applicable)
 - PART 2F: MEDIATOR CERTIFICATION and
 - PART 4: MEDIATOR'S RECOMMENDATION FOR DISMISSAL OF PETITION
 - PART 5: MAILING CERTIFICATION
- If an agreement is reached by the parties: please ensure all applicable parts of this form are completed, including all sections indicated directly above, as well as PART 3: AGREEMENT (Sections A-G).
- Return completed Mediator Statement and Agreement within 10 days by E-filing with the District Court.

PART 1: SIGN-IN SHEET DATE: OCTOBER 12, 2018

Mediator:	Name: <u>Angela Dows</u> Print	Signature: _____
	Contact Info.: <u>adows@premierlegalgroup.com</u> Email	<u>(702) 794-4411</u> Telephone #
Homeowner(s) (Grantor):	Name: _____ Print	Signature: _____
	Contact Info.: _____ Email	_____ Telephone #
	Participated: <input type="checkbox"/> In Person	<input type="checkbox"/> By Telephone
Homeowner(s) (Grantor):	Name: <u>DENNIS BAHAM</u> Print	Signature: <u>Dennis Baham</u>
	Contact Info.: _____ Email	_____ Telephone #
	Participated: <input checked="" type="checkbox"/> In Person	<input type="checkbox"/> By Telephone
Homeowner Atty. or Rep:	Name: <u>Crystal Eller</u> Print	Signature: <u>Crystal Eller</u>
<u>4978</u> NV Bar/NRS 645F License #	Contact Info.: <u>Crystal@CrystalForThePeople.com</u> Email	<u>702-685-6655</u> Telephone #
	Participated: <input checked="" type="checkbox"/> In Person	<input type="checkbox"/> By Telephone
Beneficiary (Person With Authority):	Name: <u>Moises</u> Print	Signature: <u>Margulis</u>
	Contact Info.: _____ Email	<u>305-921-6665</u> Telephone #
	Participated: <input type="checkbox"/> In Person	<input checked="" type="checkbox"/> By Telephone
Lender Atty. or Rep:	Name: <u>Ramiro Hernandez</u> Print	Signature: <u>Ramiro Hernandez</u>
<u>13146</u> NV Bar/NRS 645F License #	Contact Info.: <u>rhernandez@dwighthesch.net</u> Email	<u>702-983-5742</u> Telephone #
	Participated: <input checked="" type="checkbox"/> In Person	<input type="checkbox"/> By Telephone
Other:	Name: _____ Print	Signature: _____
	Contact Info.: _____ Email	_____ Telephone #
	Participated: <input type="checkbox"/> In Person	<input type="checkbox"/> By Telephone

If needed, a separate sheet may be utilized for additional attendees.

The attending parties are signing this sheet only to memorialize their presence at the mediation. If an agreement is reached, the parties will be requested by the mediator to execute the agreement section of this Mediator Statement, which will outline the basic terms agreed upon at mediation. The mediator may not be compelled to testify in any subsequent proceedings regarding the contents of an agreement.

PART 2A: SUMMARY (In this section in its entirety (PART 2A-G) the mediator will document the applicable outcomes of the mediation. All appropriate boxes should be checked in this section.)

- ☒ A Document Conference was held on July 25, 2018. (Attach Completed Document List) –(see Exhibit A)
- ☒ A Foreclosure Mediation was held on October 12, 2018.
- ☐ A Foreclosure Mediation was not held (Check All That Apply):
- ☐ Homeowner requested to withdraw from mediation
 - ☐ Homeowner in active bankruptcy
 - ☐ Non-eligible property
- ☐ Parties resolved prior to mediation (Complete Part 3: AGREEMENT SECTION G)

PART 2B: DISPOSITION (MEDIATOR MUST CHECK ONE BOX BELOW)

- ☒ The parties were unable to agree to a loan modification or make other arrangements and the mediation is terminated.
- ☐ The parties resolved this matter. If marked, also complete PART 3: MEDIATION AGREEMENT.

PART 2C: HOMEOWNER (GRANTOR) PARTICIPATION

- ☐ Homeowner (Grantor) failed to attend the mediation.
- ☒ Homeowner (Grantor) failed to exchange required documents.

COMMENTS

This was the first mediation in some time, at least that I could recall, where a homeowner did not submit responsive documents in the program. The rules, specifically FMR 13 subpart 3 as to initial exchange states that a homeowner "shall use his or her best effort to submit the required documents in his or her possession to the mediator and beneficiary of the deed of trust within 15 days." Although the language does not state that the homeowner "shall provide/submit" and instead states "shall use...best effort," there is a check box above for "failed to exchange required documents," and thus it appears appropriate in this case. The mediator simply does not have evidence of any responsive submission(s) of documents from the homeowner and thus feels mandated to check said box.

PART 2D: BENEFICIARY (LENDER) PARTICIPATION

*If any item is checked below, the mediator may recommend sanctions.
(Determine specific sanction recommendations with particularity in Part 2E).*

- ☐ Beneficiary (Lender), and/or its Representative, failed to attend the mediation. NFMR 11(1)(a).
- ☐ Beneficiary (Lender), and/or its Representative, failed to demonstrate authority, or provide access to a person with authority, to negotiate a loan modification. NFMR 11(1)(a).
- ☐ Beneficiary (Lender), and/or its Representative, failed to participate in good faith.
- Beneficiary (Lender), and/or its Representative, failed to bring to mediation each document required. NFMR 12(7). (Check All Missing or Incomplete Documents).
 - ☐ An original or certified copy of the mortgage note, or judicial order pursuant to NRS 104.3309.
 - ☐ A certification with an original signature of each endorsement and/or assignment of the mortgage note, or judicial order pursuant to NRS 104.3309.
 - ☐ An original or certified copy of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309.
 - ☐ A certification with an original signature of each assignment of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309.
 - ☐ Appraisal or Broker Price Opinion (BPO) in accordance with NRS 645.2515 dated not more than 60 days prior to the date of the scheduled mediation.
 - ☐ Short Sale document in accordance with the Nevada Foreclosure Mediation Rules.

PART 2E: SPECIFIC RECOMMENDATION(S) FOR SANCTIONS (In this section mediators must state with particularity the participant's conduct and specific reason(s) for recommending sanctions.)

The findings on the lender side are detailed herein are declined by the mediator in terms of checking a box, but require analysis as they were raised by a homeowner well-represented by counsel:

- a. An assignment recorded on August 26, 2013 to argue that there was a lack of authority to proceed with the mediation. A copy of the actual assignment was not provided at the mediation, and instead a printout of the recording history of what appeared to be the subject property was provided. Without the ability to review the actual assignment, the mediator cannot determine whether there is and/or was an issue to be able to make actual findings upon.
- b. A power of attorney that shows Bayview being granted Power of Attorney for the "limited purpose of executing and recording any and all documents necessary to effect..." foreclosure, modification, and/or similar. (See Exhibit B). A closer inspection of the power of attorney form does not limit said authority, at least for purposes of mediation. The same power of attorney later states, in broader less-limiting language, that Bayview was provided "full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as full to all intents and purposes as might or could be done in person to effect" foreclosure, modification

and/or similar. Homeowner's argument would be one that would cause me to side with him if, for example, lender did not "demonstrate authority, or provide access to a person with authority, to negotiate a loan modification" per the check boxes above. See also FMR 12, subpart 1. In this case lender was physically present through counsel, and additionally had a representative available via telephone, and did not have a power of attorney with solely limiting language.

- c. A court case from the Supreme Court of New York arguing that the subject loan is outside a power of attorney listing. This argument is difficult to analyze in a mediation setting, but is declined at least in terms of a mediation because: (1) there is a lack of information apart from what appears to be a single court filing without a binding order, (2) the case is from the Supreme Court of New York, without precedential effect, (3) further information would be needed in order to properly review and determine what if any effect the argument had, and/or (4) the proper forum for review would be something other than the subject foreclosure mediation, without determining what if any impact it would have upon the instant matter.

Taking all of the above into consideration, I recommend that the mediation be terminated and that a certificate of foreclosure mediation issue.

PART 2F: MEDIATOR'S CERTIFICATION

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is true and accurate record of the proceedings as required by the Nevada Mediation Foreclosure Rules.

DATED this 18th day of October, 2018.



Angela H. Dows, MEDIATOR

All documents and discussions presented during the mediation are confidential except in an action for Judicial Review as set forth in the applicable State of Nevada Foreclosure Mediation Rules and NRS Chapter 107.

PART 3: AGREEMENT (Sections A-G) This section outlines the detailed agreement between the grantor and the beneficiary. The mediator will complete all sections that apply.

THE PARTIES AGREED TO THE FOLLOWING (Please Choose Either A or B and check all that apply):

A. RETAIN THE HOME

- ☐ 1. Reinstatement
- ☐ 2. Repayment Plan
- ☐ 3. Extension
- ☐ 4. ARM to Fixed Rate
- ☐ 5. Amortization Extended
- ☐ 6. Interest Rate Reduction
- ☐ 7. Principal Forbearance
- ☐ 8. Other Forbearance
- ☐ 9. Principal Reduction
- ☐ 10. Refinance
- ☐ 11. Temporary Modification
Expiration Date : _____
- ☐ 12. Permanent Modification
- ☐ 13. Short payoff: \$ _____
When: _____
Conditions: _____
- ☐ 14. Gov't. Program: _____

B. RELINQUISH THE HOME

- ☐ 1. Deed in Lieu of Foreclosure
- ☐ 2. Voluntary Surrender
- ☐ 3. Cash for Keys \$- _____

- ☐ 4. Gov't. Program: _____
- ☐ 5. Other _____

Forbearance

- ☐ 6. Short Sale
Estimated Short Sale Value: _____
Listed By _____
Date: _____
Listing Period: From _____ to _____
Listing Price: _____
Beneficiary Offer Acceptance By _____
Date: _____

Maximum Escrow Period: _____

- ☐ 7. Waiver of Deficiency: ☐ Yes ☐ No

- ☐ 8. Vacate Date: _____

- ☒ 9. Certificate Date: November 15,

2018

Comments:

C. DETAILS

- ☐ Beneficiary will report the loan as paid in current status effective as of: _____
- ☐ Treatment of arrearages: _____
- ☐ Waiver of Fees and Penalties: _____
- ☐ Rescind Notice of Default effective as of: _____

D. THE FOLLOWING TERMS REMAIN UNCHANGED (Please check all that apply.)

- ☐ The balance due as shown on beneficiary's books, which is _____
- ☐ The interest rate stated in the original note, which is _____
- ☐ The loan term stated in the original note, which is _____

E. LOAN MODIFICATION (Please complete all that apply)

	Temporary Modification	Permanent Modification								
1. Loan Balance	Total loan balance shall be modified to \$ _____ Effective date: _____	Total loan balance shall be modified to: \$ _____ Effective date: _____								
2. Interest Rate	Period 1 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months Period 2 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months*	Period 1 a. Interest rate will be modified to ____% b. Effective as of _____ c. For the Period of _____ months Period 2 a. Interest rate will be modified to ____% b. Effective as of _____ c. For the Period of _____ months*								
3. Loan Term	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____								
4. Payment	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____								
5. Fees & Costs	The aforementioned loan balance includes fees & costs for temporary and permanent modifications as follows: <table border="1"> <thead> <tr> <th>Incurred</th> <th>Waived</th> </tr> </thead> <tbody> <tr> <td>Interest \$ _____</td> <td>Interest \$ _____</td> </tr> <tr> <td>Costs \$ _____</td> <td>Costs \$ _____</td> </tr> <tr> <td>Fees \$ _____</td> <td>Fees \$ _____</td> </tr> </tbody> </table>		Incurred	Waived	Interest \$ _____	Interest \$ _____	Costs \$ _____	Costs \$ _____	Fees \$ _____	Fees \$ _____
Incurred	Waived									
Interest \$ _____	Interest \$ _____									
Costs \$ _____	Costs \$ _____									
Fees \$ _____	Fees \$ _____									

Comments:	Other \$ _____	Other \$ _____
	TOTAL: \$ _____	TOTAL: \$ _____

*If additional Periods agreed upon by the parties, please indicate on a separate sheet and attached hereto.

F. DEFICIENCY & TAX LIABILITY

Please be advised that the mediator is not permitted to provide any legal or tax advice to the parties on any issues related to the mediation or the terms of any potential settlement agreement. It is suggested that the parties contact a licensed professional of their choice for legal or tax advice related to this mediation and any potential settlement.

1. Deficiency:

- ☐ The settlement agreement will include a provision waiving any deficiency resulting from recovery by the Trustee/Beneficiary of less than the full amount the Trustee/Beneficiary claims now to be due on the loan.

Comments:

2. Other deficiency and/or tax liability terms not mentioned above:

- ☐ Additional terms, details are as follows:

3. Is this agreement contingent upon the signing of other documents and/or forms (i.e., updated financial information; tax returns, divorce decree, etc.)?

- ☐ If yes, provide a detailed list and/or attach:

G. SETTLEMENT/RESOLUTION BEFORE MEDIATION

The parties reached a settlement and/or resolution prior to the scheduled mediation.

- ☐ Copy of signed Settlement/Resolution Agreement attached. (Attach Signed Agreement)
- ☐ Settlement/Resolution Agreement memorialized at mediation as reflected in the Mediator Statement.


H. SIGNATURE OF PARTIES

IN WITNESS WHEREOF, each of the participants in this mediation has executed this mediation agreement on the date set forth. The parties agree to separately prepare and execute the documents necessary to accomplish the terms of this agreement.

Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner's Attorney/Representative
Date _____	_____
	Lender (Beneficiary)
Date _____	_____
	Lender's Attorney/Representative
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)

PART 4: RECOMMENDATION FOR DISMISSAL OF PETITION

The parties did not reach a settlement as a result of mediation and I therefore recommend dismissal of the petition, pursuant to NFMR 20(3).


Angela H. Dows
Angela H. Dows, MEDIATOR

PART 5: EMAIL/HAND DELIVERY CERTIFICATION (CHECK ONE BOX BELOW TO INDICATE METHOD OF DELIVERY)

I hereby certify that I E-filed this Mediator Statement on the 18th day of October, 2018, with the District Court

AND

_____ Mailed to the parties at the following address(es) on the same date

OR

☒ _____ Electronically served on all Interested parties, including the Property Owner/Petitioner, Respondent, Beneficiaries, Trustee, and Home Means Nevada, Inc. on the same date.



Angela H. Dows, MEDIATOR

EXHIBIT A

EXHIBIT A

Angela Dows

From: Lauren Gillen
Sent: Friday, September 7, 2018 9:34 AM
To: Angela Dows
Subject: FW: BAHAM, DENNIS Mediation; A-18-775019-FM
Attachments: Loss Mit Application.pdf

Hi Angela,

Not sure if this is something you'd like to see.....Just an FYI.
Thank you,



Premier Legal Group

Lauren Gillen, Paralegal to
Angela H. Dows, Esq.
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
T: 1.702.794.4411 • F: 1.702.794.4421
E: lgillen@premierlegallgroup.com • W: www.premierlegallgroup.com

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From: Lisa Cox [<mailto:lc Cox@wrightlegal.net>]
Sent: Friday, September 07, 2018 9:21 AM
To: [REDACTED]
Cc: Lauren Gillen; Ramir M. Hernandez
Subject: RE: BAHAM, DENNIS Mediation; A-18-775019-FM

Mr. Baham,

Our office has not received your loss mitigation package requested on 7/25/18 for a loan modification review. Please advise when we may expect to receive your documents.

Thank you.

Lisa Cox
Paralegal



7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 946-1345 Fax
(702) 475-7964 Main Ext 7024
lc Cox@wrightlegal.net

"Wright, Finlay & Zak: Your Western
Regional Counsel for California, Nevada,
Arizona, Washington, Oregon, and Utah"



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COLLECTOR ATTEMPTING TO COLLECT A DEBT.
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telephone immediately at (949) 477-5050 and arrangements
will be made for the return of this material. Thank You.

From: Lisa Cox
Sent: Friday, August 24, 2018 8:37 AM
To: [REDACTED]
Cc: 'Lauren Gilen'; Ramir M. Hernandez
Subject: RE: BAHAM, DENNIS Mediation; A-18-775019-FM

Mr. Baham,

Our office has not received your loss mitigation package requested on 7/25/18 for a loan modification review. Please
advise when we may expect to receive your documents.

Thank you.

Lisa Cox
Paralegal



7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 946-1345 Fax
(702) 475-7964 Main Ext 7024
lcx@wrightlegal.net

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From: Lisa Cox
Sent: Friday, August 10, 2018 8:44 AM
To: [REDACTED]
Cc: 'Lauren Gillen'; Ramir M. Hernandez
Subject: RE: BAHAM, DENNIS Mediation; A-18-775019-FM

Mr. Baham,

Please provide status on the requested loss mitigation application emailed to you on 7/25/18.

Thank you.

Lisa Cox
Paralegal



7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 946-1345 Fax
(702) 475-7964 Main Ext 7024
lcx@wrightlegal.net

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From: Lisa Cox
Sent: Wednesday, July 25, 2018 1:59 PM
To: [REDACTED]
Cc: 'Lauren Gillen'; Ramir M. Hernandez
Subject: BAHAM, DENNIS Mediation; A-18-775019-FM

Mr. Baham,

Attached, please find the Lender's Loss Mitigation Application in regards to the mediation scheduled on October 3, 2018 at 1:00 pm. Please return the requested documents to our office at your earliest convenience in order to allow the Lender time to review for a loan modification and request additional documents if necessary.

If you have any questions, please don't hesitate to contact me.

Thank you.

Lisa Cox
Paralegal



WRIGHT FINLAY & ZAK™
ATTORNEYS AT LAW

7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 946-1345 Fax
(702) 475-7964 Main Ext 7024
lcx@wrightlegal.net

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telephone immediately at (949) 477-5050 and arrangements
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BAYVIEW®
LOAN SERVICING

Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd. 5th Floor
Coral Gables, FL 33146

Dear Customer:

Please find enclosed two loss mitigation packages and list of financial documents requested by Bayview Loan Servicing, LLC ("Bayview"). The first package is for all GSE (Fannie Mae and Freddie Mac) loans. The second package is for non GSE loans serviced by Bayview Loan Servicing, LLC.

These documents must be completed and returned to us no later than 30 days prior to the scheduled mediation so the evaluation process can begin prior to the mediation. All information requested by Bayview must be provided. Your failure to timely provide all requested documentation could impede a resolution at the mediation.

You have been assigned an Asset Manager, who will help you with the completion of the forms and the requested list of financial documents. You can contact Customer Service at (800) 457-5105 for more information.

Please call if you have any questions about the requested documents and how to fill out the forms.

Sincerely,

Jennifer Kraft

Jennifer Kraft
AVP – Corporate Witness Team
Bayview Loan Servicing, LLC
Phone Number: (800) 457-457-5105 Monday - Friday 9:00 a.m. - 6:00 p.m., ET

Bayview Loan Servicing, LLC is a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay of bankruptcy this notice is for compliance and informational purposes only and does not constitute a demand for payment or any attempt to collect such obligation.



Review and Complete --All Three Steps (If Applicable)

- ☐ 1. Complete and sign (by all borrowers) the enclosed Hardship Application form, AND
You must only complete and sign this form if it is enclosed in this package.
- ☐ 2. Sign and date a copy of the enclosed IRS Form 4506-T (Request for Transcript of Tax Return) or the 4506T-EZ (Short Form Request for Individual Tax Return Transcript, which can be obtained at www.bayviewloanservicing.com/resources) for each borrower (borrowers who filed a Form 1040 series on a calendar-year basis may use Form 4506T-EZ in place of Form 4506-T). Borrowers who filed their tax returns jointly may send in one IRS Form 4506-T/4506T-EZ signed and dated by both of the joint filers AND
You must only complete and sign this form if it is enclosed in this package.
- ☐ 3. Return the required income documentation. This documentation includes:
- For each borrower who receives a salary or hourly wages --
- Copy of your two most recent pay stubs that show year-to-date earnings
- For each borrower who is self-employed --
- Most recent quarterly or year-to-date profit/loss statement.
- For each borrower who has income such as social security, disability or death benefits, pension, adoption assistance, public assistance, or unemployment --
- Copy of benefits statement or letter from the provider that states the amount, frequency and duration of the benefit, and
 - Two most recent bank statements showing receipt of such payment.
- For each borrower who is relying on alimony, child support or separation maintenance as qualifying income* --
- Copy of divorce decree, separation agreement, other written agreement filed with the court, or decree that states the amount and period of time over which it will be received, and
 - Two most recent bank statements showing receipt of such payment.
- *You are not required to disclose child support, alimony or separation maintenance income, unless you choose to have it considered by your servicer.
- For each borrower who has rental income or if you are current on your mortgage payments:
- Copies of the most recently filed signed federal tax return with all schedules, including the Schedule E -- Supplemental Income and Loss (servicer can also request through IRS).
- For each borrower who has non-wage income (part time employment, bonuses, tips and investment income):
- Copy of documentation describing the nature of the income (e.g. employment contract or printouts documenting tip income)
- If you have other types of income, cannot locate the required documents, or have questions about the paperwork required, please contact us at (800) 457-5105.*

Important Information

Keep a copy of all documents for your records. Don't send original income documentation.
If you do not make your trial period payments or do not provide all required, signed and completed documentation for each borrower on time, we will not be able to determine if you qualify for a modification.

How to Return Documents

By E-mail	You may scan your documents (preferably in ".PDF" format) and then attach them to an e-mail to documents@bayviewloanservicing.com . Be certain to include your Loan Number in the e-mail so we can make sure they are delivered to the proper person.
By Fax	You may fax documents to 305-631-5660. Please be certain to label each page with your Loan Number so we can make sure they are delivered to the proper person.
By Mail	Please send your documents to the following address: Inbound Customer Documents Attn: Specialized Call Rep, Asset Manager c/o Bayview Loan Servicing, LLC 4425 Ponce de Leon Blvd., 5th Floor Coral Gables, FL 33146
Online	Log in to your account at www.bayviewloanservicing.com and use the "Upload Documents" feature to quickly upload your scanned documents (preferably into a ".PDF" format). They will automatically be filed with your account and instantly ready for review by Bayview. Plus, you'll see a list of all the documents you've uploaded. If you don't have an online account yet, it only takes a moment to create one.

Disclaimers and Notices

MILITARY PERSONNEL/SERVICEMEMBERS: If you or your spouse is a member of the military, please contact us immediately. The federal Servicemembers Civil Relief Act and comparable state laws afford significant protections and benefits to eligible military service personnel, including protections from foreclosure as well as interest rate relief. For additional information and to determine eligibility please contact our Military Assistance Team toll free at 1 (877) 251-0990.

Loss mitigation options may have costs associated with them that you may be responsible for after completion of loss mitigation. Examples of these costs include title searches, appraisals and valuations. The costs may vary depending on the loan information, geographic area, etc. Please contact us for information on costs that may be associated with your loss mitigation evaluation.

Bayview Loan Servicing, LLC is a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay of bankruptcy this notice is for compliance and informational purposes only and does not constitute a demand for payment or any attempt to collect such obligation. Bayview Loan Servicing, LLC., NMLS #2469.

Confirmed SII Disclaimer: If you are a confirmed successor in interest of the account, unless you assume the mortgage loan obligation under state law, you are not personally liable for the mortgage debt and cannot be required to use your own assets to pay the mortgage debt.

The following mailing address must be used for all Error Notices & Information Requests: Bayview Loan Servicing, LLC, Customer Support, 4425 Ponce de Leon Boulevard, 5th Floor, Coral Gables, FL 33146.

Package 1

UNIFORM APPLICANT ASSISTANCE FORM / FORM 710

For all GSE (Fannie Mae and Freddie Mac) loans.



BAYVIEW®
LOAN SERVICING

Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd, 5th Floor
Coral Gables, FL 33146

APPLICANT FINANCIAL

UNIFORM APPLICANT ASSISTANCE FORM / FORM 710

If you are experiencing a temporary or long-term hardship and need help, you must complete and submit this form along with other required documentation to be considered for available solutions. On this page, you must disclose information about

- (1) you and your intentions to either keep or transition out of your home;
- (2) the property's status;
- (3) bankruptcy; and
- (4) your credit counseling agency.

You must disclose information about **all** of your income, expenses and assets. Please note, if the property is Applicant/Owner Occupied, and you have not been previously reviewed for a modification or any other retention option, you must include documentation to support the hardship reason. The Hardship Affidavit informs you of the required documentation that you must submit in support of your hardship claim.

NOTICE: In addition, when you sign and date this form, you will make important certifications, representations and agreements, including certifying that all of the information in this Applicant Assistance Form is accurate and truthful and any identified hardship has contributed to your submission of this request for mortgage relief.

REMINDER: The Applicant Response Package you need to return consists of:

- (1) this completed, signed and dated Applicant Assistance Form;
- (2) required income documentation, and
- (3) required hardship documentation.

Disclaimers and Notices

If you would like counseling or assistance, for a list of homeownership counselors or counseling organizations in your area, you can contact the following: U.S. Department of Housing and Urban Development (HUD), go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800-569-4287.

Bayview Loan Servicing, LLC is a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay of bankruptcy this notice is for compliance and informational purposes only and does not constitute a demand for payment or any attempt to collect such obligation. Bayview Loan Servicing, LLC., NMLS #2469.

Confirmed SII Disclaimer: If you are a confirmed successor in interest of the account, unless you assume the mortgage loan obligation under state law, you are not personally liable for the mortgage debt and cannot be required to use your own assets to pay the mortgage debt.

The following mailing address must be used for all Error Notices & Information Requests: Bayview Loan Servicing, LLC, Customer Support, 4425 Ponce de Leon Boulevard, 5th Floor, Coral Gables, FL 33146.

APPLICANT FINANCIAL		UNIFORM APPLICANT ASSISTANCE FORM / FORM 710	
Loan Number:			
Servicer Name: Dayview Loan Servicing, LLC			
Property Address:			
The property is currently: <input type="checkbox"/> Occupied by Applicant <input type="checkbox"/> Occupied by someone other than Applicant (tenant/renter/other) <input type="checkbox"/> Vacant/not occupied by anyone to Applicant's best knowledge			
Applicant would like to: <input type="checkbox"/> Live in the property as my primary residence* <input type="checkbox"/> Short Sale <input type="checkbox"/> Assume sole legal responsibility for repayment of loan ("Assumption or Release of Liability") <input type="checkbox"/> Maintain the property as Second Home/Investment residence <input type="checkbox"/> DIL			
*As used in this application, the term 'Primary Residence,' means the dwelling where a person usually lives. A person can only have one primary residence at any given time, though the property may be shared with other people.			
Applicant is the: <input type="checkbox"/> Borrower/Co-Borrower <input type="checkbox"/> Authorized Third-Party <input type="checkbox"/> Successor In Interest (SII) <input type="checkbox"/> Assumer of the Loan			
Applicant		Co-Applicant (If any)	
Applicant's Name		Co-Applicant's Name	
Social Security Number	Date of Birth	Social Security Number	Date of Birth
Home Phone Number with Area Code		Home Phone Number with Area Code	
Cell or Work Number with Area Code (Indicate which)		Cell or Work Number with Area Code (Indicate which)	
E-mail Address		E-mail Address	
Mailing Address (If same as mailing address, write "same")		Mailing Address (If same as mailing address, write "same")	
Is the property listed for sale? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what was the listing date? _____ If property has been listed for sale, have you received an offer on the property? <input type="checkbox"/> Yes <input type="checkbox"/> No Date of offer: _____ Amount of Offer: \$ _____ Agent's Name: _____ Agent's Phone Number: _____ For Sale by Owner? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you contacted a credit-counseling agency for help? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please complete the counselor/agency contact information below: Counselor/Agency's Name: _____ Counselor/Agency's Contact Information: _____ _____ _____	
Do you have condominium or homeowner association (HOA) fees? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Total monthly amount: \$ _____			
Name and address that fees are paid to: _____			
Have you filed for bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes: <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13			
If yes, what is the filing date: _____ Has your bankruptcy been discharged? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Bankruptcy case number: _____			
Is any Applicant an active duty service member? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has any Applicant been deployed away from his/her primary residence or received a Permanent Change of Station order? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is any Applicant the surviving spouse of a deceased service member who was on active duty at the time of death? <input type="checkbox"/> Yes <input type="checkbox"/> No			

APPLICANT FINANCIAL		UNIFORM APPLICANT ASSISTANCE FORM / FORM 710	
Hardship Affidavit			
The hardship causing mortgage payment challenges began on approximately (date) _____ and is believed to be: <input type="checkbox"/> Short-term (up to 6 months) <input type="checkbox"/> Long-term or permanent (greater than 6 months) <input type="checkbox"/> Resolved as of (date) _____			
TYPE OF HARDSHIP (Check all that apply)		REQUIRED HARDSHIP DOCUMENTATION	
<input type="checkbox"/> Unemployment		<ul style="list-style-type: none"> Not required 	
<input type="checkbox"/> Reduction in income: a hardship that has caused a decrease in your income due to circumstances outside your control (e.g., elimination of overtime, reduction in regular working hours, a reduction in base pay)		<ul style="list-style-type: none"> Not required 	
<input type="checkbox"/> Increase in housing-related expenses: a hardship that has caused an increase in your housing expenses due to circumstances outside your control (e.g., uninsured losses, increased property taxes, HOA special assessment)		<ul style="list-style-type: none"> Not required 	
<input type="checkbox"/> Disaster (natural or man-made) impacting the property or borrower's place of employment		<ul style="list-style-type: none"> Not required 	
<input type="checkbox"/> Long-term or permanent disability, or serious illness of a borrower/co-borrower or dependent family member		<ul style="list-style-type: none"> Written statement from the borrower, or other documentation verifying disability or illness Note: Detailed medical information is not required, and information from a medical provider is not required 	
<input type="checkbox"/> Divorce or legal separation		<ul style="list-style-type: none"> Final divorce decree or final separation agreement OR Recorded quitclaim deed 	
<input type="checkbox"/> Separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law		<ul style="list-style-type: none"> Recorded quitclaim deed OR Legally binding agreement evidencing that the non-occupying borrower or co-borrower has relinquished all rights to the property 	
<input type="checkbox"/> Death of a borrower or death of either the primary or secondary wage earner		<ul style="list-style-type: none"> Death certificate; OR Obituary or newspaper article reporting the death 	
<input type="checkbox"/> Distant employment transfer/relocation		<ul style="list-style-type: none"> For active duty service members: Permanent Change of Station (PCS) orders or letter showing transfer For employment transfers/new employment: Copy of signed offer letter or notice from employer showing transfer to a new location or written explanation if employer documentation not applicable, AND Documentation that reflects the amount of any relocation assistance provided (not required for those with PCS orders) 	
<input type="checkbox"/> Other - hardship that is not covered above: _____ _____ _____		<ul style="list-style-type: none"> Written explanation describing the details of the hardship and any relevant documentation 	

APPLICANT FINANCIAL **UNIFORM APPLICANT ASSISTANCE FORM / FORM 40**

Borrower Income

Please enter all borrower income amounts in middle column.

MONTHLY TOTAL BORROWER INCOME TYPE & AMOUNT		REQUIRED INCOME DOCUMENTATION
Gross (pre-tax) wages, salaries and overtime pay, commissions, tips, and bonuses	\$	<ul style="list-style-type: none"> • Most recent pay stub and documentation of year-to-date earnings if not on pay stub OR • Two most recent bank statements showing income deposit amounts
Self-employment income	\$	<ul style="list-style-type: none"> • Two most recent bank statements showing self-employed income deposit amounts OR • Most recent signed and dated quarterly or year-to-date profit/loss statement OR • Most recent complete and signed business tax return OR • Most recent complete and signed individual federal income tax return
Unemployment benefit income	\$	<ul style="list-style-type: none"> • No documentation required
Taxable Social Security, pension, disability, death benefits, adoption assistance, housing allowance, and other public assistance	\$	<ul style="list-style-type: none"> • Two most recent bank statements showing deposit amounts OR • Award letters or other documentation showing the amount and frequency of the benefits
Non-taxable Social Security or disability income	\$	<ul style="list-style-type: none"> • Two most recent bank statements showing deposit amounts OR • Award letters or other documentation showing the amount and frequency of the benefits
Rental income (rents received, less expenses other than mortgage expense)	\$	<ul style="list-style-type: none"> • Two most recent bank statements demonstrating receipt of rent OR • Two most recent deposited rent checks
Investment or Insurance Income	\$	<ul style="list-style-type: none"> • Two most recent investment statements OR • Two most recent bank statements supporting receipt of the income
Other sources of income not listed above (Note: Only include alimony, child support, or separate maintenance income if you choose to have it considered for repaying this loan)	\$	<ul style="list-style-type: none"> • Two most recent bank statements showing receipt of income OR • Other documentation showing the amount and frequency of the income

Current Borrower Assets

Exclude retirement funds such as a 401(k) or Individual Retirement Account (IRA), and college savings accounts such as a 529 plan.

Checking account(s) and cash on hand	\$
Savings, money market funds, and Certificates of Deposit (CDs)	\$
Stocks and bonds (non-retirement accounts)	\$
Other:	\$

APPLICANT FINANCIAL		UNIFORM APPLICANT ASSISTANCE FORM / FORM 710	
Information For Government Monitoring Purposes			
<p>The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.</p>			
Applicant		Co-Applicant	
<input type="checkbox"/> I do not wish to furnish this information		<input type="checkbox"/> I do not wish to furnish this information	
Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino		Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	
Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White		Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male		Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male	
To be completed by Servicer			Name/Address of Interviewer's Employer
This request was taken by: <input type="checkbox"/> Face-to-face interview <input type="checkbox"/> Mail <input type="checkbox"/> Telephone <input type="checkbox"/> Internet	Servicer/Interviewer's Name (print or type) & ID Number		
	Servicer/Interviewer's Signature _____ Date _____		
	Servicer/Interviewer's Phone Number (include area code)		
Loan Number	Servicer/Interviewer's Fax Number (include area code)		Servicer/Interviewer's email address

Applicant Acknowledgement and Agreement

I certify, acknowledge, and agree to the following:

1. All of the information in this Applicant Assistance Form is truthful and the hardship that I have identified contributed to my need for mortgage relief.
2. The accuracy of my statements may be reviewed by the Servicer, owner or guarantor of my mortgage, their agent(s), or an authorized third party*, and I may be required to provide additional supporting documentation. I will provide all requested documents and will respond timely to all Servicer, or authorized third party*, communications.
3. Knowingly submitting false information may violate Federal and other applicable law.
4. If I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this request for mortgage relief or if I do not provide all required documentation, the Servicer may cancel any mortgage relief granted and may pursue foreclosure on my home and/or pursue any available legal remedies.
5. The Servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request. The Servicer will use the information in this application to evaluate my eligibility for mortgage relief.
6. I may be eligible for a trial period plan, repayment plan, or forbearance plan. If I am eligible for one of these plans, I agree that:
 - a. All the terms of this Acknowledgment and Agreement are incorporated into such plan by reference as if set forth in such plan in full.
 - b. My first timely payment under the plan will serve as acceptance of the terms set forth in the notice of the plan sent by the Servicer.
 - c. The Servicer's acceptance of any payments under the plan will not be a waiver of any acceleration of my loan or foreclosure action that has occurred and will not cure my default unless such payments are sufficient to completely cure my entire default under my loan.
 - d. Payments due under a trial period plan for a modification will contain escrow amounts. If I was not previously required to pay escrow amounts, and my trial period plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior waiver is revoked. Payments due under a repayment plan or forbearance plan may or may not contain escrow amounts. If I was not previously required to pay escrow amounts and my repayment plan or forbearance plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior escrow waiver is revoked.
7. A condemnation notice has not been issued for the property, and there has been no change in ownership of the Property since the signing of the original mortgage loan documents.
8. The Servicer, or its agent, or authorized third party* will obtain a current credit report on all Applicants who sign this application, whether or not obligated on the Note.
9. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
10. I/We authorize you to provide to Bayview Loan Servicing, LLC, Ianniello Anderson PC, Nations Lending Services, Timios Inc., Service Link and Title 365* any and all information and documentation necessary to allow the aforementioned parties to use in efforts to clear title and/or resolve liens on the subject Property located at 10007 MAINLANDS BLVD W, PINELLAS PARK, FL 33782-0000. Please note, Ianniello Anderson PC, Nations Lending Services, Timios Inc., Service Link and Title 365 are authorized on behalf of Bayview Loan Servicing, LLC and the Applicant to discuss all settlement negotiations including but not limited to Junior Lien Holders, Judgments and any other encumbrances affecting title to the above referenced property. A copy of this authorization constitutes an original.
11. The Servicer or authorized third party* will collect and record personal information that I submit in this Applicant Response Package and during the evaluation process. This personal information may include, but is not limited to: (a) my name, address, telephone number, (b) my social security number, (c) my credit score, (d) my income, and (e) my payment history and information about my account balances and activity. I understand and consent to the Servicer or authorized third party*, as well as any investor or guarantor (such as Fannie Mae or Freddie Mac), disclosing my personal information and the terms of any relief or foreclosure alternative that I receive to the following:
 - a. Any investor, insurer, guarantor, or servicer that owns, insures, guarantees, or services my first lien or subordinate lien (if applicable) mortgage loan(s) or any companies that perform support services to them; and
 - b. The U.S. Department of Treasury, Fannie Mae and Freddie Mac, in conjunction with their responsibilities under the Making Home Affordable program, or any companies that perform support services to them.
12. I consent to being contacted concerning this request for mortgage assistance at any telephone number, including mobile telephone number, or e-mail address I have provided to the Lender/Servicer/ or authorized third party*.

By checking this box, I also consent to being contacted by ☐ text messaging.

Print Applicant Name: _____

Applicant Signature: _____ Date _____

* An authorized third party may include, but is not limited to, a counseling agency, Housing Finance Agency (HFA) or other similar entity that is assisting me in obtaining a foreclosure prevention alternative.



D

Co-Applicant Acknowledgement and Agreement

I certify, acknowledge, and agree to the following:

1. All of the information in this Applicant Assistance Form is truthful and the hardship that I have identified contributed to my need for mortgage relief.
2. The accuracy of my statements may be reviewed by the Servicer, owner or guarantor of my mortgage, their agent(s), or an authorized third party*, and I may be required to provide additional supporting documentation. I will provide all requested documents and will respond timely to all Servicer, or authorized third party*, communications.
3. Knowingly submitting false information may violate Federal and other applicable law.
4. If I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this request for mortgage relief or if I do not provide all required documentation, the Servicer may cancel any mortgage relief granted and may pursue foreclosure on my home and/or pursue any available legal remedies.
5. The Servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request. The Servicer will use the information in this application to evaluate my eligibility for mortgage relief.
6. I may be eligible for a trial period plan, repayment plan, or forbearance plan. If I am eligible for one of these plans, I agree that:
 - a. All the terms of this Acknowledgment and Agreement are incorporated into such plan by reference as if set forth in such plan in full.
 - b. My first timely payment under the plan will serve as acceptance of the terms set forth in the notice of the plan sent by the Servicer.
 - c. The Servicer's acceptance of any payments under the plan will not be a waiver of any acceleration of my loan or foreclosure action that has occurred and will not cure my default unless such payments are sufficient to completely cure my entire default under my loan.
 - d. Payments due under a trial period plan for a modification will contain escrow amounts. If I was not previously required to pay escrow amounts, and my trial period plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior waiver is revoked. Payments due under a repayment plan or forbearance plan may or may not contain escrow amounts. If I was not previously required to pay escrow amounts and my repayment plan or forbearance plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior escrow waiver is revoked.
7. A condemnation notice has not been issued for the property, and there has been no change in ownership of the Property since the signing of the original mortgage loan documents.
8. The Servicer, or its agent, or authorized third party* will obtain a current credit report on all Applicants who sign this application, whether or not obligated on the Note.
9. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
10. I/We authorize you to provide to Bayview Loan Servicing, LLC, Ianniello Anderson PC, Nations Lending Services, Timios Inc., Service Link and Title 365* any and all information and documentation necessary to allow the aforementioned parties to use in efforts to clear title and/or resolve liens on the subject Property located at 10007 MAINLANDS BLVD W, PINELLAS PARK, FL 33782-0000. Please note, Ianniello Anderson PC, Nations Lending Services, Timios Inc., Service Link and Title 365 are authorized on behalf of Bayview Loan Servicing, LLC and the Applicant to discuss all settlement negotiations including but not limited to Junior Lien Holders, Judgments and any other encumbrances affecting title to the above referenced property. A copy of this authorization constitutes an original.
11. The Servicer or authorized third party* will collect and record personal information that I submit in this Applicant Response Package and during the evaluation process. This personal information may include, but is not limited to: (a) my name, address, telephone number, (b) my social security number, (c) my credit score, (d) my income, and (e) my payment history and information about my account balances and activity. I understand and consent to the Servicer or authorized third party*, as well as any investor or guarantor (such as Fannie Mae or Freddie Mac), disclosing my personal information and the terms of any relief or foreclosure alternative that I receive to the following:
 - a. Any Investor, Insurer, guarantor, or servicer that owns, insures, guarantees, or services my first lien or subordinate lien (if applicable) mortgage loan(s) or any companies that perform support services to them; and
 - b. The U.S. Department of Treasury, Fannie Mae and Freddie Mac, in conjunction with their responsibilities under the Making Home Affordable program, or any companies that perform support services to them.
12. I consent to being contacted concerning this request for mortgage assistance at any telephone number, including mobile telephone number, or e-mail address I have provided to the Lender/Servicer/ or authorized third party*. By checking this box, I also consent to being contacted by ☐ text messaging.

Print Co-Applicant Name: _____

Co-Applicant Signature: _____ Date: _____

* An authorized third party may include, but is not limited to, a counseling agency, Housing Finance Agency (HFA) or other similar entity that is assisting me in obtaining a foreclosure prevention alternative.

Package 2
Hardship Application
For non-GSE loans serviced by Bayview Loan Servicing, LLC.

Hardship Application

Page 1	COMPLETE ALL THREE PAGES OF THIS FORM
--------	---------------------------------------

▶ Loan I.D. Number _____ ▶ Servicer **Bayview Loan Servicing, LLC**

BORROWER	CO-BORROWER
Borrower's name	Co-borrower's name
Social Security number Date of birth	Social Security number Date of birth
Home phone number with area code	Home phone number with area code
Cell or work number with area code	Cell or work number with area code

I want to:	<input type="checkbox"/> Keep the Property	<input type="checkbox"/> Sell the Property	<input type="checkbox"/> Deed In Lieu
The property is my:	<input type="checkbox"/> Primary Residence	<input type="checkbox"/> Second Home	<input type="checkbox"/> Investment
The property is:	<input type="checkbox"/> Owner Occupied	<input type="checkbox"/> Renter Occupied	<input type="checkbox"/> Vacant

Mailing address	
Property address (if same as mailing address, just write same)	E-mail address

Is the property listed for sale? <input type="checkbox"/> Yes <input type="checkbox"/> No Have you received an offer on the property? Yes No Date of offer: _____ Amount of offer: \$ _____ Agent's Name: _____ Agent's Phone: _____ Number: _____ <input type="checkbox"/> For Sale by Owner? Yes No	Have you contacted a credit-counseling agency for help? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please complete the following: Counselor's Name: _____ Agency Name: _____ Counselor's Phone Number: _____ Counselor's E-mail: _____
--	---

Who pays the real estate tax bill on your property? <input type="checkbox"/> I do <input type="checkbox"/> Lender does <input type="checkbox"/> Paid by condo or HOA Are the taxes current? <input type="checkbox"/> Yes <input type="checkbox"/> No Condominium or HOA Fees <input type="checkbox"/> Yes <input type="checkbox"/> No \$ _____ Paid to: _____	Who pays the hazard insurance premium for your property? <input type="checkbox"/> I do <input type="checkbox"/> Lender does <input type="checkbox"/> Paid by condo or HOA Is the policy current? Yes <input type="checkbox"/> No Name of Insurance Co.: _____ Insurance Co. Tel # _____
--	--

Have you filed for bankruptcy?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Chapter 7 Chapter 13 Filing Date: _____	Has your bankruptcy been discharged? <input type="checkbox"/> Yes <input type="checkbox"/> No Bankruptcy case number: _____
--------------------------------	---	--

Additional Liens/Mortgages or Judgments on this property:			
Lien Holder's Name/Servicer	Balance	Contact Number	Loan Number

HARDSHIP AFFIDAVIT	
I (We) am/are requesting review for modification. I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply):	
<input type="checkbox"/> My household income has been reduced. For example: unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower.	<input type="checkbox"/> My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.
<input type="checkbox"/> My expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.	<input type="checkbox"/> My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.
<input type="checkbox"/> Other: _____	
Explanation (continue on back of page 3 if necessary): _____	

INCOME/EXPENSES FOR HOUSEHOLD

Number of People in Household:

Monthly Household Income		Monthly Household Expenses		Household Assets	
Monthly Gross Wages	\$	First Mortgage Payment	\$	Checking Account(s)	\$
Overtime	\$	Second Mortgage Payment	\$	Checking Account(s)	\$
Child Support / Alimony / Separation ²	\$	Insurance	\$	Savings / Money Market	\$
Social Security / SSDI	\$	Property Taxes	\$	CDs	\$
Other monthly income from pensions, annuities or retirement plans	\$	Credit Cards / Installment Loan(s) (total minimum payment per month)	\$	Stocks / Bonds	\$
Tips, commission, bonus and self-employed income	\$	Alimony, child support payments	\$	Other Cash on Hand	\$
Rents Received	\$	Net Rental Expenses	\$	Other Real Estate (estimated value)	\$
Unemployment Income	\$	HOA / Condo Fees / Property Maintenance	\$	Other _____	\$
Food Stamps / Welfare	\$	Car Payment	\$	Other _____	\$
Other (investment income, royalties, interest, dividends, etc.)	\$	Food	\$	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.)	
		Utilities (cable, phone, cell)	\$		
Total Income		Total Expenses		Total Assets	

INCOME MUST BE DOCUMENTED

Include combined income and expenses (for all borrowers and co-borrowers if any) all but include income and expenses up to a household member who is not a borrower, please specify using the back of this form if necessary.

You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

BORROWER		CO-BORROWER	
<input type="checkbox"/> I do not wish to furnish this information		<input type="checkbox"/> I do not wish to furnish this information	
Ethnicity:	<input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Ethnicity:	<input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino
Race:	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Race:	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White
Sex:	<input type="checkbox"/> Female <input type="checkbox"/> Male	Sex:	<input type="checkbox"/> Female <input type="checkbox"/> Male
This request was taken by:		Name / Address of Interviewer's Employer	
<input type="checkbox"/> Face-to-face interview			
<input type="checkbox"/> Mail			
<input type="checkbox"/> Telephone			
<input type="checkbox"/> Internet			

ACKNOWLEDGEMENT AGREEMENT AND AUTHORIZATION

In making this request for consideration, I certify under penalty of perjury:

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand the Servicer may investigate the accuracy of my statements and may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate law.
3. I and all persons who sign this application understand and give permission to the Servicer to pull a credit report regarding our financial information, whether or not we are obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement and may pursue foreclosure on my home.
5. That: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
9. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any agreement by Servicer to (a) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (b) any HUD-certified housing counselor.
10. I/we authorize you to provide to Bayview Loan Servicing, LLC, Nations Lending Services, Timios Inc., and Title 365* any and all information and documentation necessary to allow the aforementioned parties to use in efforts to clear title and/or resolve liens on the subject property located at 3305 CHASE LN, ELGIN, IL.

*Please Note: Nations Lending Services, Timios Inc, and Title 365 are authorized on behalf of Bayview Loan Servicing, LLC and the Borrower to discuss all settlement negotiations including but not limited to Junior Lien Holders, Judgments and any other encumbrances affecting title to the above referenced property. A copy of this authorization constitutes an original.

Borrower Signature / Printed Name	Date
Co-Borrower Signature / Printed Name	Date

HOMEOWNER'S HOTLINE

If you have questions about the program that Bayview Loan Servicing cannot answer or need further counseling, you can call the Homeowner's HOPE Hotline at 1 (888) 995-HOPE™ (4673). The Hotline also provides a number for the hearing impaired: 877-304-9709 TTY. The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish. HUD also offers counseling services in 170 languages. You may also visit the U.S. Department of Housing and Urban Development (HUD) web site at <http://www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm>.

Bayview Loan Servicing, LLC is a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay of bankruptcy this notice is for compliance and informational purposes only and does not constitute a demand for payment or any attempt to collect such obligation.

Form 4506-T
(July 2017)
Department of the Treasury
Internal Revenue Service

Request for Transcript of Tax Return

- ▶ Do not sign this form unless all applicable lines have been completed.
▶ Request may be rejected if the form is incomplete or illegible.
▶ For more information about Form 4506-T, visit www.irs.gov/form4506t.

OMB No. 1545-1872

Tip. Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can quickly request transcripts by using our automated self-help service tools. Please visit us at irs.gov and click on "Get a Tax Transcript..." under "Tools" or call 1-800-833-6946. If you need a copy of your return, use Form 4506, Request for Copy of Tax Return. There is a fee to get a copy of your return.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number or individual taxpayer identification number if joint tax return
3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)	
4 Previous address shown on the last return filed if different from line 3 (see instructions)	

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

Bayview Loan Servicing, LLC, 4425 Ponce de Leon Blvd, 5th Floor, Coral Gables, FL 33146 (800) 457-5105

Caution: If the tax transcript is being mailed to a third party, ensure that you have filled in lines 6 through 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your tax transcript to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your transcript information, you can specify this limitation in your written agreement with the third party.

6 Transcript requested. Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶ 1040

- a** Return Transcript, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120-A, Form 1120-H, Form 1120-L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days. ☒
- b** Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 10 business days. ☐
- c** Record of Account, which provides the most detailed information as it is a combination of the Return Transcript and the Account Transcript. Available for current year and 3 prior tax years. Most requests will be processed within 10 business days. ☐
- 7** Verification of Nonfiling, which is proof from the IRS that you did not file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days. ☐
- 8** Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2011, filed in 2012, will likely not be available from the IRS until 2013. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 10 business days. ☐

Caution: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

12 / 31 / 2016 12 / 31 / 2017 / / /

Caution: Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. Note: This form must be received by IRS within 120 days of the signature date.

☐ Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506-T. See instructions.

Phone number of taxpayer on line 1a or 2a

Sign Here

Signature (see instructions) _____ Date _____

Title (if line 1a above is a corporation, partnership, estate, or trust) _____

Spouse's signature _____ Date _____

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cal. No. 37667N

Form 4506-T (Rev. 7-2017)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about Form 4506-T and its instructions, go to www.irs.gov/form4506t. Information about any recent developments affecting Form 4506-T (such as legislation enacted after we released it) will be posted on that page.

General Instructions

Caution: Do not sign this form unless all applicable lines have been completed.

Purpose of form. Use Form 4506-T to request tax return information. You can also designate (on line 5) a third party to receive the information. Taxpayers using a tax year beginning in one calendar year and ending in the following year (fiscal tax year) must file Form 4506-T to request a return transcript.

Note: If you are unsure of which type of transcript you need, request the Record of Account, as it provides the most detailed information.

Tip: Use Form 4506, Request for Copy of Tax Return, to request copies of tax returns.

Automated transcript request. You can quickly request transcripts by using our automated self-help service tools. Please visit us at irs.gov and click on "Get a Tax Transcript..." under "Tools" or call 1-800-908-9946.

Where to file. Mail or fax Form 4506-T to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual transcripts (Form 1040 series and Form W-2) and one for all other transcripts.

If you are requesting more than one transcript: or other product and the chart below shows two different addresses, send your request to the address based on the address of your most recent return.

Chart for individual transcripts (Form 1040 series and Form W-2 and Form 1099)

If you filed an individual return and lived in:	Mail or fax to:
Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address	Internal Revenue Service RAVS Team Stop 6716 AUSC Austin, TX 73301 855-687-8504
Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming	Internal Revenue Service RAVS Team Stop 37106 Fresno, CA 93885 855-800-8105
Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia	Internal Revenue Service RAVS Team Stop 6705 P-6 Kansas City, MO 64199 855-821-0094

Chart for all other transcripts

If you lived in or your business was in:	Mail or fax to:
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address	Internal Revenue Service RAVS Team P.O. Box 9841 Mail Stop 6734 Ogden, UT 84409 855-290-1145
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Internal Revenue Service RAVS Team P.O. Box 145600 Stop 2600 F Cincinnati, OH 45250 855-800-8015

Line 1b. Enter your employer identification number (EIN) if your request relates to a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (ITIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

Line 3. Enter your current address. If you use a P.O. box, include it on this line.

Line 4. Enter the address shown on the last return filed if different from the address entered on line 3.

Note: If the addresses on lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address. For a business address, file Form 8822-B, Change of Address or Responsible Party — Business.

Line 6. Enter only one tax form number per request.

Signature and date. Form 4506-T must be signed and dated by the taxpayer listed on line 1a or 2a. The IRS must receive Form 4506-T within 120 days of the date signed by the taxpayer or it will be rejected. Ensure that all applicable lines are completed before signing.

CAUTION You must check the box in the signature area to acknowledge you have the authority to sign and request the information. The form will not be processed and returned to you if the box is unchecked.

Individuals. Transcripts of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4506-T exactly as your name appeared on the original return. If you changed your name, also sign your current name.

Corporations. Generally, Form 4506-T can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer. A bona fide shareholder of record owning 1 percent or more of the outstanding stock of the corporation may submit a Form 4506-T but must provide documentation to support the requester's right to receive the information.

Partnerships. Generally, Form 4506-T can be signed by any person who was a member of the partnership during any part of the tax period requested on line 5.

All others. See section 6103(e). If the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

Note: If you are heir at law, next of kin, or beneficiary you must be able to establish a material interest in the estate or trust.

Documentation. For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the letters testamentary authorizing an individual to act for an estate.

Signature by a representative. A representative can sign Form 4506-T for a taxpayer only if the taxpayer has specifically delegated this authority to the representative on Form 2848, line 6. The representative must attach Form 2848 showing the delegation to Form 4506-T.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to establish your right to gain access to the requested tax information under the Internal Revenue Code. We need this information to properly identify the tax information and respond to your request. You are not required to request any transcript if you do request a transcript, sections 6103 and 6109 and their regulations require you to provide this information, including your SSN or EIN. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4506-T will vary depending on individual circumstances. The estimated average time is: Learning about the law or the form, 10 min.; Preparing the form, 12 min.; and Copying, assembling, and sending the form to the IRS, 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506-T simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send the form to this address. Instead, see *Where to file* on this page.

EXHIBIT B

EXHIBIT B

After Recorded Return To: I
 Bayview Loan Servicing, LLC I
 4425 Ponce de Leon Blvd I
 Coral Gables, FL 33146 I
 Attention: Ramona Careaga I

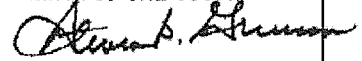
LIMITED POWER OF ATTORNEY

Reference is hereby made to (x) each of the pooling and servicing agreements listed in Schedule 1 attached hereto, by and among The Bank of New York Mellon f/k/a The Bank of New York ("BNY Mellon"), as trustee located at 101 Barclay Street, 7 East New York, NY 10286, Countrywide Home Loans Servicing LP, as master servicer, Countrywide Home Loans, Inc., as seller, one or more additional sellers identified therein, and either of CWALT, Inc. or CWABS, Inc. or CWMBBS, Inc., as depositor (each, a "Pooling and Servicing Agreement") and collectively, the "Pooling and Servicing Agreements"), and (y) that certain settlement agreement (the "Settlement Agreement"), dated as of June 28, 2011, by and among BNY Mellon, in its capacity as trustee or indenture trustee of certain mortgage-securitization trusts identified therein, Bank of America Corporation, Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing LP) (the "Master Servicer"), Countrywide Financial Corporation and Countrywide Home Loans, Inc. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Pooling and Servicing Agreements or the Settlement Agreement, as the context requires.

BNY Mellon, as Trustee under the Pooling and Servicing Agreements, hereby constitutes and appoints Bayview Loan Servicing, LLC located at 4425 Ponce de Leon Boulevard, Coral Gables, FL 33146, and its authorized officers (collectively, "Bayview") and each of them, its true and lawful attorneys-in-fact and agents, with full powers of substitution and resubstitution, for and in its name, place and stead, in any and all capacities, for the limited purpose of executing and recording any and all documents necessary to effect (i) a foreclosure of a Mortgage Loan, (ii) the disposition of an REO Property, (iii) an assumption agreement or modification agreement or supplement to the Mortgage Note, Mortgage, or deed of trust, (iv) defense of the Trustee in litigation and to resolve any litigation where Bayview has an obligation to defend the Trustee, including but not limited to dismissal, termination, cancellation, rescission and settlement, which settlement shall release with prejudice all claims and liabilities against BNY Mellon and will not result in admission of guilt by BNY Mellon, (v) title claim resolution, including but not limited to settlement agreements or (vi) a reconveyance, deed of reconveyance or release or satisfaction of mortgage or such instrument releasing the lien of a Mortgage, (vii) the protection, enforcement and/or assignment of BNY Mellon's interest, as Trustee, in a Mortgage Loan, the property secured thereby, or the proceeds related thereto, including but not limited to preparation or execution of documents relating to tax sales, in each case solely in the performance of Bayview's duties and obligations in respect of Mortgage Loans that are then being subserviced by Bayview pursuant to a subservicing agreement (the "Subservicing Agreement") with the Master Servicer, then in effect in accordance with the terms of the Settlement Agreement. BNY Mellon also grants unto said attorneys-in-fact and agents, and each of them, subject to the foregoing limitations, the full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as might or could be done in person to effect items (i), (ii), (iii), (iv), (v), (vi) and (vii) above, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their

EXHIBIT I

EXHIBIT I



ELLER LAW, LLC
Crystal Eller, Esq.
Nevada Bar No.4978
104 S. Jones Blvd.
Las Vegas, NV 89107
(702) 685-6655
(702) 685-6655- Fax
Crystal@crystalforthepeople.com
Attorney for Petitioner

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

DENNIS BAHAM;

Petitioner,

v.

FIRST AMERICAN TRUSTEE
SERVICING SOLUTIONS; BAYVIEW
LOAN SERVICING, LLC;

Respondents.

Case No. A-18-775019-FM

Dept. No. 7

REQUEST FOR RELIEF

Petitioner DENNIS BAHAM, by and through his counsel of record, Crystal Eller of Eller Law, LLC, pursuant to NRS 107 as amended by AB 149, and the Nevada Foreclosure Mediation Rules ("FMR"), as reintroduced by Senate Bill 490, EDCR 2.14, hereby petition the Court for review of the mediation conducted pursuant thereto and the Nevada Supreme Court Foreclosure Mediation Rules.

ELLER LAW, LLC

/S/ Crystal Eller

Crystal Eller, Esq.

Nevada Bar No.4978

104 S. Jones Blvd.

Las Vegas, NV 89107

(702) 685-6655

(702) 685-6655- Fax

Crystal@crystalforthepeople.com

Attorney for Petitioner

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NOTICE OF MOTION

PLEASE TAKE NOTICE this Request for Relief will be heard on the 11th day of
DEC. _____, 2018 at the hour of 9AM A.M/P.M. in the Eighth Judicial
District Court, Department XII.

DATED this 2nd of November,2018.

ELLER LAW, LLC

/s/ Crystal Eller
Crystal Eller, Esq.
Nevada Bar No.4978
104 S. Jones Blvd.
Las Vegas, NV 89107
(702) 685-6655
(702) 685-6655- Fax
Crystal@crystalforthepeople.com
Attorney for the Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 Nevada Revised Statute 107, as amended by AB 149 and SB 490, and Nevada Supreme Court
4 FMR 1 and 20 vest this Court with jurisdiction over this Petition.

5 **II. PARTIES**

6 Petitioner is the owner/mortgager of a residential property located at 6017 Guild Court Las
7 Vegas, NV 89131 APN: 125-14-810-039 (the "Subject Property"). Respondent First American
8 Trustee Servicing Solutions; Bayview Loan Servicing, LLC; Bank of New York Mellon is the
9 alleged beneficiary of the deed of trust.

10 **III. STATUTORY AND REGULATORY SCHEME**

11 NRS 107, as amended by SB 490, establishes certain restrictions on the trustee's power of
12 sale with respect to owner-occupied housing by providing a grantor of a deed of trust or the
13 person who holds the title of record the right to request mediation under which he may seek a loan
14 modification. Once the mediation is requested, no further action may be taken to exercise the
15 power of sale until the completion of the mediation.

16 If any party fails to attend the mediation, fails to participate in good faith at the mediation,
17 fails to comply with the document provisions under the FMRs or does not have the authority or
18 access to a person with the authority required under the FMRs, the mediator may recommend
19 sanctions. The Court may issue an order imposing such sanctions against any person to the
20 mediation proceedings as the Court determines appropriate, including without limitation,
21 requiring a loan modification in the manner determined proper by the Court. Under NRS
22 107.080(5)(a) the trustee or other person authorized to make a foreclosure sale must substantially
23 comply with that sanction.

24 On August 1, 2017, the Nevada Supreme Court entered an Order Amending Rules of
25 Foreclosure Mediation. FMR 20 states that a party to the mediation may file a request for relief
26 seeking essentially a judicial review of the foreclosure mediation.

27 **IV. ARGUMENT**

28 **A. The Power of Attorney Failed to Provide Requisite Authority to the Representative**

1 The Petitioner/borrower, Dennis Baham originally filed a petition for mediation
2 assistance in proper person but was able to retain counsel shortly before the scheduled mediation
3 date. This date was then continued for approximately one week due to a conflict on borrower's
4 counsel's schedule. The foreclosure mediation was held on October 12, 2018 with the Mediator
5 Statement being filed and on October 18, 2018. Relevant pages of Mediator's Statement attached
6 hereto as "Exhibit 1".

7 Petitioner did not provide documents to the representative of the alleged beneficiary
8 because he has genuine ongoing concerns about who the actual beneficiary of the deed of trust
9 associated with his loan is. Petitioner also has genuine ongoing concerns about whether or not the
10 various companies who have claimed to be authorized servicers have appropriate authority to
11 negotiate with him regarding the terms of his loan or a modification. For instance, when
12 petitioner was researching Bank of New York Mellon (the current alleged beneficiary of the deed
13 of trust), he received a letter from them stating they were "unable to identify any loans under [his]
14 name or for the property address [he] provided". That letter is attached hereto as "Exhibit 2". As
15 a result, the mediation was held without any borrower submission of documents.

16 FMR 12 states in relevant part "A beneficiary or its representative shall be physically
17 present at mediation. Physical presence of the beneficiary or its representative is satisfied by the
18 physical presence of an **authorized** representative of the beneficiary..." [Emphasis added]. The
19 purported beneficiary representative at the mediation did not have a power of attorney from Bank
20 of New York Mellon. ("BONY Mellon") Instead, he had a power of attorney from Bayview Loan
21 Servicing, LLC ("Bayview") Therefore, the only way this representative could be considered to
22 be authorized is if there was a document giving Bayview the necessary authority to negotiate the
23 terms of a loan modification, short-sale, short-pay-off or other solution.

24 During the mediation the undersigned, borrower's counsel brought to the mediator's
25 attention that the power of attorney provided by the lender representative which purported to give
26 Bayview authority to negotiate loan modifications, short-sales, short-pay-offs or other similar
27 resolution, failed to actually grant that authority. Again, this is a concern because the
28 representative who was physically present at the mediation gleaned his authority to negotiate from
Bayview and not directly from the alleged beneficiary, BONY Mellon. Therefore, if Bayview
does not have the requisite authority to negotiate regarding a deed of trust and promissory note for
a given property, then a power of attorney given by Bayview to the representative physically
present at the mediation must be deficient.

1 Here the power of attorney ("POA") (relevant page attached to mediator's statement as
2 "Exhibit B") between the alleged beneficiary, BONY Mellon and Bayview specifically limited
3 Bayview's authority stating at line five of paragraph 2, "for the limited purpose of executing and
4 recording any and all documents necessary to effect ... (iii) an assumption agreement, or
5 modification agreement or supplement to the mortgage note, mortgage or deed of trust..." This
6 language is clear. The POA specifically uses the words "for the limited purpose..." This POA
7 gives Bayview the authority to execute and record documents that will bring into effect an
8 assumption agreement, modification agreement or supplement the mortgage note, mortgage or
9 deed of trust. It specifically does not give Bayview the authority to actually negotiate the terms of
any of those potential agreements. That authority is reserved for the beneficiary, BONY Mellon.

10 Unfortunately, the mediator misinterprets some language stated later in the POA to
11 subsequently remove the very definite and specific limiting language stated in paragraph 2 at line
12 5. The mediator sites the language beginning at line 18 of paragraph 2. Regretably, she sites
13 only a portion of the sentence then re-words the remainder of the language after the end quotes
14 with language that is not in the POA agreement. What is written in the mediator statement simply
15 is not what is written in the POA. By taking a portion of the sentence out of context and re-
16 writing the ending, she has changed the clear meaning. First, the sentence to which the mediator
17 refers in her statement actually begins with the language "BNY Mellon also grants unto said
18 attorney-in-fact and agents, and each of them, **subject to the foregoing limitations** full power
19 and authority". The sentence goes on to state "... to do and perform each and every act and thing
20 requisite and necessary to be done in and about the premises, as full to all intents and purposes as
might or could be done in person for **effect** [items] (i)(ii)(iii)(iv)(v)(vi) and (vii) above...".
[emphasis added]

21 Nowhere does the POA use the term "foreclosure, modification and/or similar". This
22 was presumed by the mediator. The language in paragraph 18 does clearly state two things; 1.)
23 that the language to follow in the remainder of the sentence is specifically subject to the
24 limitations clearly stated earlier in the document at paragraph 2 line 5 as those limitations are in
25 fact the "foregoing limitations" previously listed in the document, and 2.) use of the word "effect"
26 a second time is intentional and deliberate. The POA grants Bayview only the authority to
27 execute and record documents which will put agreements into "effect". It specifically limits the
28 authority to those powers and does not give Bayview the authority to negotiate the actual terms of

1 loan modifications, short-sales, short-payoffs or other possible solutions to the pending
2 foreclosure. That authority are reserved for the beneficiary or perhaps the master-servicer.

3 The mediator's interpretation of the language of the POA should be disregarded by the
4 Court. The Court should review the clear meaning of the limiting language of the POA and find
5 that the alleged beneficiary representative lacked the mandatory authority under FMR 12(a) and
6 that the necessary "agreement which authorizes the third party to represent the beneficiary at
7 mediation and authorizes the third party to negotiate a loan modification on behalf of the
8 beneficiary of the deed of trust" required by FMR 13 (7)(d) was missing from the documents
9 provided by the alleged beneficiary. Therefore, a certificate to foreclose should not issue.

10 B. Representative had no Authority to Make Binding Agreements on Behalf of the
11 Beneficiary

12 In addition to the fact that the alleged beneficiary representative lacked authority under the
13 POA, he also demonstrated during negotiations that he had no authority to bind the beneficiary to
14 an agreement if one were to be reached. During the mediation a "short-payoff" resolution was
15 discussed in detail including an amount which the lender/beneficiary would be willing to accept
16 as a short-payoff. However, when the undersigned, borrower's counsel requested that the parties
17 reduce the agreement/offer to writing, the representative was unable to do so. He called his
18 contact at the alleged beneficiary listed on the sign-in sheet attached to the mediator statement
19 (Exhibit 1) to discuss the possibility of a short-payoff.

20 However apparently, he was not given permission to put the offer or agreement in
21 writing. When he returned from the phone call, he stated that the lender/beneficiary would need
22 additional information such as where the pay-off money would come from and who the lender
23 would be if it was a re-finance and other similar requirements. He argued that because the
24 borrower did not have that information at the time, there could be no agreement. The
25 undersigned, borrower's counsel suggested making an agreement where the lender/beneficiary's
26 obligation to accept the short payoff would be contingent on the borrower providing any
27 information needed at a future time. However, the lender/beneficiary representative simply did
28 not have the authority to make that agreement, and to reduce it to writing. The only "agreement"
he had the authority to make was a verbal promise that if the borrower submitted a short-payoff
offer the lender/beneficiary would review it. Such terms obviously do not commit the lender to
any terms and cannot be considered an agreement. Essentially it was no more than an agreement

1 to maybe agree to do something in the future but only if they chose to do so at the future time.
2 This is exactly the type of non-committal behavior on the part of lenders the FMP was designed to
3 overcome.

4 If this representative truly had the authority contemplated by the foreclosure mediation
5 program rules, specifically, rule 12, he would have been able to make a decision and put that
6 decision in writing. Instead he verbally discussed what could have been an acceptable solution
7 but did not have the actual authority to make a commitment on behalf of the lender/beneficiary.
8 The foreclosure mediation program requires that the representative have actual authority to bind
9 the lender. Without it, the mediation is likely a waste of everyone's time and effort. It does no
10 good to discuss a resolution to which the representative has no authority to commit to on behalf of
11 the lender/beneficiary. This is the very reason the program rules require proof of authority via
12 documents which must be submitted to the homeowner and mediator. This representative simply
13 did not have the authority to negotiate a solution and bind the lender/beneficiary to that solution.

14 **V. CONCLUSION**

15 As discussed above, the clear and plain language of the POA between BNY Mellon and
16 Bayview, limits the servicer to "executing and recording" and excludes negotiating via this
17 limiting language. This interpretation of the terms of the POA is further bolstered by the fact that
18 even though a tentative agreement with additional conditions could have been reached during the
19 mediation, it was not. This was due to the fact that the lender/beneficiary representative did not
20 have the authority to bind the lender to such an agreement. However, this authority must be
21 present for the lender/beneficiary to be deemed to have appeared at the mediation in good faith.
22 Because it was not present, the Court should find the lender/beneficiary representative lacked the
23 required authority and preclude Home Means Nevada for issuing a certificate to foreclose.

24 Based on the foregoing, Petitioner respectfully prays for the following relief:

- 25 1. For the Court to accept jurisdiction over this matter;
- 26 2. For entry of appropriate injunction against Respondent and its assigns, agents,
27 representatives, employees and/or successor(s) in interest, or any agent or other related successor
28

1 entity, prohibiting any and all procedure exercising the power of sale relative to any foreclosure
2 of Petitioners' home, by indicating the Certificate to Foreclose should not be issued;

3 3. For attorney's fees and costs.

4 4. For any other and further relief that the Court may deem appropriate or which may be
5 available by law.

6 DATED this 2nd of November 2018

7
8 ELLER LAW, LLC

9 /S/ Crystal Eller

10 Crystal Eller, Esq.

11 Nevada Bar No.4978

12 104 S. Jones Blvd.

13 Las Vegas, NV 89107

14 (702) 685-6655

15 (702) 685-6655- Fax

16 Crystal@crystalforthepeople.com

17 Attorney for the Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ELLER LAW, LLC and that on the 2nd day of November 2018, I caused the above and foregoing **REQUEST FOR RELIEF**, to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[] By placing the same to be deposited in the United State Mail, in a sealed envelope upon which First Class postage was prepaid in Las Vegas, Nevada;

[] Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

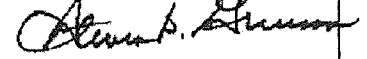
To the following attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

ELLER LAW, LLC

/S/ Crystal Eller
Crystal Eller, Esq.

EXHIBIT J

EXHIBIT J



1 NATALIE L. WINSLOW, ESQ.
2 Nevada Bar No. 12125
3 JAMIE K. COMBS, ESQ.
4 Nevada Bar No. 13088
5 AKERMAN LLP
6 1635 Village Center Circle, Suite 200
7 Las Vegas, Nevada 89134
8 Telephone: (702) 634-5000
9 Facsimile: (702) 380-8572
10 Email: natalie.winslow@akerman.com
11 Email: jamie.combs@akerman.com
12
13 *Attorneys for Bayview Loan Servicing, LLC*

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

13 DENNIS BAHAM,

14 Petitioner(s),

15 v.

16 FIRST AMERICAN TRUSTEE SERVICING
17 SOLUTIONS; BAYVIEW LOAN SERVICING,
18 LLC,

19 Respondent(s).

Case No.: A-18-775019-FM

Dept.: VII

ORDER DENYING RELIEF

21 Petitioner Dennis Baham filed a Request for Relief on November 2, 2018 seeking judicial
22 review of the foreclosure mediation which took place on October 12, 2018. Respondent Bayview
23 Loan Servicing, LLC filed a response on November 2, 2018. The court held a hearing on the request
24 on January 29, 2019. Natalie L. Winslow, Esq. appeared on behalf of Bayview, and Crystal Eller,
25 Esq. appeared on behalf of Dennis Baham. The court, being fully apprised of the matter, denies
26 Petitioner's request for relief, as follows:

27 A foreclosure mediation took place on October 12, 2018 before mediator Angela Dows.
28 Bayview attended the mediation on behalf of BoNYM through its counsel, Ramir Hernandez, Esq.,

47904031:1

1 who appeared in person, and Moises Margulis, who appeared telephonically. Petitioner appeared in
2 person and was represented by counsel, Crystal Eller, Esq. No agreement was reached at the
3 foreclosure mediation. The mediator found no deficiency with the documents provided by Bayview,
4 or its authority, and recommended that the mediation be terminated and a Certificate from the
5 Program issue.

6 Petitioner argues Bayview did not appear at the mediation with the appropriate authority
7 required by the rules. Specifically, petitioner argues the power of attorney provided to Bayview was
8 insufficient to confer the requisite authority, and the representative at the mediation did not have
9 authority to approve a short-payoff. The court disagrees.

10 FMR 12(1)(a) requires that a beneficiary of the deed of trust be represented at the mediation
11 by a person or persons with authority to negotiate and modify the loan, which can include counsel.
12 The Nevada Supreme Court has concluded that a servicer of a deed of trust beneficiary has the
13 authority necessary to participate on behalf of a deed of trust beneficiary in a foreclosure mediation.
14 *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 668, 310 P.3d 569, 574 (2013).

15 Bayview produced a power of attorney from BoNYM demonstrating it had authority to
16 negotiate a loan modification or foreclosure alternative on behalf of BoNYM. The power of attorney
17 from BoNYM granted Bayview full power and authority to "execut[e] and record[] any and all
18 documents necessary to effect (i) a foreclosure of a Mortgage Loan; . . . (iii) an assumption
19 agreement or modification agreement, or supplement to the Mortgage Note, Mortgage, or deed of
20 trust . . . (v) title claim resolution, including but not limited to settlement agreements or (vi) a
21 reconveyance, deed of reconveyance, or release or satisfaction of Mortgage or such instrument
22 releasing the lien of such Mortgage. . ." It also granted Bayview "the **full power and authority** to do
23 and perform **each and every act** and thing requisite and necessary to be done . . . as fully to all
24 intents and purposes as might or could be done in person to effect all items (i), (ii), (iii), (iv), (v),
25 (vi), and (vii), above."

26 Additionally, while the Bayview did not approve a short-payoff at the mediation, this was
27 due to petitioner's failure to produce documents prior to the mediation as required by FMR 13(3),
28 rather than any lack of authority on the part of Bayview.

Therefore, good cause appearing:

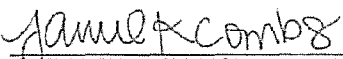
IT IS HEREBY ORDERED, ADJUDGED, and DECREED, that Petitioner's Request for Relief be DENIED;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Petition be DISMISSED. The Foreclosure Program Administrator is directed to issue the Certificate of Foreclosure.

DATED this 15th day of February 2019.


 DISTRICT COURT JUDGE
 30


Submitted by:
AKERMAN LLP


 NATALIE L. WINSLOW, ESQ.
 Nevada Bar No. 12125
 JAMIE K. COMBS, ESQ.
 Nevada Bar No. 13088
 1635 Village Center Cir., Suite 200
 Las Vegas, Nevada 89134

Attorneys for Respondents

Approved as to form and content:

ELLER LAW, LLC


 CRYSTAL ELLER, ESQ.
 Nevada Bar No. 4978
 104 S. Jones Blvd.
 Las Vegas, Nevada 89107

Attorney for Petitioner

EXHIBIT K

EXHIBIT K

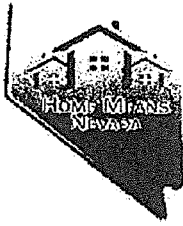
APN#: 125-14-810-039

RECORDING REQUESTED BY:
FIRST AMERICAN NATIONAL DEFAULT
TITLE
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

WHEN RECORDED MAIL TO:
FIRST AMERICAN TRUSTEE SERVICING SOLUTIONS, LLC
4795 REGENT BLVD, MAIL CODE 1011-F
IRVING, TX 75063

Inst #: 20190329-0000004
Fees: \$40.00
03/29/2019 07:45:11 AM
Receipt #: 3668810
Requestor:
FIRST AMERICAN MORTGAGE SOL
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM CERTIFICATE
TITLE OF DOCUMENT



HOME MEANS NEVADA, INC.
A Non-Profit Entity Established by the
State of Nevada. Department of Business and Industry

Board of Directors

President - Shannon Chambers
VP- Perry Faigin
Member at-large - Robin Sweet
Member at-large - Verise Campbell
Member at-large - Jennifer Yim

**STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM
CERTIFICATE**

APN: 125-14-810-039

Recording requested by:

First American Trustee Servicing Solutions
4795 Regent Blvd., Mail Code 1011-F
Irving TX 75063

When recorded, mail to:

First American Trustee Servicing Solutions
4795 Regent Blvd., Mail Code 1011-F
Irving TX 75063



- ☐ **Mediation Waiver:** The Beneficiary may proceed with foreclosure process.
- ☐ **No Agreement:** A Foreclosure Mediation Conference was held on . The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with foreclosure process.
- ☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on . The parties homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.
- ☐ **Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference, failed to produce the necessary disclosure forms, did not file petition, or did not pay the fees required by the district court. The Beneficiary may proceed with the foreclosure process.
- ☐ **Certificate Reissuance:** The Beneficiary may proceed with foreclosure process.
- ☒ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 04/26/2018 Proof of Service Date:

Property Owner(s):

Dennis Baham

Property Address:

6017 Guild Ct.
Las Vegas, NV 89131

Trustee:

First American Trustee
Servicing Solutions, LLC

Instrument Number: 20041223-0002350

Deed of Trust Document Number: 20041223-0002350

Book Page

Foreclosure Mediation Program Certificate Number: 2019-03-21-0001 Issue Date: 03/21/2019

EXHIBIT L

EXHIBIT L

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3/28/2019 5:07 PM
Steven D. Grierson
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7 *Counsel for Petitioner*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 DENNIS BAHAM;

11 Petitioner,

12 vs.

13 FIRST AMERICAN TRUSTEE SERVICING
SOLUTIONS, INC.; BAYVIEW LOAN
14 SERVICING, LLC;

15 Defendant.

CASE NO.: A-18-775019-FM
DEPT. NO.: VII

NOTICE OF APPEAL

17 Petitioner, DENNIS BAHAM, by and through his counsel of record, JAMIE S.
18 COGBURN, ESQ. and ERIK W. FOX, ESQ., of COGBURN LAW OFFICES, hereby gives notice
19 of appealing to the Nevada Supreme Court the following order: (1) the February 27, 2019, Order
20 ...
21 ...
22 ...
23 ...
24 ...
25

1 Denying Relief. Notice of Entry of Order on the Order Denying Relief was entered on February
2 28, 2019, with said Order constituting the final order in the case.

3 DATED this 28th day of March, 2019.

4 **COGBURN LAW OFFICES**

5 /s/ Erik W. Fox

6 JAMIE S. COGBURN, ESQ.

7 Nevada Bar No. 8409

8 ERIK W. FOX, ESQ.

9 Nevada Bar No. 8804

10 2580 St. Rose Parkway, Ste. 330

11 Henderson, NV 89074

12 *Counsel for Petitioner*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for service only with the Eighth Judicial District Court on the 28th day of March, 2019.

I further certify that I served a true and correct copy of the foregoing document as follows:

☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

☐ By placing a copy of the original in a sealed envelope, first-class postage fully prepaid thereon, and depositing the envelope in the U.S. Mail at Las Vegas, Nevada, addressed as follows:

Michelle Crumby
info@homemnv.org
Defendant Home Means Nevada

Natalie L. Winslow, Esq.
AKERMAN LLP
Natalie.winslow@akerman.com
Attorney for Bayview Loan Servicing LLC

/s Michelle J. Lansdown
An Employee of **COGBURN LAW OFFICES**

EXHIBIT M

EXHIBIT M

APN: 125-14-810-039

Recording Requested by :
First American Title Insurance Company

When Recorded Mail To:
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

TS No. : NV1400259949
TSG Number: 8457622
FHA/VA/PMI No:

Inst #: 20190510-0003003
Fees: \$40.00
05/10/2019 02:22:00 PM
Receipt #: 3707987
Requestor:
FIRST AMERICAN/ TRUSTEE SER
Recorded By: DECHO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 12/21/2004. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 06/07/2019 at 09:00 A.M., First American Trustee Servicing Solutions, LLC, as duly appointed Trustee under and pursuant to Deed of Trust recorded 12/23/2004, as Instrument No. 20041223-0002350, in book , page , of Official Records in the office of the County Recorder of CLARK County, State of Nevada. Executed by:

DENNIS BAHAM

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized, (Payable at time of sale in lawful money of the United States) At the front entrance to Nevada Legal News located at 930 So. Fourth Street, Las Vegas, NV
All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as: AS MORE FULLY DESCRIBED IN THE ABOVE MENTIONED DEED OF TRUST APN# 125-14-810-039

The street address and other common designation, if any, of the real property described above is purported to be:

6017 GUILD CT, LAS VEGAS, NV 89131-2331

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.

TS No.: NV1400259949

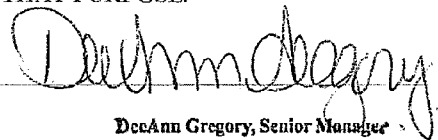
TSG Number: 8457622

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$ 933,533.83. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the County where the real property is located.

THIS PROPERTY IS SOLD AS-IS, THE LENDER AND ITS ASSETS ARE UNABLE TO VALIDATE THE CONDITION, DEFECTS OR DISCLOSURE ISSUES OF SAID PROPERTY AND BUYER WAIVES THE DISCLOSURE REQUIREMENT UNDER NRS 113.130 BY PURCHASING THIS SALE AND SIGNING SAID RECEIPT.

If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagor, the Mortgagee or the Mortgagee's attorney.

First American Trustee Servicing Solutions, LLC MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE.


DeAnn Gregory, Senior Manager

Date: 5-10-19

First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063
Fax Only: (817) 699-1487
FOR TRUSTEE'S SALE INFORMATION PLEASE CALL 800-280-2832

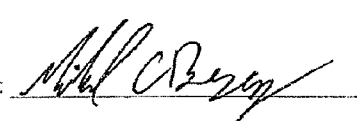
State of Texas
County of Dallas

Before me MICHAEL C BESSEY, a Notary Public, on this day personally appeared
DeAnn Gregory

known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 05-10-19

Witness my hand and official seal

Signature: 

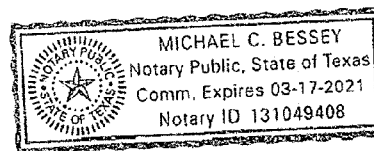


EXHIBIT A

TS No. NV1400259949

TSG Number: 8457622

PARCEL I: LOT 39 IN BLOCK A OF FINAL MAP OF ELKHORN/JONES, A RESIDENTIAL PLANNED DEVELOPMENT AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114 OF PLATS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, EXCEPTING THEREFROM A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATES RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925 OF OFFICIAL RECORDS, AS THE SAME MAP FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II: A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATE RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

EXHIBIT N

EXHIBIT N

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1 COGBURN LAW
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12 *Attorneys for Plaintiffs*

Electronically Filed
5/24/2019 4:02 PM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-19-795507-C
Department 32

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DENNIS BAHAM, an individual; CHUCK J.
11 REINECK, an individual; and JEANETTE J.
12 REINECK, an individual;

12 Plaintiffs,

13 vs.

14 BAYVIEW LOAN SERVICING, LLC, a
15 Foreign Limited Liability Company;

16 Defendant.

Case No.:
Dept. No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**ARBITRATION EXEMPTION:
CLASS ACTION (N.A.R. 3(A))**

17 Plaintiffs; Dennis Baham ("Baham"), Chuck J. Reineck and Jeanette J. Reineck (the
18 "Reinecks") (collectively "Plaintiffs"), individually and on behalf of Nevada residents similarly
19 situated, by and through their attorneys Jamie S. Cogburn, Esq., and Erik W. Fox, Esq., of Cogburn
20 Law, sues Bayview Loan Servicing, LLC ("Bayview"), under the Fair Debt Collection Practices
21 Act ("FDCPA"), for the collection of debt in the State of Nevada without being licensed to conduct
22 debt collection activities by the State of Nevada, Dept. of Business & Industry Financial
23 Institutions Division ("NFID").

1 **I. PRELIMINARY STATEMENT**

2 1. This class action addresses systemic action by Bayview collecting debts as to
3 mortgage loans secured by real property in the state of Nevada, without being properly licensed
4 by the NFID to collect debts in the State of Nevada as required by NRS 649.075.

5 2. Bayview was not licensed with the NFID for collection efforts performed in the
6 State of Nevada prior to January 18, 2019 (the "Licensing Date").

7 3. Bayview communicated with and took debt collection actions against Nevada
8 consumers while failing to be licensed by the NFID to conduct debt collection activities prior to
9 the Licensing Date.

10 **II. JURISDICTION AND VENUE**

11 4. Jurisdiction of this Court arises under NRS 649.370.

12 5. Venue is proper in this Court pursuant to NRS 13.040 as Bayview transacts
13 business within the State of Nevada and Clark County, Nevada, along with the conduct complained
14 of occurring within the Eighth Judicial District.

15 **III. PARTIES**

16 6. Baham is a natural person who resides in Clark County, Nevada at all times relevant
17 to the allegations herein.

18 7. Chuck J. Reineck is a natural person who resides in Clark County, Nevada at all
19 times relevant to the allegations herein.

20 8. Jeanette J. Reineck is a natural person who resides in Clark County, Nevada at all
21 times relevant to the allegations herein.

22 9. For all issues relevant to this matter, Baham is a "consumer" as defined in 15 U.S.C.
23 § 1692a(3).

24 10. For all issues relevant to this matter, Chuck J. Reineck is a "consumer" as defined
25 in 15 U.S.C. § 1692a(3).

1 11. For all issues relevant to this matter, Jeanette J. Reineck is a “consumer” as defined
2 in 15 U.S.C. § 1692a(3).

3 12. Bayview is a corporation engaged in the business of collecting debts by use of the
4 mails and telephone, and Bayview regularly attempts to collect debts alleged to be due another.

5 13. Upon information and belief, Bayview Loan Servicing, LLC, is a limited liability
6 company organized under the laws of the State of Delaware.

7 14. Bayview is a “debt collector” as defined by the Fair Debt Collection Practices Act
8 (“FDCPA”) by virtue of NRS 649.370 and 15 U.S.C. § 1692a(6).

9 15. Bayview is a “collection agency” as defined by NRS 649.020(1).

10 **IV. FACTUAL ALLEGATIONS RELATING TO BAHAM**

11 16. Baham purchased the real property at 6017 Guild Court, Las Vegas, Nevada, 89131
12 (APN 125-14-810-039) in Clark County, Nevada (the “Baham Property”) on or around December
13 23, 2004.

14 17. As part of the 2004 purchase of the Baham Property, Baham obtained a mortgage
15 originally serviced by Countrywide Home Loans, Inc.

16 18. Bayview asserts it became the servicer of the Baham mortgage account (hereinafter
17 the “Baham Bayview Collection Account”).

18 19. In the latter part of 2018, Baham researched Bayview’s licensing status using the
19 publicly accessible NFID license search website, wherein the public can learn the licensing status
20 of debt collection companies.

21 20. After searching the NFID website in the latter part of 2018, Baham discovered that
22 Bayview had not registered as a Collection Agency with the NFID.

23 21. Baham initiated a Complaint with the NFID asserting that Bayview was conducting
24 debt collection activities without being licensed as a debt collector in the State of Nevada (the
25 “NFID Bayview Complaint”).

1 22. The NFID Bayview Complaint was assigned case number 75722.

2 23. On January 31, 2019, the NFID sent correspondence to Baham, wherein the NFID
3 stated: "Bayview Loan Servicing LLC is now licensed by the NFID as of January 18, 2019. Please
4 be advised that Bayview Loan Servicing LLC is now permitted to engage in the collection activity
5 that was previously prohibited. Our licenses are valid as of the date licensed. Previous activity
6 conducted without a license is still considered unlicensed activity."

7 24. Prior to January 18, 2019, Bayview was performing debt collection activities as to
8 Baham and other Nevada citizens wherein Bayview services mortgage account(s).

9 25. Specifically, Bayview sought payment on the Baham Bayview Collection Account
10 by way of demand for payment and exercising alleged rights in the Deed of Trust recorded against
11 the Baham Property.

12 **V. FACTUAL ALLEGATIONS RELATING TO THE REINECKS**

13 26. The Reinecks purchased the real property at 2688 La Casita Avenue, Las Vegas,
14 Nevada 89120 (APN 177-01-410-008) (hereinafter the "Reineck Property") on or about March 18,
15 2003.

16 27. Bayview is also the alleged servicer of the Reineck mortgage account (hereinafter
17 the "Reineck Bayview Collection Account").

18 28. As recently as 2019, Bayview has undertaken collection actions against the
19 Reinecks and authorized foreclosure to proceed as to the Reineck Property.

20 29. These actions were taken whilst Bayview was not licensed as a Collection Agency
21 with the NFID.

22 **VI. CLASS DEFINITIONS**

23 30. The class of persons ("Class") represented by Baham and the Reinecks are
24 composed of all natural persons who reside in Nevada and who have been the subject of consumer
25

1 debt collection efforts by Bayview within the years immediately preceding the filing of this class
2 action.

3 31. Plaintiffs estimate there are more than 300 members of the Class, which represents
4 the mortgages serviced by Bayview in Nevada.

5 32. A sub-class of the persons represented by Cogburn Law ("Sub-Class") is composed
6 of all members of the Class who have been the subject of consumer debt collection efforts by
7 Bayview within the one year immediately preceding the filing of this Complaint.

8 33. Plaintiffs estimate there are also more than 300 members of the Sub-Class.

9 **VII. FACTUAL ALLEGATIONS COMMON TO THE CLASS AND SUB-CLASS**

10 34. Bayview's principal business is the servicing of home loan mortgage accounts and
11 the collection of debt associated with those serviced home loan mortgage accounts.

12 35. Upon information and belief, Bayview obtains servicing rights from the owner,
13 holder, or investor of the obligation secured by a Deed of Trust on the subject property.

14 36. Upon information and belief, Bayview services the home loans by seeking
15 collection of mortgage payments and other amounts due under the related mortgage loan
16 documents.

17 37. Upon information and belief, Bayview regularly participates in all aspects of the
18 foreclosure process, including foreclosure mediation and seeking foreclosure on properties where
19 the mortgages are in default.

20 38. Bayview performs and has performed mortgage servicing in the State of Nevada.

21 39. Bayview performs and has performed debt collection the State of Nevada.

22 40. Bayview routinely contacts consumers in the State of Nevada seeking collection on
23 the Bayview collection accounts via phone.

24

25

1 41. Bayview routinely contacts consumers in the State of Nevada seeking collection on
2 the Bayview collection accounts via correspondence, electronic communications, and other written
3 forms.

4 42. By performing the business of debt collection in the State of Nevada, Bayview is
5 required to register as a debt collector with the State of Nevada, Dept. of Business & Industry
6 Financial Institutions Division ("NFID").

7 43. On or about January 31, 2019, the NFID wrote to Baham regarding a complaint
8 filed by Baham with the NFID.

9 44. The NFID stated that Bayview became licensed as a Collection Agency in the State
10 of Nevada on January 18, 2019.

11 45. The NFID also stated that any previous debt collection activity by Bayview prior
12 to January 18, 2019, was "unlicensed activity."

13 46. Bayview acted as an unlicensed debt collector in the State of Nevada prior to
14 January 18, 2019.

15 47. Bayview acted as an unlicensed debt collector in the State of Nevada as to Baham
16 prior to January 18, 2019.

17 48. Bayview acted as an unlicensed debt collector in the State of Nevada as to the
18 Reinecks prior to January 18, 2019.

19 49. During all times relevant to this Complaint, Bayview was not registered as a
20 Collection Agency with the NFID.

21 50. Bayview is a "collection agency" as the term is defined by NRS 649.020(1).

22 51. A "collection agency" is required to be licensed in the State of Nevada under
23 NRS 649.075(1).

24 52. Nevada has expressly adopted the Fair Debt Collection Practices Act ("FDCPA").
25 NRS 649.370.

1 53. A Collection Agency engages in deceptive trade practices if the Collection Agency
2 is not licensed by the required agency. NRS 598.0923(1).

3 54. While the Nevada adoption of the FDCPA does not require that the consumer has
4 been personally misled, deceived, or damaged as a result of the FDCPA violation, every member
5 of the Class has been misled, deceived, or damaged as a result of Bayview's failure to register as
6 a Collection Agency prior to January 18, 2019.

7 55. The questions of law and fact common to the Class and/or Sub-Class are:

8 a. Whether Bayview conducted business in Nevada to the degree that Bayview
9 is required to be registered in Nevada.

10 b. Whether Bayview has acted as a Collection Agency in Nevada.

11 c. Whether Bayview was required to be licensed as a Collection Agency in
12 Nevada prior to performing collection activities.

13 d. Whether Bayview violated the FDCPA.

14 e. Whether Bayview violated Nevada's adoption of the FDCPA.

15 f. Whether Bayview violated the FDCPA by not becoming licensed as a
16 Collection Agency in Nevada prior to undertaking debt collection activities.

17 g. Whether Bayview should be enjoined from continuing to act as a Collection
18 Agency in Nevada for failure to comply with Nevada licensing requirements.

19 h. Whether Bayview should be ordered to review collection actions taken by
20 Bayview during the relevant time period in order that the unlicensed debt collection activities
21 should be undone or remedied.

22 i. Whether Bayview should be ordered to disgorge all funds wrongfully
23 collected during the relevant portion of the Class and/or Sub-Class periods.

24 j. The statutory damages allowed and claimed in this civil action.

25

1 k. The attorney fees, litigation costs, and court costs allowed and claimed in
2 this action.

3 l. The declaratory relief sought in this civil action.

4 56. These questions of law and fact are common to the Class or Sub-Class and
5 predominate over questions affecting only individual members. A class action is superior to other
6 available methods for a fair and efficient adjudication of the controversy because such action is
7 uniquely suited to determining the rights and damages to thousands of similarly situated
8 individuals while minimizing the amount of legal resources that must be utilized to resolve the
9 controversy.

10 57. The only individual questions that concern the Class Members are the actual
11 damages to each Class Member to be disgorged by Bayview. This information can be determined
12 by a simple ministerial examination of Bayview's business records. Bayview regularly keeps and
13 maintains its business records for the Bayview collection accounts.

14 58. Plaintiffs' claims are typical of the claims of the Class Members.

15 59. Plaintiffs are similarly situated with and have suffered similar damages as the other
16 members of the Class and Sub-Class.

17 60. Plaintiffs will fairly and adequately protect the interest of all Class Members in the
18 prosecution of this civil action.

19 61. Plaintiffs have retained attorneys who are experienced in consumer protection laws,
20 experienced in the collection of consumer debt and the defense of such acts and litigation, and
21 experienced in class actions.

22 62. Plaintiffs' attorneys are adequate to represent the Class and Sub-Class.

23 **VIII. FIRST CLAIM FOR RELIEF—DECLARATORY JUDGMENT**

24 63. Plaintiffs reallege and incorporate all preceding paragraphs as if fully set out herein.
25

1 64. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201, et seq.,
2 and NRS 30.040, et seq., for the purposes of determining a question of actual controversy between
3 the parties, as is more fully detailed in this pleading.

4 65. At all times relevant to this civil action, Bayview was required to be a licensed
5 Collection Agency with the NFID.

6 66. At all times relevant to this civil action, including prior to January 18, 2019,
7 Bayview was not a licensed Collection Agency.

8 67. Every collection action taken against consumers in Nevada for loans serviced by
9 Bayview constituted illegal and impermissible actions, and a fraud on the relevant consumers.

10 68. An actual and justiciable controversy has arisen regarding Bayview's unlicensed
11 collection efforts against Nevada consumers.

12 69. The Court has the power to declare rights and other legal remedies between and
13 amongst the parties.

14 70. The issues are ripe for judicial determination.

15 71. As a direct and proximate cause of Bayview's actions, it has become necessary for
16 Plaintiffs to retain the services of an attorney.

17
18 **IX. SECOND CLAIM FOR RELIEF—VIOLATION OF THE FDCPA AND**
19 **NRS 649.370, ET SEQ., ON BEHALF OF CLASS AND SUB-CLASS**

20 72. Plaintiffs reallege and incorporate all preceding paragraphs as if fully set out herein.

21 73. Defendant violated the FDCPA and its Nevada counterpart in performing collection
22 efforts related to consumers in Nevada, including the Plaintiffs, for actions that Bayview could not
23 legally take without being properly licensed.

24 74. Bayview violated the FDCPA in that Bayview actually took action that it was not
25 legally authorized by the NFID to take.

- 1 75. Each member of the Class suffered damages as a result of the illegal Bayview
- 2 collection activity as a result of the violation of the FDCPA and NRS 649.370, et seq.
- 3 76. The FDCPA provides for statutory damages.
- 4 77. The FDCPA provides for reasonable attorney fees and costs.
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1 **X. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs and Class Members pray this Court:

3 1. Certify this civil action as a class action, with each of the Plaintiffs as Class
4 Representatives, and their attorneys as counsel on behalf of the Class;

5 2. Certify both the Class and Sub-Class;

6 3. Enter an order that Bayview is required to be registered as a Collection Agency
7 with the NFID for all future collection efforts against consumers in the State of Nevada;

8 4. Enter an order that Bayview lacked the authority to act as a Collection Agency prior
9 to January 18, 2019, because Bayview was unlicensed;

10 5. Enter declaratory judgment against Defendant as described herein;

11 6. Enter judgment against Defendant for damages in excess of \$15,000;

12 7. Enter judgment against Defendant for statutory damages under the FDCPA and
13 NRS 649.370, et seq.;

14 8. Enter judgment against Defendant for reasonable attorney fees and costs; and

15 9. Such other and further relief as the Court deems appropriate

16 Dated this 24th day of May, 2019.

17 COGBURN LAW OFFICES

18
19 By: /s/Erik W. Fox

20 Jamie S. Cogburn, Esq.

21 Nevada Bar No. 8409

22 Erik W. Fox, Esq.

23 Nevada Bar No. 8804

24 2879 St. Rose Parkway, Suite 200

25 Henderson, Nevada 89052

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Attorneys for Bayview Loan Servicing, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DENNIS BAHAM, an individual; CHUCK J.
REINECK, an individual; JEANETTE J.
REINECK, an individual,

Plaintiffs,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company,

Defendants.

Case No.: 2:19-cv-01125-APG-VCF

**DEFENDANT BAYVIEW LOAN
SERVICING, LLC'S MOTION TO
DISMISS**

INTRODUCTION

Plaintiffs Dennis Baham, Chuck Reineck, and Jeanette Reineck allege that Defendant Bayview Loan Servicing, LLC ("Bayview") purportedly violated Nev. Rev. Stat. § 649.075(1) and the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, by attempting to collect debts in Nevada without a Nevada license. The Class Action Complaint (the "Complaint") fails to state a claim and should be dismissed in its entirety.

The claim related to Nev. Rev. Stat. § 649.075(1)—which requires a license to engage in debt collection activity in Nevada—fails for three distinct reasons. First, chapter 649 provides no private right of action. Chapter 649 is enforceable only by Nevada's Commissioner of Financial Institutions. Second, pursuant to chapter 649, Bayview has the right to cure alleged licensing violations. The Complaint does not allege that Bayview failed to cure the alleged licensing violations; to the contrary, the Complaint alleges that Bayview has a valid license. Third, the Complaint does not provide any

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

1 factual allegations to state a plausible claim that Bayview engaged in debt collection activity with
2 respect to Plaintiffs' mortgages.

3 With respect to Plaintiffs' claim for purported violations of the FDCPA, the Ninth Circuit has
4 squarely held that attempting to collect a debt without obtaining a required state license is not a *per se*
5 violation of the FDCPA. *See Wade v. Regional Credit Ass'n*, 87 F.3d 1098, 1099-1100 (9th Cir. 1996).
6 The Complaint does not otherwise purport to plead any independent violations of the FDCPA. As a
7 result, Plaintiffs' FDCPA claim fails as well.

8 BACKGROUND¹

9 Plaintiffs hold mortgages for properties in Las Vegas, Nevada that are serviced by Bayview.
10 Compl. ¶¶ 16-18, 26-27. Without providing any facts, the Complaint alleges in conclusory fashion
11 that Bayview performed debt collection activities with respect to Plaintiffs' mortgages by demanding
12 payment and/or authorizing foreclosure proceedings. *Id.* ¶¶ 25, 29.

13 Plaintiffs allege that in late 2018, they discovered that Bayview had not registered as a debt
14 collector with the Nevada Commissioner of Financial Institutions. *Id.* ¶ 20. Plaintiffs filed a complaint
15 with the Commissioner. *Id.* ¶ 21. On January 31, 2019, the Commissioner notified Plaintiffs that
16 Bayview had obtained a license as of January 18, 2019 and is now permitted to engage in debt
17 collection activity in Nevada. *Id.* ¶ 23.

18 Plaintiffs take issue with Bayview's alleged debt collection activity prior to January 18, 2019.
19 In Count 1 of the Complaint, Plaintiffs seeks a declaratory judgment. *Id.* ¶¶ 63-71. In Count 2,
20 Plaintiffs allege that Bayview purportedly violated Nev. Rev. Stat. ch. 649 and the FDCPA by
21 performing debt collection activities in Nevada without a Nevada license. *Id.* ¶¶ 72-77.

22 ARGUMENT

23 To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient
24 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility" only "when the plaintiff pleads
26 factual content that allows the court to draw the reasonable inference that the defendant is liable for
27

28 ¹ For purposes of this Rule 12(b)(6) motion to dismiss, Bayview is forced to accept Plaintiffs' well-pled allegations as true, but denies all of Plaintiffs' claims of liability or wrongdoing.

1 the misconduct alleged." *Id.* Courts insist upon "'specificity in pleading' ... to avoid the potentially
2 enormous expense of discovery in cases with no 'reasonably founded hope'" of success. *Bell Atl.*
3 *Corp. v. Twombly*, 550 U.S. 544, 558-59 (2007).

4 **I. The Complaint Fails To State A Claim Under Nev. Rev. Stat. Ch. 649.**

5 The Complaint alleges that Bayview violated Nev. Rev. Stat. § 649.075(1), which provides
6 that "a person shall not conduct within this State a collection agency or engage within this State in the
7 business of collecting claims for others ..., or seek to make collection or obtain payment of any claim
8 on behalf of another without having first applied for and obtained a license from the Commissioner
9 [of Financial Institutions]." Compl. ¶¶ 21, 51, 65-66, 73.

10 **A. There Is No Private Right Of Action Under Chapter 649.**

11 The Complaint first fails to state a claim because "there is no private right of action" under
12 chapter 649. *Christy v. Designed Receivable Solutions, Inc.*, 2018 WL 4008982, at *5 (D. Nev. Aug.
13 21, 2018); *accord Stickler v. AnswerCorrect Teleservices, Inc.*, 2015 WL 3935242, at *4 (D. Nev.
14 June 26, 2015); *Preston v. Clark Cty. Collection Servs., LLC*, 2014 WL 6882626, at *2-3 (D. Nev.
15 Dec. 4, 2014); *Peatrowsky v. Persolve*, 2014 WL 1215061, at *5 & n.39 (D. Nev. Mar. 24, 2014);
16 *Padilla v. PNC Mortg.*, 2011 WL 3585484, at *4 (D. Nev. Aug. 15, 2011); *Smith Cmty. Lending, Inc.*,
17 773 F. Supp. 2d 941, 945 & n.2 (D. Nev. 2011). Chapter 649 instead confers authority on the
18 Commissioner of Financial Institutions to conduct investigations and administer discipline upon the
19 filing of a verified complaint with the Commissioner. *See* Nev. Rev. Stat. § 649.385-.390; *Stickler*,
20 2015 WL 3935242, at *4; *Peatrowsky*, 2014 WL 1215061, at *5 n.39; *Padilla*, 2011 WL 3585484, at
21 *4. The lack of a private right of action for purported violations defeats any claim Plaintiffs might
22 assert under chapter 649.

23 **B. Plaintiffs Ignore Chapter 649's Cure Provisions.**

24 Even if a private right of action existed, however, Plaintiffs' claim that Bayview purportedly
25 violated chapter 649 fails. Chapter 649 allows an opportunity to cure alleged licensing violations
26 before any penalty can attach. Specifically, if the Commissioner determines that a person is engaging
27 in debt collection activity without a license, the Commissioner first must issue a cease and desist order,
28 and can impose penalties only if the person fails to timely comply with the order. Nev. Rev. Stat. §

649.390(2)-(4). Here, the Complaint alleges that: (1) Plaintiffs filed a complaint with the Commissioner alleging that Bayview was collecting debts without a Nevada license; and (2) Bayview obtained a license, curing the alleged licensing violation. Compl. ¶¶ 20-23. The Complaint does not—and cannot—allege that the Commissioner issued a cease and desist order to Bayview or that Bayview failed to timely comply with an order.² As a result, even if Plaintiffs could privately enforce Nev. Rev. Stat. § 649.075(1) (and they cannot), Plaintiffs have no viable claim for relief. By Plaintiffs' own admissions, Bayview already cured the purported chapter 649 violation.

C. Plaintiffs Also Fail To State Factual Allegations To Support A Claim.

The Complaint also lacks factual allegations to state a plausible claim that Bayview attempted to collect past due payments from Baham or the Reinecks—the trigger for chapter 649's licensing requirement. *See* Nev. Rev. Stat. § 649.075(1); *see also id.* § 649.010 (defining "claim"); *id.* § 649.020 (defining "collection agency"). Without providing any factual support, the Complaint offers one-sentence conclusory paragraphs for Baham and the Reinecks, respectively, alleging that Bayview "sought payment" from Baham and "exercise[d] alleged rights in the Deed of Trust" (Compl. ¶ 25), and "has undertaken collection actions against the Reinecks and authorized foreclosure to proceed." *Id.* ¶ 29. Plaintiffs' unsupported, conclusory allegations fall short of stating a plausible claim that Bayview was engaged in debt collection activity subject to Nev. Rev. Stat. § 649.075(1). *See Iqbal*, 556 U.S. at 678. Accordingly, Plaintiffs' chapter 649 claim fails.

II. The Complaint Fails To State A Claim Under The FDCPA.

Lacking a private right of action under Nevada law, the Complaint alleges that Bayview purportedly violated unspecified provisions of the FDCPA by engaging in debt collection activity in Nevada without a Nevada license. Compl. ¶¶ 73-74. Plaintiffs' FDCPA claim fares no better than their chapter 649 claim.

² As a Nevada-licensed mortgage servicer, Bayview is regulated pursuant to Nev. Rev. Stat. ch. 645F, which governs mortgage lending and related professions. *See, e.g.,* Nev. Rev. Stat. § 645F.510 ("[A] person shall not engage in the business of a mortgage servicer or hold himself or herself out as a mortgage servicer in this State without a license issued pursuant to this chapter."). Bayview denies that it was required to separately register as a debt collector pursuant to Nev. Rev. Stat. ch. 649, but did so out of an abundance of caution to avoid any potential dispute.

1 In *Wade*, 87 F.3d at 1099, the Ninth Circuit squarely addressed the precise issue here: "whether
2 ... attempting to collect a debt without obtaining a required state debt collection permit violates the
3 [FDCPA]." The Ninth Circuit answered "no." *Id.* The Ninth Circuit expressly rejected the plaintiff's
4 argument "that debt collection practices in violation of state law are per se violations of the FDCPA."
5 *Id.* at 1100. The Ninth Circuit also found that the plaintiff had not alleged facts to otherwise establish
6 an independent FDCPA violation. *Id.* at 1100 & n.2; *see also Christy*, 2018 WL 4008982, at *4 ("A
7 plaintiff cannot establish an FDCPA violation merely by showing a debt collector violated state law
8 because not every violation of state law is an FDCPA violation. The pertinent question is whether the
9 debt collector's conduct is an independent violation of the FDCPA."); *accord Preston*, 2014 WL
10 6882626, at *4-5.

11 Here, the Complaint alleges that Bayview violated the FDCPA by engaging in debt collection
12 activity in Nevada without a Nevada license (Compl. ¶¶ 73-74)—a theory directly contrary to
13 controlling Ninth Circuit precedent. *See Wade*, 87 F.3d at 1099-1100. The Complaint makes no effort
14 to allege an "independent violation of the FDCPA." *Christy*, 2018 WL 4008982, at *4; *Preston*, 2014
15 WL 6882626, at *4-5. Plaintiffs do not identify any particular FDCPA provision that they believe
16 Bayview violated, let alone provide any supporting factual allegations to establish an independent
17 violation. Indeed, the Complaint lacks any factual allegations detailing Bayview's purported debt
18 collection activity. All Plaintiffs allege is that Bayview engaged in debt collection activity in Nevada
19 without a Nevada license, but as the Ninth Circuit held in *Wade*, that alone does not state a claim under
20 the FDCPA.

21 The Complaint attempts to rely on Nev. Rev. Stat. § 649.370, which provides that "[a] violation
22 of any provision of the federal [FDCPA] ... shall be deemed to be a violation of this chapter." *See*
23 Compl. ¶ 52; *id.* at p. 9 (citing § 649.370 in the header to Count 2). Nev. Rev. Stat. § 649.370 is not
24 relevant here because Plaintiffs are not contending that alleged violations of the FDCPA should be
25 deemed a violation of state law. Again, Plaintiffs have not alleged independent violations of the
26 FDCPA. Plaintiffs are contending the opposite—that alleged violations of state law should be deemed
27 a *per se* violation of the FDCPA. Plaintiffs are apparently attempting an end-run around the lack of a
28 private right of action under chapter 649. But as the Ninth Circuit held in *Wade*, 87 F.3d 1100,

violations of state law are not *per se* violations of the FDCPA. Simply put, the FDCPA lacks any provision comparable to Nev. Rev. Stat. § 649.370 providing that violations of state law are also violations of the FDCPA.

Accordingly, Plaintiffs' FDCPA claims should be dismissed.

III. The Complaint Fails To State A Claim For Declaratory Judgment.

The Complaint also includes a separate count seeking a declaratory judgment pursuant to 28 U.S.C. § 2201 and Nev. Rev. Stat. § 30.040. Compl. ¶ 64. Plaintiffs' failure to state a substantive claim defeats their declaratory judgment "claim" as well. *See, e.g., Miller-Wohl Co., Inc. v. Comm'r of Labor & Industry, State of Mont.*, 685 F.3d 1088, 1090 (9th Cir. 1982) (explaining that the Declaratory Judgment Act, 28 U.S.C. § 2201, "is procedural" and simply "provides an additional remedy" for an independent claim); *Pettit v. Fed. Nat'l Mortg. Ass'n*, 2014 WL 6065780, at *3 & n.25 (D. Nev. Nov. 12, 2014) ("a 'claim' for declaratory relief is not a substantive cause of action at all; it is merely a prayer for a remedy"); *Builders Ass'n of N. Nev. v. City of Reno*, 776 P.2d 1234, 1234 (Nev. 1989) (holding that plaintiff could not maintain a declaratory judgment claim where underlying statute lacked a private right of action).

CONCLUSION

For the foregoing reasons, Bayview respectfully requests that the Court dismiss Plaintiffs' Class Action Complaint with prejudice.

Respectfully submitted July 2, 2019 by:

AKERMAN LLP

By: /s/ Darren T. Brenner

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Nevada Bar No. 8386

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Attorneys for Bayview Loan Servicing, LLC

EXHIBIT P

EXHIBIT P

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 DENNIS BAHAM, et al.,

4 Plaintiffs

5 v.

6 BAYVIEW LOAN SERVICING, LLC,

7 Defendant

Case No.: 2:19-cv-01125-APG-VCF

**Order (1) Granting Motion to Dismiss,
(2) Denying Motion to Amend, and
(3) Granting Motion for Leave to File
Supplemental Authority**

[ECF Nos. 4, 7, 19]

8 Plaintiffs Dennis Baham, Chuck Reineck, and Jeanette Reineck filed a class action
9 complaint against defendant Bayview Loan Servicing, LLC (Bayview) under the Fair Debt
10 Collection Practices Act (FDCPA). The plaintiffs allege that Bayview collected debts,
11 specifically mortgage loans secured by real property, without a license issued by the Nevada
12 Department of Business & Industry Financial Institutions Division. According to the complaint,
13 Bayview engaged in activity to collect on mortgages before it became a licensed collection
14 agency in Nevada on January 18, 2019. ECF No. 1. The plaintiffs seek declaratory relief and
15 allege violations of the FDCPA and Nevada Revised Statutes § 649.370.¹

16 Bayview moves to dismiss the § 649.370 claim because (1) Chapter 649 does not create a
17 private right of action, (2) the chapter allows Bayview to cure a licensing violation, which it did,
18 and (3) the complaint does not plausibly allege Bayview engaged in debt collection activity as to
19 any of the plaintiffs' mortgages. As to the FDCPA claim, Bayview argues that under controlling
20 authority, attempting to collect a debt without a license is not a per se violation of the FDCPA,

21
22
23 ¹ Section 649.370 provides that any violation of the FDCPA "shall be deemed to be a violation of this chapter."

1 and the complaint does not plausibly allege any other violation. Finally, Bayview argues that
2 because the plaintiffs fail to state a substantive claim, their declaratory relief claim also must fail.

3 The plaintiffs respond that unlicensed debt collection activity violates the FDCPA. They
4 also contend that there is a private right of action under Chapter 649, but to the extent there is
5 not, then the FDCPA claim should still survive. They contend some remedy must exist, under
6 either federal or state law, to address Bayview's unlicensed debt collection activity. Although
7 the plaintiffs briefly argue a private right of action exists under state law, they nevertheless seek
8 leave to amend to make clear that their claim arises only under the FDCPA, not Nevada law.

9 After briefing on the motion to dismiss was complete, Bayview moved for leave to file
10 supplemental authority in the form of the Supreme Court of Nevada's decision *Benko v. Quality*
11 *Loan Service Corporation*, 454 P.3d 1263 (Nev. 2019) (en banc). In *Benko*, the Supreme Court
12 of Nevada held that trustees conducting nonjudicial foreclosures do not need to be licensed under
13 Chapter 649. Bayview argues that this case shows it was not required to obtain a license in the
14 first place and thus could not have violated either Nevada law or the FDCPA. The plaintiffs
15 respond that *Benko* is distinguishable because that case involved a trustee conducting a
16 nonjudicial foreclosure sale, but Bayview is not a foreclosure trustee. Instead, Bayview is a
17 mortgage servicer who directed the trustee to conduct the foreclosure.

18 I grant Bayview's motion to dismiss because the plaintiffs have not plausibly alleged a
19 violation of the FDCPA and because there is no private right of action under Chapter 649. I
20 deny the plaintiffs' motion to amend because the proposed amended complaint also does not
21 plausibly allege a violation of the FDCPA. I grant Bayview's motion for leave to file
22 supplemental authority.

23 ////

1 **A. FDCPA**

2 The Ninth Circuit has held that debt collection practices in violation of a state's licensing
3 law are not per se violations of the FDCPA. *Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1100 (9th
4 Cir. 1996). That court acknowledged that several district courts had held that it could be a per se
5 violation, including the case on which the plaintiffs here rely. *Id.* at 1100 (citing *Kuhn v. Account*
6 *Control Tech., Inc.*, 865 F. Supp. 1443 (D. Nev. 1994)). The *Wade* court concluded that the
7 mere fact that the debt collection company was not licensed under state law was not in and of
8 itself an FDCPA violation. *Id.* Instead, it examined the debt collector's communications to
9 determine whether those violated the FDCPA and found no violations. *Id.* at 1099-1100.

10 The plaintiffs' complaint likewise alleges only that Bayview conducted collection activity
11 in Nevada without a license by sending requests for payment and by initiating foreclosure. But
12 that is all that the complaint alleges. There are no factual allegations that Bayview's
13 communications or conduct otherwise violated the FDCPA. Because the plaintiffs allege only a
14 state law licensing violation, they have failed to allege a violation of the FDCPA. Accordingly,
15 they also have not alleged a basis for declaratory relief under the FDCPA. I therefore grant
16 Bayview's motion to dismiss the FDCPA claim.

17 I also deny the plaintiffs' motion for leave to amend because the proposed amended
18 complaint contains the same defect as the original complaint in that it asserts only a state law
19 licensing violation. Ordinarily, I would grant leave for the plaintiffs to amend to allege facts that
20 would state an FDCPA claim. However, the plaintiffs were on notice of the defect in their
21 original complaint through Bayview's motion and they did not allege facts in their proposed
22 amended complaint that would show an FDCPA violation. Presumably, if the plaintiffs had such
23 facts, they would have alleged them in the proposed amended complaint. The plaintiffs also do

1 not contend in their opposition or motion to dismiss that additional facts exist. I therefore
2 dismiss the plaintiffs' FDCPA claim with prejudice.

3 **B. Nevada Law**

4 I have previously ruled that there is no private right of action under Chapter 649. *Preston*
5 *v. Clark Cty. Collection Serv., LLC*, No. 2:14-CV-00021-APG-PAL, 2014 WL 6882626, at *3
6 (D. Nev. Dec. 4, 2014). The plaintiffs have not persuaded me that I should reach a different
7 conclusion in this case. Although the plaintiffs contend this leaves them without a remedy for
8 unlicensed collection activity, they may file a complaint against Bayview with the Commissioner
9 of Financial Institutions, which Baham did. *See Nev. Rev. Stat. § 649.385*; ECF No. 1 at 7.
10 Remedies include the Commissioner suing to restrain the practices or impose administrative
11 fines, as well as potential criminal liability for the violator. *See Nev. Rev. Stat. §§ 649.400-.440*.
12 Because there is no private right of action under Chapter 649, I dismiss with prejudice the
13 plaintiffs' claim under § 649.370 and any related request for declaratory relief.

14 **C. Conclusion**

15 I THEREFORE ORDER that defendant Bayview Loan Servicing, LLC's motion for
16 leave to file supplemental authority (ECF No. 19) is **GRANTED**.

17 I FURTHER ORDER that the plaintiffs' motion to amend (ECF No. 7) is **DENIED**.

18 I FURTHER ORDER that defendant Bayview Loan Servicing, LLC's motion to dismiss
19 (ECF No. 4) is **GRANTED**. The clerk of court is instructed to enter judgment in favor of
20 defendant Bayview Loan Servicing, LLC and against the plaintiffs, and to close this case.

21 DATED this 20th day of March, 2020.

22
23 

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

EXHIBIT Q

EXHIBIT Q

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Attorneys for Plaintiff

Electronically Filed
5/30/2019 11:09 AM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-19-795762-C
Department 23

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DENNIS BAHAM, an individual,
11 Plaintiff,

Case No.:
Dept. No.:

12 vs.

13 BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
14 AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
15 Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
16 YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
17 INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
18 CERTIFICATES, SERIES 2005-2,

19 Defendants.

COMPLAINT

ARBITRATION EXEMPTION
CLAIMED:

Title to Real Estate and Injunctive Relief
Requested

21 Plaintiff, Dennis Baham ("Plaintiff" or "Baham"), by and through his counsel of record,

22 Cogburn Law, alleges as follows:

23 ...

24 ...

25 ...

1 **I. JURISDICTION AND VENUE**

2 1. Jurisdiction in this matter is proper based on the subject of this matter being title to
3 the real property located at 6017 Guild Court, Las Vegas, Nevada, 89131 (APN 125-14-810-039)
4 and hereinafter referred to as the "Property."

5 2. Venue in the Eighth Judicial District Court in and for the County of Clark, State of
6 Nevada, is proper pursuant to NRS 13.040.

7 **II. PARTIES**

8 3. Baham is a natural person who resides in Clark County, Nevada, at all times
9 relevant to the allegations herein.

10 4. Upon information and belief, Bayview Loan Servicing, LLC ("Bayview"), is and
11 was at all times relevant to this matter, a limited liability company organized under the laws of the
12 State of Delaware.

13 5. Upon information and belief, First American Trustee Servicing Solutions, L.L.C.
14 ("FATSS"), is and was at all times relevant to this matter, a limited liability company organized
15 under the laws of the State of Texas.

16 6. Upon information and belief, The Bank of New York Mellon Corporation, formerly
17 known as The Bank of New York as Trustee for the Certificate Holders of CWALT, Inc.,
18 Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 ("BNY"), is
19 and was at all times relevant to this matter, a limited liability company organized under the laws
20 of the State of Delaware.

21 **III. GENERAL ALLEGATIONS**

22 7. Baham purchased the real property at 6017 Guild Court, Las Vegas, Nevada, 89131
23 (APN 125-14-810-039) in Clark County, Nevada (the "Property") on or around December 23,
24 2004.

25

1 8. Bayview asserts it became the servicer of the Baham mortgage account (hereinafter
2 the ("Baham Bayview Collection Account").

3 9. In the latter part of 2018, Baham researched Bayview's licensing status using the
4 publicly accessible NFID license search website, wherein the public can learn the licensing status
5 of debt collection companies.

6 10. After searching the NFID website in the latter part of 2018, Baham discovered that
7 Bayview had not registered as a Collection Agency with the NFID.

8 11. Baham initiated a Complaint with the NFID asserting that Bayview was conducting
9 debt collection activities without being licensed as a debt collector in the State of Nevada (the
10 "NFID Bayview Complaint").

11 12. The NFID Bayview Complaint was assigned case number 75722.

12 13. On January 31, 2019, the NFID sent correspondence to Baham, wherein the NFID
13 stated: "Bayview Loan Servicing LLC is now licensed by the NFID as of January 18, 2019. Please
14 be advised that Bayview Loan Servicing LLC is now permitted to engage in the collection activity
15 that was previously prohibited. Our licenses are valid as of the date licensed. Previous activity
16 conducted without a license is still considered unlicensed activity."

17 14. Prior to January 18, 2019, Bayview was performing debt collection activities as to
18 Baham and other Nevada citizens wherein Bayview services mortgage account(s).

19 15. Specifically, Bayview sought payment on the Baham Bayview Collection Account
20 by way of demand for payment and exercising alleged rights in the Deed of Trust recorded against
21 the Baham Property.

22 16. Bayview impermissibly authorized foreclosure on the Property while unlicensed
23 with the NFID.

24 17. A sale date for the Property is scheduled for June 7, 2019.

25 ...

CLAIM FOR RELIEF – INJUNCTIVE RELIEF

18. Plaintiff repeats and realleges the allegations hereinabove inclusively, as if set forth fully herein, and incorporates the same by reference.

19. Bayview was not licensed as a Collection Agency with the NFID when it directed the foreclosure on the Property to occur rendering all activities performed as a Collection Agency illegal.

20. Bayview became licensed as a Collection Agency on January 18, 2019, well after the initiation of foreclosure proceedings.

21. Baham has a probability of success on the merits, as Bayview is a “Collection Agency” as the term is defined by NRS 649.020(1).

22. Further, Baham has a probability of success on the merits as a Collection Agency is required to be licensed in the State of Nevada under NRS 649.075(1).

23. Further, Baham has a probability of success on the merits as a Collection Agency engages in deceptive trade practices if the Collection Agency is not licensed by the required agency. NRS 598.0923(1).

24. Without temporary, preliminary and permanent injunctive relief, Baham will suffer irreparable harm in the form of loss of the Property.

25. The public has an interest in Collection Agencies being registered with NFID prior to undertaking collection activities.

26. Baham requests that the status quo be preserved, and Bayview be enjoined from proceeding with foreclosure where Bayview was not licensed at the time the foreclosure process began.

27. Baham does not seek injunctive relief other than for the time period wherein Bayview was not licensed by the NFID.

28. As a direct and proximate cause of Defendants' actions, it has become necessary for Plaintiff to secure the services of an attorney, and Plaintiff is entitled to recover fees and costs incurred herein as special damages.

IV. PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the judgment of this Court as follows:

1. For a temporary restraining order;
2. For a preliminary injunction and permanent injunction barring Bayview from
tion activities while unlicensed as to the Property;
3. For a trial on the merits;
4. Costs of suit, pre-judgment interest, post-judgment interest, and attorney fees; and
5. Such other and further relief as is just and proper.

Dated this 29th day of May, 2019.

COGBURN LAW

By: /s/Erik W. Fox

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Attorneys for Plaintiff

EXHIBIT R

EXHIBIT R

Steven D. Grierson

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11 Facsimile: (702) 966-3880
12 *Attorneys for Plaintiff*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 DENNIS BAHAM, an individual,

11 Plaintiff,

Case No.: A-19-795762-C

Dept. No.: 23

12 vs.

13 BAYVIEW LOAN SERVICING, LLC, a
14 Foreign Limited Liability Company; FIRST
15 AMERICAN TRUSTEE SERVICING
16 SOLUTIONS, L.L.C., a Foreign Limited
17 Liability Company; and BANK OF NEW
18 YORK MELLON f/k/a THE BANK OF NEW
19 YORK AS TRUSTEE FOR THE
20 CERTIFICATE HOLDERS OF CWALT,
21 INC., ALTERNATIVE LOAN TRUST 2005-
22 2, MORTGAGE PASS-THROUGH
23 CERTIFICATES, SERIES 2005-2,

24 Defendants,

DEPARTMENT XXIII
NOTICE OF HEARING
DATE 6/25/19 TIME 11:00a
APPROVED BY *cm IDC23*

21 **ORDER GRANTING TEMPORARY RESTRAINING ORDER**
22 **AND SETTING PRELIMINARY INJUNCTION HEARING**

22 The Court having considered Plaintiff, Dennis Baham's Ex Parte Motion for Temporary
23 Restraining Order and Preliminary Injunction ("Plaintiff's Motion"), the pleadings and papers on
24 file herein, and being otherwise fully advised, and good cause appearing therefore,
25

COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

1 IT IS HEREBY ORDERED that a Temporary Restraining Order be issued restraining
2 Defendants Bayview Loan Servicing, LLC; First American Trustee Servicing Solutions, L.L.C.;
3 and Bank of New York Mellon, formerly known as The Bank of New York as Trustee for the
4 Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through
5 Certificates, Series 2005-2 (collectively "Defendants") from holding the Trustee's Sale for the
6 property identified as APN 125-14-810-039, located at 6017 Guild Court, Las Vegas, Nevada,
7 89131 (the "Property"), on June 7, 2019. Defendants are restrained from permitting the noticed
8 sale to occur on June 7, 2019, and are further prohibited from holding the foreclosure sale on the
9 Property until such time as the preliminary injunction hearing can be held in this matter.

10 IT IS FURTHER ORDERED that Plaintiff shall post a bond in the amount of
11 \$ 500,000.

12 IT IS FURTHER ORDERED that Plaintiff's Motion, together with a file-stamped copy of
13 this Order, be served upon Defendants no later than 6-5-19 at 5pm.

14 IT IS FURTHER ORDERED that Defendants must file any opposition to Plaintiff's
15 Motion, no later than 6-14-19 at 5pm

16 Dated: 6-3-19

17
18
19 Respectfully submitted by:

20 COGBURN LAW

21 By: [Signature]
22 Jamie S. Cogburn, Esq.
23 Nevada Bar No. 8409
24 Erik W. Fox, Esq.
25 Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

[Signature]
DISTRICT COURT JUDGE
JUDGE STEFANY A. MILEY

EXHIBIT S

EXHIBIT S

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 09, 2019

A-19-795762-C	Dennis Baham, Plaintiff(s) vs. Bayview Loan Servicing, LLC, Defendant(s)
---------------	--

July 09, 2019	10:30 AM	Preliminary Injunction Hearing
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

PARTIES

PRESENT:	Brenner, Darren T.	Attorney for Defendants Bank of New Mellon and Bayview Loan Servicing LLC
	Fox, Erik W.	Attorney for Plaintiff

JOURNAL ENTRIES

- Argument by Mr. fox noting Bank of New York Mellon are investors. Colloquy regarding re-filing and Plaintiff being in the same position. Mr. Fox stated the action is in process with Supreme Court which involves this property and pointed out they would be unable to re-file at this time, thus, requested to amend pleadings. Argument by Mr. Brenner pointing out that allowing the amendment would delay the process, stated case history and further argued bond. Court disclosed Jamie Cogburn had done some legal work for the Court. No objection by either party with the Court continuing to preside over the case. Court inquired why party had not brought the issue before Judge Bell. Argument by Mr. Fox regarding forum shopping. Court stated parties would need to wait for Supreme Court decision and place the matter before Judge Bell. Further argument by Mr. Fox regarding removing to Federal Court. Court stated parties should agree to stay any sales pending decision from other Court and reiterated issue should be before Judge Bell. Statement by Mr. Brenner. Court noted it was unsure what Judge Gordon or the Supreme Court were going to decide and requested possible solutions. Argument by Mr. Brenner. Court inquired how Plaintiff could seek relief as currently postured in front of Judge bell. Arguments by counsel. Mr. Brenner noted sale date is tomorrow, July 10, 2019 which had been continued several times. Court stated it could

PRINT DATE: 07/24/2019

Page 1 of 2

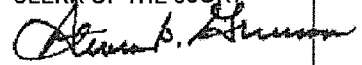
Minutes Date: July 09, 2019

A-19-795762-C

not make any preliminary findings and ORDERED, TRO extended for two weeks (expiration date being July 23, 2019 at 5:00 p.m.) and directed parties to place matter before Judge Bell. FURTHER, bond STANDS. Mr. Fox to provide an order to opposing counsel for review prior to submitting to the Court for signature.

EXHIBIT T

EXHIBIT T



1 COGBURN LAW
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3 Erik W. Fox, Esq.
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2580 St. Rose Parkway, Suite 330
5 Henderson, Nevada 89074
Telephone: (702) 748-7777
6 Facsimile: (702) 966-3880
Attorneys for Petitioner

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 DENNIS BAHAM;

11 Petitioner,

Case No.: A-18-775019-FM
Dept. No.: 7

12 vs.

13 FIRST AMERICAN TRUSTEE SERVICING
SOLUTIONS, INC.; BAYVIEW LOAN
14 SERVICING, LLC;

15 Respondent.

16 **MOTION TO ALTER OR AMEND JUDGMENT**
17 **ON REQUEST FOR ORDER SHORTENING TIME**

18 Petitioner, Dennis Baham ("Baham" or "Petitioner"), by and through his counsel of record,
19 Cogburn Law, hereby files this Motion to Alter or Amend Judgement on request for an Order
20 Shortening Time. This Motion is made and based on the papers and pleadings herein, the following
21 Memorandum of Points and Authorities, the supporting declaration of counsel, any exhibits
22 attached hereto, and any oral argument the Court may choose to entertain at the time of hearing.

23 ...

24 ...

25 ...

COGBURN LAW


COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

ORDER SHORTENING TIME

Upon the Declaration of Erik W. Fox, Esq., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the above-entitled matter will be shortened and will be heard on the 23rd day of July, 2019, at the hour of 9:00 a.m. in Department 7 of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.


IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any oppositions shall be filed by July 22nd and any replies shall be filed by July 23rd.

Dated: 7/19/19


DISTRICT COURT JUDGE
BN

Respectfully submitted by:

COGBURN LAW

By: 
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Erik W. Fox, Esq.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Petitioner

DECLARATION OF ERIK W. FOX, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

Erik W. Fox, declares as follows:

1. I am an Attorney with Cogburn Law, counsel for the Petitioner, Dennis Baham, in the above-stated action.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. A foreclosure sale is pending for July 24, 2019, on the Baham Property that was the subject of the Foreclosure Mediation judicial review before this Court.

4. Following the briefing and oral argument on the Petition, Baham received notice from the Nevada Financial Institutions Division that Bayview was not licensed as a Collection Agency at the time the foreclosure on Baham's Property was initiated.

5. A true, correct and authentic copy of the NFID correspondence confirming Bayview was not licensed is attached as **Exhibit 1**.

6. A matter was filed related solely to Bayview's unlicensed status as a Collection Agency and its preclusive effect on Bayview's ability to seek foreclosure.

7. The matter was heard by Judge Miley, who initially entered a temporary restraining order precluding the sale from moving forward. However, Judge Miley became concerned that jurisdiction rested with this Court given the nature of the mediation petition. Baham has concerns about the nature of judicial review, and this Court's function in examining what occurred at the Foreclosure Mediation. As the issue of Bayview's licensing was not before the Mediator, this Court may not have jurisdiction to entertain new issues and evidence. That said, as Judge Miley instructed, Baham has sought a temporary remand of the pending appeal so that this Court may consider whether Bayview's unlicensed Collection Agency status precluded them from initiating foreclosure while unlicensed.

1 **II. STATEMENT OF FACTS**

2 **A. THE COLLECTION AGENCY LICENSING TIMELINE.**

3 The following timeline assists in the Court's understanding of when the issue arose in the
4 Foreclosure Mediation process.

- 5 • April 26, 2018 – Bayview initiates foreclosure by recording the Notice of Default
6 and Election to Sell
- 7 • May 24, 2018 – the Foreclosure Mediation Petition was filed on
- 8 • October 18, 2018 – Mediator's statement filed following mediation
- 9 • January 29, 2019 – Petitioner's Request for Relief hearing held
- 10 • January 31, 2019 – Dept. of Business & Industry, Financial Institutions Divisions
11 mails Baham a letter stating Bayview was permitted as of January 18, 2019, to
12 conduct Collection Agency activity. All Bayview Collection Agency activity prior
13 to that date is "considered unlicensed activity."
- 14 • February 27, 2019 – this Court enters Order Denying Relief
- 15 • March 28, 2019 – Baham files Notice of Appeal

16 As the Court can see from the above timeline, the issue of Bayview's Collection Agency
17 licensing status did not become ripe until January 31, 2019, after this Court had considered the
18 briefing and entertained oral argument.

19 On July 9, 2019, Judge Miley considered the subject of this motion.¹ Judge Miley had
20 previously granted a temporary restraining order related to pending foreclosure. The TRO was
21 issued solely in the context of Bayview's Collection Agency licensing status. The TRO was
22 extended to July 23, 2019, at 5:00 p.m., and will expire after that time. The foreclosure was
23 rescheduled for the following day, July 24, 2019.

24
25 ¹ Case No. A-19-795762-C.

1 **III. LEGAL ARGUMENT**

2 **A. BAHAM MEETS THE ALTER OR AMEND STANDARD.**

3 It is within the Court's discretion to alter or amend a judgment. Rodriguez v. Fiesta Palms,
4 LLC, 134 Nev., Adv. Op. 78, 428 P.3d 255, 257 (2018). NRCP 60(b)(2) provides for relief from
5 a final judgment where newly discovered evidence arises that could not have been discovered at
6 in time for Rule 59(b) motion. A motion under NRCP 60(b)(2) must be made within a reasonable
7 time, but not more than six months. NRCP 60(c)(1). The Court should evaluate: (1) whether the
8 party promptly applied to remove the judgment after learning of it, (2) whether any evidence shows
9 the party intended to delay the proceedings, (3) whether the party lacked knowledge of the
10 procedural requirements, (4) whether the party acted in good faith, and (5) whether the general
11 policy of deciding a case on the merits weighs in favor of vacating the judgment. *Rodriguez*, 134
12 Nev., Adv. Op. 78, 428 P.3d at 257.

13 The motion is timely for two reasons. First, the licensing issue did not arise until Baham
14 received the January 31, 2019, letter indicating Bayview was no licensed prior to January 18, 2019.
15 This precedes the Foreclosure Mediation, as well as the briefing and oral argument before this
16 Court. Notwithstanding, the clear timeliness, the matter is also well within the six-month limit for
17 filing such motions.

18 No evidence exists that Baham intended to delay the proceedings. Baham timely appealed
19 this Court's decision. Bayview elected to move forward with foreclosure during the pendency of
20 that appeal. Fearing the consequences of Bayview's actions, Baham sought a ruling about the now
21 ripe issue of Bayview's unlicensed activity. Baham has attempted to deal with the situation as
22 expeditiously as possible.

23 This matter did not become ripe until after the Foreclosure Mediation, and is based on
24 newly discovered evidence. The third factor is inapplicable to Baham under the circumstances.
25

1 Baham is entitled to have a decision on the merits. Specifically, both Baham and the State
2 of Nevada, in terms of public policy, have an interest in ensuring that all conduct requiring
3 licensing, not occur without that licensing. As Baham shows below, the Notice of Trustee Sale
4 could not be recorded where Bayview was unlicensed when the foreclosure process started. That
5 militates in Baham's favor.

6 **B. AMENDMENT OF THE JUDGMENT IS NECESSARY AS BAYVIEW**
7 **WAS NOT LEGALLY AUTHORIZED TO ACT AS A COLLECTION**
8 **AGENCY**

8 In 1996 Judge Pro has already concluded how unlicensed collection activity in this
9 jurisdiction is actionable:

10 Court finds that ACT's unlicensed collection actions undertaken prior to October
11 1, 1993, constituted a violation of § 1692e(5) in that they threatened to take action
12 that legally could not be taken. Gaetano, 774 F. Supp. at 1415. The Court further
13 finds that ACT's actions were "unfair or unconscionable" in violation of § 1692f
because the failure to obtain a license "deprived [Kuhn] of her right as a consumer
debtor residing within the state to have the defendant's qualifications as a
collection agency reviewed by state authorities."

14 *Kuhn v. Account Control Technology, Inc.*, 865 F. Supp. 1443, 1452 (D. Nev. 1994). (Emphasis
15 added). The purpose of this citation is to cement the concept that the issue of unlicensed activity
16 is one in which consumers are entitled to protection.

17 The theory behind this motion is simple. It is unequivocal that Bayview was not licensed
18 as a Collection Agency in Nevada during the initiation of the foreclosure proceedings.
19 NRS 107.080(2)(b) requires the recording of a Notice of Default and Election to Sell. Then, a
20 minimum of "3 months" must elapse prior to recording a Notice of Trustee Sale. Those are
21 independent staged/timed requirements for foreclosure. NRS 107.080(2)(d). The Notice of Sale
22 cannot occur unless a Notice of Default was properly recorded. The order of scheduling is
23 expressly stated in the statutes, and the Notice of Sale cannot be accomplished without the Notice
24 of Default being properly recorded and served. Where Bayview lacked the authority as a Collection
25

1 Agency in Nevada at the time of the recording and service of the Notice of Default, the action is
2 void because Bayview was not permitted to take the action.

3 NRS 649.075(1) requires any entity conducting Collection Agency activities in this State
4 to be licensed. “‘Collection agency’ means all persons engaging, directly or indirectly, and as a
5 primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining
6 in any manner the payment of a claim owed or due or asserted to be owed or due to another.”
7 NRS 649.020(1). If an entity is not licensed, “[they] shall not conduct within this State a collection
8 agency or engage within this State in the business of collecting claims for others”
9 NRS 649.075(1).

10 In short, Bayview was not permitted to initiate the foreclosure process at the time it did
11 because it was unlicensed. The issue is incapable of curing by becoming later licensed, because of
12 the foreclosure timing requirements imposed by NRS 107.080. This is not to say that Bayview
13 cannot initiate foreclosures presently provided they maintain active licensure status. However, this
14 is one situation, Bayview must begin anew.

15 ...
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25 ...

1 **IV. CONCLUSION**

2 For the reasons stated, Baham respectfully requests this Court grant this Motion and amend
3 the judgment to reflect that Bayview was not able to begin foreclosure proceedings because it was
4 not licensed as a Collection Agency at that time. In the event, this Court determines to deny this
5 Motion, Baham respectfully requests a stay of the decision to permit appellate review.

6 Dated this 18th day of July, 2019.

7 COGBURN LAW

8 By: 
9

Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Erik W. Fox, Esq.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Petitioner

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that the foregoing **MOTION TO ALTER OR AMEND JUDGMENT**
15 **ON REQUEST FOR ORDER SHORTENING TIME** was submitted electronically for filing
16 and/or service with the Eighth Judicial District Court on the 22nd day of July, 2019.

17 I further certify that I served a true and correct copy of the foregoing document as follows:

18 ☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing
19 document shall be made in accordance with the E-Service List as follows:

20	Jamie Combs	jamie.combs@akerman.com
	Akerman LLP	AkermanLAS@akerman.com
21	Natalie Winslow	natalie.winslow@akerman.com
22	Ramir M. Hernandez	rhernandez@wrightlegal.net
23	Michelle Crumby	info@homemnv.org

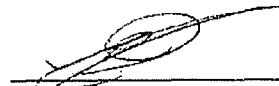
24 
25 An employee of Cogburn Law

Exhibit 1

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

MICHAEL BROWN
Director

GEORGE E. BURNS
Commissioner

January 31, 2019

Dennis Baham
601 Guild Ct.
Las Vegas, NV 89131

Subject: Complaint against Bayview Loan Servicing LLC, Reference 75722

Dear Mr. Baham:

We are in receipt of a response to your complaint against Bayview Loan Servicing LLC. This response has been reviewed by our office and has been attached for your review.

Please be advised that the Nevada Financial Institutions Division (NFID) does not provide legal advice.

As mentioned to you, Bayview Loan Servicing LLC is now licensed by the NFID as of January 18, 2019. Please be advised that Bayview Loan Servicing LLC is now permitted to engage in the collection activity that was previously prohibited. Our licenses are valid as of the date licensed. Previous activity conducted without a license is still considered unlicensed activity.

You may contact me at 702-486-4120 if you have any further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Hanevold".

Julie Hanevold
Supervisory Examiner

Attachment: Responses from Bayview Loan Servicing LLC.

LAS VEGAS
Office of the Commissioner
3300 W. Sahara Avenue, Suite 250
Las Vegas, NV 89102
(702) 486-4120 Fax (702) 486-4563

NORTHERN NEVADA
Examination & CPA Office
1755 East Flamingo Lane, Ste 243
Reno, NV 89502
(775) 688-1730 Fax (775) 688-1735
Web Address: <http://fd.nv.gov>

CARSON CITY
Licensing Office
1830 College Parkway, Suite 100
Carson City, NV 89705
(775) 684-2970 Fax (775) 684-2977

EXHIBIT U

EXHIBIT U

Steven D. Grierson

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4 NATALIE L. WINSLOW, ESQ.
5 Nevada Bar No. 12125
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10 Las Vegas, Nevada 89134
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12 Facsimile: (702) 380-8572
13 Email: darren.brenner@akerman.com
14 Email: natalie.winslow@akerman.com
15 Email: jamie.combs@akerman.com

16 *Attorneys for Bayview Loan Servicing, LLC*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 DENNIS BAHAM,

20 Petitioner(s),

21 v.

22 FIRST AMERICAN TRUSTEE SERVICING
23 SOLUTIONS; BAYVIEW LOAN SERVICING,
24 LLC,

25 Respondent(s).

Case No.: A-18-775019-FM

Dept.: VII

**ORDER DENYING PETITIONER'S
MOTION TO ALTER / AMEND THE
JUDGMENT**

26 The Court, having reviewed Petitioner's motion to alter/amend the judgment, and Bayview's
27 opposition, and having heard argument of counsel at a hearing held on July 25, 2019, hereby
28 DENIES Petitioner's motion. The Court finds that, in light of Baham's submission of the issue to the
NFID in 2017, the evidence related to Bayview's licensing status with the NFID is not newly
discovered evidence.

49634887;1

AKERMAN LLP

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

AUG 05 2019
SD

The Court further denies Petitioner's alternative motion to stay the judgment pending appellate review.

DATED this 6 day of August, 2019.



DISTRICT COURT JUDGE

Submitted by:
AKERMAN LLP

BN

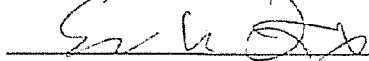

DARREN T. BRENNER, ESQ.

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Las Vegas, Nevada 89134

Attorneys for Respondents

Approved as to form and content:

COGBURN LAW


ERIK W. FOX, ESQ.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074

Attorneys for Petitioner

EXHIBIT V

EXHIBIT V

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS BAHAM,
Appellant,
vs.
BAYVIEW LOAN SERVICING, LLC,
Respondent.

No. 78491

FILED

AUG 06 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING STAY


This is an appeal from a district court order granting respondent a certificate of foreclosure after mediation. Appellant has filed an emergency motion for stay, seeking to enjoin an upcoming August 7, 2019, foreclosure sale while this appeal is pending. Respondent timely filed an opposition to the stay motion.

In determining whether to grant a stay pending appeal, this court considers the following factors: (1) whether the object of the appeal will be defeated if the stay is not granted, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits of the appeal. NRAP 8(c). Having reviewed the parties' arguments and supporting documentation in light of these factors, we conclude that appellant has not demonstrated that these factors militate in favor of a stay. Accordingly, we deny the stay.

It is so ORDERED.

, C.J.
Gibbons

, J.
Tao

, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Cogburn Law Offices
Akerman LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT W

EXHIBIT W

Fill in this information to identify your case:

United States Bankruptcy Court for the:

DISTRICT OF NEVADA

Case number (if known)

Chapter you are filing under:

☐ Chapter 7☐ Chapter 11☐ Chapter 12☒ Chapter 13☐ Check if this an amended filing**Official Form 101****Voluntary Petition for Individuals Filing for Bankruptcy**

12/17

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself**About Debtor 1:****About Debtor 2 (Spouse Only in a Joint Case):****1. Your full name**

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Dennis

First name

Middle name

Bring your picture identification to your meeting with the trustee.

Baham

Last name and Suffix (Sr., Jr., II, III)

First name

Middle name

Last name and Suffix (Sr., Jr., II, III)

2. All other names you have used in the last 8 years

Include your married or maiden names.

3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

Debtor 1 Dennis Baham

Case number (if known) _____

About Debtor 1:

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

☒ I have not used any business name or EINs.

Include trade names and *doing business as* names

Business name(s)

EINs

About Debtor 2 (Spouse Only in a Joint Case):

☐ I have not used any business name or EINs.

Business name(s)

EINs

5. Where you live

**6717 Guild Court
Las Vegas, NV 89131**

Number, Street, City, State & ZIP Code

Clark

County

If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address.

Number, P.O. Box, Street, City, State & ZIP Code

If Debtor 2 lives at a different address:

Number, Street, City, State & ZIP Code

County

If Debtor 2's mailing address is different from yours, fill it in here. Note that the court will send any notices to this mailing address.

Number, P.O. Box, Street, City, State & ZIP Code

6. Why you are choosing this district to file for bankruptcy

Check one:

☒ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

☐ I have another reason.
Explain. (See 28 U.S.C. § 1408.)

Check one:

☐ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

☐ I have another reason.
Explain. (See 28 U.S.C. § 1408.)

Debtor 1 Dennis Baham

Case number (if known) _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under *Check one. (For a brief description of each, see Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)). Also, go to the top of page 1 and check the appropriate box.*
- ☐ Chapter 7
- ☐ Chapter 11
- ☐ Chapter 12
- ☒ Chapter 13
-
8. How you will pay the fee ☒ I will pay the entire fee when I file my petition. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ☐ I need to pay the fee in installments. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ☐ I request that my fee be waived (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.
-
9. Have you filed for bankruptcy within the last 8 years?
- ☒ No.
- ☐ Yes.
- | | | |
|----------------|------------|-------------------|
| District _____ | When _____ | Case number _____ |
| District _____ | When _____ | Case number _____ |
| District _____ | When _____ | Case number _____ |
-
10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?
- ☒ No
- ☐ Yes.
- | | |
|---------------------------|-----------------------------|
| Debtor _____ | Relationship to you _____ |
| District _____ When _____ | Case number, if known _____ |
| Debtor _____ | Relationship to you _____ |
| District _____ When _____ | Case number, if known _____ |
-
11. Do you rent your residence?
- ☒ No. Go to line 12.
- ☐ Yes. Has your landlord obtained an eviction judgment against you?
- ☐ No. Go to line 12.
- ☐ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Debtor 1 Dennis Baham

Case number (if known) _____

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

☒ No. Go to Part 4.☐ Yes. Name and location of business

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

Name of business, if any _____

Number, Street, City, State & ZIP Code _____

Check the appropriate box to describe your business:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a
- small business debtor*
- ?

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. 1116(1)(B).

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

☒ No. I am not filing under Chapter 11.☐ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.☐ Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.**Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention**

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

☒ No.☐ Yes.

What is the hazard? _____

If immediate attention is needed, why is it needed? _____

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

Where is the property? _____

Number, Street, City, State & Zip Code _____

Debtor 1 **Dennis Baham**

Case number (if known)

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling**15. Tell the court whether you have received a briefing about credit counseling.**

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:*You must check one:*

- ☒ I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- ☐ I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

- ☐ I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy. If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- ☐ I am not required to receive a briefing about credit counseling because of:
- ☐ **Incapacity.**
I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ☐ **Disability.**
My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ☐ **Active duty.**
I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):*You must check one:*

- ☐ I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- ☐ I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

- ☐ I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- ☐ I am not required to receive a briefing about credit counseling because of:
- ☐ **Incapacity.**
I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ☐ **Disability.**
My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ☐ **Active duty.**
I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Debtor 1 **Dennis Baham**

Case number (if known)

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?
- 16a. Are your debts primarily consumer debts? *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☐ No. Go to line 16b.
- ☒ Yes. Go to line 17.
- 16b. Are your debts primarily business debts? *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.
- ☐ No. Go to line 16c.
- ☐ Yes. Go to line 17.
- 16c. State the type of debts you owe that are not consumer debts or business debts
-
17. Are you filing under Chapter 7?
- ☒ No. I am not filing under Chapter 7. Go to line 18.
- Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?
- ☐ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
- ☐ No
- ☐ Yes
-
18. How many Creditors do you estimate that you owe?
- ☒ 1-49 ☐ 1,000-5,000 ☐ 25,001-50,000
- ☐ 50-99 ☐ 5001-10,000 ☐ 50,001-100,000
- ☐ 100-199 ☐ 10,001-25,000 ☐ More than 100,000
- ☐ 200-999
-
19. How much do you estimate your assets to be worth?
- ☐ \$0 - \$50,000 ☐ \$1,000,001 - \$10 million ☐ \$500,000,001 - \$1 billion
- ☐ \$50,001 - \$100,000 ☐ \$10,000,001 - \$50 million ☐ \$1,000,000,001 - \$10 billion
- ☐ \$100,001 - \$500,000 ☐ \$50,000,001 - \$100 million ☐ \$10,000,000,001 - \$50 billion
- ☒ \$500,001 - \$1 million ☐ \$100,000,001 - \$500 million ☐ More than \$50 billion
-
20. How much do you estimate your liabilities to be?
- ☐ \$0 - \$50,000 ☐ \$1,000,001 - \$10 million ☐ \$500,000,001 - \$1 billion
- ☐ \$50,001 - \$100,000 ☐ \$10,000,001 - \$50 million ☐ \$1,000,000,001 - \$10 billion
- ☐ \$100,001 - \$500,000 ☐ \$50,000,001 - \$100 million ☐ \$10,000,000,001 - \$50 billion
- ☒ \$500,001 - \$1 million ☐ \$100,000,001 - \$500 million ☐ More than \$50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11, 12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

/s/ Dennis Baham**Dennis Baham**

Signature of Debtor 1

Signature of Debtor 2

Executed on **August 6, 2019**
MM / DD / YYYYExecuted on _____
MM / DD / YYYY

Debtor 1 **Dennis Baham**

Case number (if known)

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

/s/ Carrie E. Hurtik

Date

August 6, 2019

Signature of Attorney for Debtor

MM / DD / YYYY

Carrie E. Hurtik 7028 Esq.

Printed name

Hurtik Law & Associates

Firm name

**6767 W. Tropicana Avenue, Suite 200
Las Vegas, NV 89103**

Number, Street, City, State & ZIP Code

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Bar number & State

Dennis Baham
6717 Guild Court
Las Vegas, NV 89131

Carrie E. Hurtik
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6767 W. Tropicana Avenue, Suite 200
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Bayview Loan Servicing
Acct No xxxxxx5623
4425 Ponce de Leon Blvd. 5th Floor
Miami, FL 33146

Citi
Acct No xxxxxxxxxxxxxx9986
Po Box 6190
Sioux Falls, SD 57117

Clark County Credit Un
Acct No xxxxx9212
2625 N Tenaya Way
Las Vegas, NV 89128

Clark County Credit Un
Acct No xxxxx9211
2625 N Tenaya Way
Las Vegas, NV 89128

Clark County Credit Un
Acct No xxxxx9275
2625 N Tenaya Way
Las Vegas, NV 89128

Clark County Credit Un
Acct No xxxx7975
2625 N Tenaya Way
Las Vegas, NV 89128

Countrywide Home Lending/BAC
Acct No 86239382
Attn: Bankruptcy CA6-919-01-41
P.O. Box 5170
Simi Valley, CA 93062

First American Trustee Services
Acct No xxxxxx5623
4795 Regent Blvd.
Mail Code 1011-F
Irving, TX 75063

Fnb Omaha
Acct No xxxxxxxxxxxxxx2304
P.o. Box 3412
Omaha, NE 68197

Portfolio Recov Assoc
Acct No xxxxxxxxxxxx5819
120 Corporate Blvd Ste 1
Norfolk, VA 23502

EXHIBIT X

EXHIBIT X

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Attorneys for Secured Creditor BNY

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

IN RE: DENNIS BAHAM

Case No.: 19-15039-abl

Chapter: 13

BNY'S MOTION TO DISMISS

Hearing Date: November 20, 2019

Hearing Time: 9:30 a.m.

Secured Creditor The Bank of New York Mellon, f/k/a The Bank of New York as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (BNY) moves to dismiss Debtor's chapter 13 bankruptcy case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Debtor is unable to present a feasible and confirmable Chapter 13 plan to cure the \$300,000 he owes in pre-petition arrearages on his mortgage loan. Additionally, Debtor filed bankruptcy in bad faith on the eve of foreclosure, after two Nevada courts and the court of appeals refused to stay foreclosure on similar baseless grounds. This bankruptcy is solely to frustrate BNY's efforts to

1 foreclose its deed of trust securing the loan Debtor has been delinquent on for *eight* years. Debtor's
2 filings also contain numerous material misrepresentations intended only to mislead and cause delay.
3 The bankruptcy petition should be dismissed with prejudice.

4 **II. FACTUAL BACKGROUND**

5 **A. The Mortgage Loan, Debtor's Prior Bankruptcy, and Loan Modification.**

6 Debtor purchased the property at 6017 Guild Court, Las Vegas, Nevada in December 2004,
7 borrowing \$616,020.00 from Countrywide, secured by a deed of trust recorded against the property.
8 Declaration of Jamie Combs, Esq. at **Exhibit A**. BNY is the current beneficiary of the deed of trust,
9 and Bayview Loan Servicing, LLC services the loan on its behalf. *Id.* at **Exhibit B**.

10 Debtor defaulted on the loan and filed for Chapter 7 bankruptcy relief on December 8, 2007.
11 *See* Case No. 07-18260-mkn; *see also* Combs Decl. at **Exhibit C**. During his Chapter 7 bankruptcy,
12 Debtor filed a statement of intention indicating he intended to retain the property and continue to
13 make regular payments. *See id.* at ECF No. 21; Combs Decl. at **Exhibit D**. The Chapter 7
14 bankruptcy trustee therefore abandoned the property. *See id.* at ECF No. 32; Combs Decl. at **Exhibit**
15 **E**. Debtor received his bankruptcy discharge on March 17, 2008, and the case closed on July 9,
16 2010. *See id.* at ECF No. 25, ECF No. 60; Combs Decl. at **Exhibits F, G**.

17 In 2011, after the bankruptcy, Debtor entered into a loan modification agreement, which
18 modified the principal balance of the loan to \$720,797.08. Combs Decl. at **Exhibit H**. Debtor
19 defaulted on the modified loan almost immediately. *Id.* at **Exhibit I**.

20 **B. The Debtor's Four State Court Foreclosure Mediations.**

21 After defaulting on his modified loan, Debtor elected to participate in Nevada's Foreclosure
22 Mediation Program. Debtor was granted four separate mediations through the Program between
23 2015 and 2018. *See* Combs Decl. at **Exhibit J**; Eighth Judicial District Case Nos. A-15-717704-J; A-
24 15-729443-J; A-17-756557-J; A-18-775019-FM. None of the mediations were successful. At the
25 most recent mediation in 2018, the Debtor refused to provide any documentation to allow BNY or its
26 servicer Bayview to evaluate him for a foreclosure alternative. Combs Decl. at **Exhibit K**. BNY
27 received a certificate from the foreclosure program after the most recent round of mediation *Id.* at
28

1 **Exhibits L and M.** The debtor fought the issuance of the certification in Nevada state court, arguing
 2 the court should not allow the foreclosure to proceed because BNY and/or Bayview did not
 3 participate in good faith and/or did not have authority to proceed with a foreclosure sale. The state
 4 court overruled Debtor's objection. *Id.* at Exhibit L. The foreclosure mediation certificate was
 5 recorded against the property on March 29, 2019. *Id.* at Exhibit M. Debtor appealed. *Id.* at **Exhibit**
 6 **N.** The appeal is still pending. *Id.* at **Exhibit O.** With the certificate having issued, BNY noticed its
 7 foreclosure sale to take place on June 7, 2019. *Id.* at **Exhibit P.**

8 **C. Debtor's Subsequent Lawsuits Against BNY and its Servicer Bayview.**

9 On May 24, 2019, Debtor, along with two other individuals, initiated a proposed class action
 10 lawsuit against Bayview as case A-19-795507-C. *Id.* at **Exhibit Q.** In that lawsuit, plaintiffs allege
 11 BNY's loan servicer Bayview conducted unlicensed debt collection activities in violation of the
 12 FDCPA and NRS 649.370, and request money damages. *Id.* The case was then removed to federal
 13 court. *Id.* Debtor did not identify the case on his bankruptcy petition or in his schedules.

14 Debtor initiated a separate lawsuit on May 30, 2019, making the same allegations as in the
 15 class action lawsuit, but seeking a different remedy—an injunction preventing BNY from
 16 foreclosing. *Id.* at **Exhibit R.** Debtor sought and obtained an *ex parte* temporary restraining order
 17 preventing BNY from moving forward with its scheduled foreclosure sale in the injunction lawsuit.
 18 *Id.* at **Exhibit S.** As a result, BNY's sale was continued to July 10, 2019. However, upon learning of
 19 the already pending lawsuits—in particular, the state court action that already determined BNY had
 20 the right to foreclose and that decision was already on appeal—the state court adjudicating the May
 21 30, 2019 suit rejected the preliminary injunction. *Id.* at **Exhibit T.**

22 Upon the denial of the preliminary injunction, Debtor went to the Nevada Court of Appeal
 23 asking it to amend the lower court's findings and to stop the sale. On July 19, 2019, the Nevada
 24 Court of Appeal rejected that request. *Id.* at **Exhibit U.** Debtor then went back to the lower court
 25 seeking amended findings to stop the foreclosure. On July 25, 2019, the lower state court rejected
 26 that request on grounds that it was untimely and therefore improper. *Id.* at **Exhibit V.**

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 LAS VEGAS, NEVADA 89134
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1 On August 1, 2019, Debtor again petitioned the Nevada Court of Appeal to stay foreclosure.
2 Combs Decl. at **Exhibit W**. On August 26, 2019, the Nevada Court of Appeal again denied the
3 request to stop the foreclosure, concluding that a stay was not warranted under the circumstances.
4 *Id.* at **Exhibit X**.

5 **D. Debtor's Ch. 13 Bankruptcy Petition, Schedules, and Proposed Plan.**

6 On the evening of August 6, 2019, a few hours after the Nevada supreme court denied
7 Debtor's motion to stay the foreclosure sale, Debtor filed this bankruptcy petition seeking relief
8 under Chapter 13 of the United States Bankruptcy Code, ECF No. 1, and an amended petition, ECF
9 No. 2. On August 20, 2019, Debtor filed his summary of assets and liabilities, ECF No. 14, and a
10 proposed Chapter 13 Plan, ECF No. 15. In the summary, Debtor lists his ownership in the residential
11 property located at 6017 Guild Court, Las Vegas, Nevada 89131, with an estimated value of
12 \$770,000. ECF No. 14 at p. 3. He lists Bayview Loan Servicing (BNY's servicer) as having a
13 secured interest in the property for \$944,000 for the first mortgage on the property. *Id.* at p. 11.

14 Debtor states his combined monthly income is \$6,071.08. *Id.* at p. 21. Debtor states his
15 disposable monthly income is -\$233.78. *Id.* In Schedule J, Debtor states, under penalty of perjury,
16 his monthly home ownership expenses—which is to include the first mortgage payments—is zero.
17 *Id.* at p. 22. Debtor's proposed plan indicates he owes no pre-petition arrearages. *Id.* at p. 2.

18 Debtor proposes making monthly plan payments to the Trustee of \$2,230 over a sixty-month
19 period. ECF No. 15 at p. 1. Of this amount, Debtor proposes monthly payments to Bayview of
20 \$1,500—or a total of \$90,000 over the sixty-month period. *Id.* The plan provides that "if the plan
21 term does not exceed 60 months and any claims are filed in amounts greater than the amounts
22 specifically stated herein Debtor authorizes the Trustee to continue making payments to creditors
23 beyond the term of the plan. Debtor shall continue making plan payments to the Trustee until the
24 claims, as filed, are paid in full or until the plan is otherwise modified." ECF No. 15 at p. 4.

25 On September 19, 2019, the bankruptcy trustee filed an opposition to confirmation of the
26 proposed plan with a recommendation for dismissal. ECF No. 21. The trustee filed an amended
27 opposition and recommendation for dismissal. ECF No. 22.

E. Amounts Due Under BNY's Mortgage Loan.

Debtor is in default on the loan for the obligations which became due on September 1, 2011, and all subsequent installments, together with late charges, advances, assessments, and fees. On October 15, 2019, BNY, as Trustee, filed a proof of claim in the amount of **\$942,335.90**. *See* Claim 7. The current unpaid principal balance of BNY's deed of trust is **\$718,832.58**. *Id.* Debtor has a pre-petition delinquency of **\$301,619.02**. *Id.* Debtor's monthly payments are \$3,757.39. *Id.* Debtor has not made any post-petition payments to BNY. Combs Decl. at ¶ 28.

III. DEBTOR CANNOT PROPOSE A FEASIBLE OR CONFIRMABLE PLAN OF REPAYMENT.

The court may dismiss a Chapter 13 bankruptcy case on the request of a party in interest after notice and a hearing if in the best interests of creditors and the estate "for cause." 11 U.S.C. § 1307(c). Cause exists under 11 U.S.C. § 1307 for the Court to dismiss this bankruptcy because the Debtor has not filed, and cannot file, a feasible plan of repayment. *See, e.g., In re Henson*, 289 B.R. 741, 743 (Bankr. N.D. Cal. 2003) (dismissing Ch. 13 bankruptcy filing and finding that debtor was "simply not in a position to propose a confirmable Chapter 13 plan"); *In re Askri*, 580 B.R. 460 (Bankr. E.D. Va. 2017) (affirming dismissal of Chapter 13 bankruptcy where debtor would not be able to make payments sufficient to pay off the more than \$200,000 in arrearages over the maximum 60 month term); *In re D'Arco*, No. 1:12-BK-18255-MT, 2014 WL 5824903, at *6 (Bankr. C.D. Cal. Nov. 10, 2014); *In re Schmidt*, 215 B.R. 208 (D. Kan. 1999) (Chapter 13 case dismissed based on debtors' failure to propose a confirmable plan).

A debtor's plan may not modify the rights of a creditor secured by a mortgage in a debtor's residence except that the debtor may cure pre-petition defaults within a reasonable time. *In re Huerta*, 137 B.R. 356, 361 (Bankr. C.D. Cal. 1992); 11 U.S.C. §§ 1322(b)(2) and (5). Where a debtor proposes a plan that does not provide for a cure of the pre-petition defaults on the mortgage, and the debtor is unable to make the payments required to cure the pre-petition defaults, dismissal is appropriate. For example, in *Askri*, the district court upheld the bankruptcy court's dismissal of a Chapter 13 bankruptcy after concluding the debtor did not have the ability to pay what would have been required to cure the arrearages *and* maintain the regular monthly mortgage payments on the

1 mortgage. *Askri*, 580 B.R. at 462-463. There, the debtor had three mortgages against property
 2 totaling more than \$1.2 million, and he was more than \$200,000 in arrears. *Id.* at 462. The income
 3 reflected in his schedules, however, showed he only had \$7,500 in income each month, of which
 4 \$3,000 was speculative contributions from his children. *Id.* at 465. In order to pay back the
 5 arrearages over the maximum 60-month term, while also making the regular monthly mortgage
 6 payments, the debtor in *Askri* would have had to make payments of more than \$3,000 each month
 7 for five years. *Id.* at 465. The court determined it was not feasible for the debtor to make such
 8 payments, and dismissed the case for cause.

9 As explained in BNY's objection to the proposed plan, Debtor is unable to propose a feasible
 10 plan. Like in *Askri*, Debtor's pre-petition default is substantial—Debtor has not made payments on
 11 the mortgage loan since entering into the loan modification agreement in September of 2011. *See*
 12 BNY's POC and Combs Decl. at Exhibit J. His pre-petition default is **\$301,619.02**. *See id.* In order
 13 just to cure his pre-petition default over the maximum time of 60 months, he would be required to
 14 make payments to BNY of **\$5,026.98** per month. When accounting for the ongoing monthly
 15 payments of \$3,757.39, he would have to pay a total of **\$8,784.37**. Just as the Debtor's income in
 16 *Askri* was not sufficient to make the payments required to pay both the arrearages and the ongoing
 17 monthly mortgage payments, Debtor's combined monthly income of \$6,071.08 is also insufficient to
 18 make the payments that would be required under a confirmable Ch. 13 plan. As a result, this Court
 19 should dismiss the bankruptcy case with prejudice.

20 **IV. CAUSE EXISTS FOR DISMISSAL BECAUSE DEBTOR FILED IN BAD FAITH.**

21 Additionally, the court may dismiss a bankruptcy with prejudice "for cause" if the debtor
 22 files the bankruptcy in bad faith. *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999); 11 U.S.C.
 23 § 1325(a)(3),(7).

24 The Ninth Circuit adopted a totality of the circumstances test to analyze whether a chapter 13
 25 bankruptcy is filed in bad faith. *In re Leavitt*, 171 F.3d at 1224. Among the factors a court examines
 26 are (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the
 27 Bankruptcy Code, or otherwise filed his petition or plan in an inequitable manner; (2) the debtor's
 28

history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present. *Id.* Importantly, a finding of bad faith *does not* require fraudulent intent by the debtor. *Id.* "[N]either malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor ill will directed at creditors, or that debtor was affirmatively attempting to violate the law—malfeasance is not a prerequisite to bad faith." *Id.* (internal citations omitted). The totality of the circumstances indicate that Debtor filed this bankruptcy action in bad faith.

A. Debtor's Misrepresentations.

As to the first factor, Debtor misrepresented facts in his petition and filed an inequitable plan in an attempt to manipulate the Bankruptcy Code. Despite the petition and schedules being filed under penalty of perjury, Debtor makes no less than four material false statements in his filings.

First, Debtor misrepresents in his petition that his monthly home ownership expenses—which is required to include the first mortgage payments—is zero. ECF No. 2 at p. 22. In truth, Debtor's monthly payments on his first mortgage total \$3,757.39. *See* BNY's POC, Claim 7. **Second**, Debtor misrepresents that he owes **no** pre-petition arrearages. *See* ECF No. 15 at p. 2. This is plainly false. Debtor has not made a mortgage payment in almost ten years—and his prepetition delinquency on the mortgage loan is **\$301,619.02**. *Id.* **Third**, Debtor misrepresents that the subject property is **not** his principal residence. *See* ECF No. 15 at p. 2 (indicating "No" under the "Principal Residence" column in Section 4.1). The property located at 6017 Guild Ct., Las Vegas, NV, 89131 is Debtor's principal residence—he identifies it in his petition as where he lives, and provides no other addresses or properties that he owns or resides in. *See* ECF No. 2 at p. 2. **Fourth**, Debtor misrepresented his participation in the numerous lawsuits he initiated within the past year. Debtor swore—under penalty of perjury—that he was not a party in any lawsuit, court action, or administrative proceeding. *See* ECF No. 14 at No. 9. This too is a clear misrepresentation. Debtor has been a party to three legal actions within the one year before he filed bankruptcy. *See* Combs Decl. at Exhibits J, L, Q, and R. In fact, the bankruptcy was filed less than five *hours* after the Nevada supreme court denied his request for an injunction to stop the foreclosure. *See id.* at Exhibit X.

These misrepresentations have resulted in a proposed plan that is not in compliance with the Code and which would not result in BNY being paid the full amount of its claim. Had Debtor provided accurate information in his petition and schedules, it would be clear that he is unable to propose any feasible Chapter 13 plan.

B. Debtor's History of Filings.

Where a debtor files successive cases evidencing an intent to manipulate the bankruptcy process for the sole purpose of preventing a foreclosure sale, dismissal for cause is appropriate. *See In re Huerta*, 137 B.R. 356, 370 (Bankr. C.D. Cal. 1992). In *Huerta*, the court denied confirmation of the debtor's proposed plan and dismissed the case in light of the successive nature of the filing evidencing an intent to manipulate the bankruptcy rules solely to delay foreclosure. *Id.* There, the debtor filed a prior Chapter 13 case and the plan was confirmed, but the debtor dismissed the case shortly after he failed to meet his payment obligations under the plan. *Id.* at 369. He refiled a second chapter 13 bankruptcy case shortly thereafter, causing further delay and expense to his creditors. *Id.* The court concluded that debtor's filing, which appeared to be for the sole purpose of stopping or delaying foreclosure, was done in bad faith and dismissed the action. *Id.*

Here, as in *Huerta*, this is Debtor's second bankruptcy filing during the history of the mortgage loan. Debtor filed a Chapter 7 bankruptcy action on December 8, 2007, approximately three years after taking out the mortgage loan. *See* Case No. 07-18260-mkn. Debtor filed a statement of intention in that bankruptcy that he would retain the property and continue to make regular payments. *See id.* at ECF No. 21. The trustee abandoned the subject property. *See id.* at ECF No. 32. The Debtor was discharged on March 17, 2008, and the case was closed on July 9, 2010. *See id.* at ECF No. 25, ECF No. 60. Not long after the bankruptcy, Debtor entered into a loan modification agreement to allow him to retain the property. *See* Combs Decl. at Exhibit H. But, after entering into the modification agreement, Debtor failed to make the payments, again defaulting. *See id.* at Ex. I.

He then delayed foreclosure by entering into Nevada's foreclosure mediation program. Between 2015 and 2018 Debtor went through *four* mediations with BNY or its servicers, none of which resulted in a resolution. *See* Eighth Judicial District Case Nos. A-15-717704-J; A-15-729443-J; A-17-756557-J; A-18-775019-FM; Combs Decl. at Exhibit J. At the most recent mediation in

2018, the Debtor refused in bad faith to provide any documentation to allow BNY or its servicer Bayview to evaluate him for a foreclosure alternative. *See* Combs Decl. at Exhibit K. BNY received a certificate from the foreclosure program after the most recent round of mediation, which was recorded against the property on March 29, 2019. *Id.* at Exhibit M. Debtor appealed the order, but did not move for a stay of the foreclosure. As a result, BNY noticed its foreclosure sale to take place on June 7, 2019. *Id.* at Exhibit P. Debtor's successive filing here during the life of the mortgage loan, combined with the additional delays he caused through the foreclosure mediation program, is evidence that his intention is solely to delay foreclosure. Like in *Huerta*, the Debtor's successive bankruptcy was filed in bad faith and should be dismissed.

C. Debtor's Intent to Circumvent Unfavorable State Court Rulings.

A debtor's bankruptcy filing shortly after receiving an unfavorable ruling in a related state court case evidences an intent to delay and prolong a debtor's stay in the property, rather than a good faith desire to reorganize. *See In re Chinichian*, 784 F.2d 1440, 1442 (9th Cir. 1986) (sufficient evidence existed to allow the bankruptcy court to conclude the debtors did not file their plan in good faith where plan appeared to be filed for the sole purpose of preventing consummation of an adverse state court judgment which would have required the debtors to give up their home); *In re Hogan*, No. 12-11522, 2013 WL 309082, at *1 (Bankr. N.D. Cal. Jan. 25, 2013). In *Hogan*, the court dismissed the Chapter 13 bankruptcy for cause where the debtor remained in possession of property for years after a prior court order concluded that property should have been surrendered to the bank. *Id.* After delaying surrender of the property through various appeals of the state court order, debtor filed a Chapter 13 bankruptcy petition less than one month after the state appellate court ruled against them. *Id.* at *2. Viewing this as evidence of intent to delay the surrender, rather than a good faith desire to reorganize, the court dismissed the case with prejudice. *Id.* at *3.

Here, like in *Hogan*, Debtor filed this bankruptcy as a means to circumvent unfavorable rulings in state court litigation. Shortly after BNY noticed its foreclosure sale, Debtor filed two new lawsuits in state court—a class action lawsuit seeking damages against BNY's servicer, and another making the same allegations but seeking to enjoin BNY from foreclosing. *See* Eighth Judicial

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District Court Nos. A-19-795507-C and A-19-795762-C¹; Combs Decl. at Exhibits Q, R. When the Eighth Judicial District Court denied Debtor's request for an injunction, Debtor then sought an injunction preventing foreclosure from the Nevada supreme court in the foreclosure mediation case. Combs Decl. at Exhibits T, U, and W. The Nevada supreme court also denied his request for an injunction, resulting in this bankruptcy action being filed approximately *four hours* later. *Id.* at Exhibit X. Just as the bankruptcy was used by the debtor in *Hogan* as a delay tactic, Debtor's filing here only hours after receiving the most recent unfavorable ruling by the state court is also nothing more than "a continuation of [his] pattern of delay, designed to prolong [his] stay in the property." *In re Hogan* at *2.

D. Debtor's Egregious Behavior.

Finally, Debtor's behavior has been egregious. In addition to the issues described above, Debtor also attempted to cause delays by sending letters to BNY's servicer Bayview disputing the loan and feigning ignorance as to Bayview's role in the process, despite previously attending a foreclosure mediation with Bayview. Combs Decl. at **Exhibit Y**. Moreover, Debtor was provided with the opportunity to stop the foreclosure proceedings, but chose not to. BNY's counsel offered to stipulate to a stay of the foreclosure sale pending appeal of the foreclosure mediation action if the Debtor agreed to resume making the monthly mortgage payments of approximately \$3,750 per month. *Id.* at **Exhibit Z**. The Debtor refused this offer, apparently believing he could delay foreclosure further without making any payments at all. Combs Decl. at ¶ 27.

Debtor's motivation in filing bankruptcy appears to be solely to avoid his secured obligation to BNY, by delaying foreclosure as long as possible and abusing chapter 13's provisions.

...

...

...

...

...

¹ This case was removed to federal court and is now pending as Case No. 2:19-cv-1125.

1 **V. CONCLUSION**

2 Debtor's proposed plan is not confirmable, nor is Debtor able to propose any feasible,
3 confirmable plan. In addition, Debtor's purpose in seeking bankruptcy protection—to avoid his
4 secured obligation to BNY and delay foreclosure as long as possible—along with his filing
5 inaccuracies and attempt to manipulate BNY's secured claim, constitute bad faith. The court should
6 dismiss this case with prejudice and allow BNY to foreclose.

7 Dated the 17th day of October, 2019.

8 **AKERMAN LLP**

9 /s/ Jamie K. Combs

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CERTIFICATE OF SERVICE

1. On October 17, 2019, I served the following document: **MOTION TO DISMISS**, I served the above-named document by the following means to the persons as listed below:

(Check all that apply):

☒ a. ECF System

Carrie E. Hurtik
6767 W. Tropicana Avenue, Suite 200
Las Vegas, NV 89103
Email: churtik@hurtiklaw.com
Attorney for Debtor

Kathleen Leavitt
711 S. 4th Street, Suite 101
Las Vegas, NV 89101
Chapter 13 Trustee

☐ b. United States mail, postage fully prepaid

☐ c. Personal Service

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the documents(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the documents(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct mail (as opposed to through the ECF System)

☐ e. By fax transmission

☐ f. By messenger

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

Signed on: October 17, 2019

Jill Sallade

Name of Declarant)

/s/ Jill Sallade

(Signature of Declarant)

EXHIBIT Y

EXHIBIT Y

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE: . Case No. 19-15039-abl
. .
DENNIS BAHAM, . Chapter 13
. .
Debtor. . 300 Las Vegas Blvd. South
. . Las Vegas, NV 89101
. .
. . Tuesday, December 3, 2019
. . 3:05 p.m.

TRANSCRIPT OF ORAL RULING RE: MOTION TO DISMISS CASE WITH
CERTIFICATE OF SERVICE FILED BY JAMIE COMBS ON BEHALF OF THE
BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN
TRUST [25]

**BEFORE THE HONORABLE AUGUST B. LANDIS
UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES:

For the Debtor: CARRIE E. HURTIK, ESQ.
6767 West Tropicana Avenue, Suite 200
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For The Bank of New
York Mellon, FKA The
Bank of New York as
Trustee for the
Certificateholders of
Cwalt, Inc.,
Alternative Loan Trust
2005-2 Mortgage
Passthrough Certificate,
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1 (Proceedings commence at 3:05 p.m.)

2 THE CLERK: Court is now in session.

3 THE COURT: Have seat.

4 All right. We're here for the one matter on my
5 three o'clock calendar, Dennis Baham, Chapter 13 Number
6 19-15039. This is the date and time for Court's oral ruling on
7 a motion to dismiss this case. Start with appearances.

8 MS. HURTIK: Good afternoon, Your Honor. Carrie
9 Hurtik on behalf of Dennis Baham.

10 THE COURT: Good afternoon.

11 MS. COMBS: Good afternoon, Your Honor. Jamie Combs
12 on behalf of Bank of New York Mellon.

13 THE COURT: All right. Good afternoon.

14 Go ahead and have a seat, Counsel. The only matter
15 that's before me today is the Court's oral ruling with respect
16 to this motion to dismiss the case. The matter's been
17 submitted. The Court has reached its decision. The only thing
18 that I'll do today is announce the decision.

19 The appearances having been noted in the record
20 already. The issue before the Court is whether the Chapter 13
21 bankruptcy case filed by Dennis Baham, the debtor, be dismissed
22 under 11 U.S.C. Section 1307(c)(4) cause, including, without
23 limitation, bad faith in the filing of that case.

24 In order to understand my decision here today, it's
25 necessary to appreciate the record that I've considered, and



1 it's significant. In preparing for this ruling, the Court has
2 reviewed the papers comprising its official docket in the
3 debtor's Chapter 13 case, Number 19-15039, and I take judicial
4 notice of those papers to the extent appropriate under and
5 permitted by Federal Rule of Evidence 201(b) and (c). In
6 particular, the Court has reviewed, and this is without
7 limitation, the following papers and the exhibits appended to
8 them:

9 Debtor's Chapter 13 voluntary petition filed August
10 6th, 2019, ECF 1;

11 Debtor's amended Chapter 13 voluntary petition filed
12 that same date, August 6, 2019, ECF 3;

13 Notice of Chapter 13 bankruptcy case filed August
14 6th, 2019, ECF 5;

15 The clerk's notice of incomplete and/or deficient
16 filing; the petition was missing the summary of assets and
17 liabilities, Schedules A through J, inclusive, and the
18 statement of financial affairs, disclosure of compensation of
19 the attorney for the debtors, the verification of creditor
20 matrix, the means test form, the credit counseling certificate,
21 Chapter 13 plan, and declaration of electronic filing; the
22 clerk's notice set a deficient filing deadline of August 20th,
23 2019. You can see that from review of the docket on August 6
24 and 7, 2019, ECF -- Docket Numbers 7 and 8;

25 Debtor's schedules and statements in support of this



1 Chapter 13 bankruptcy petition filed August 20th, 2019, ECF
2 Number 14; those schedules and statements were filed with the
3 Court under oath over the debtor's signature;

4 Debtor's Chapter 13 plan number 1, August 20th, 2019,
5 ECF 15;

6 Trustee's opposition to confirmation of plan number
7 1, combined with trustee's recommendation for dismissal, filed
8 September 19, 2019, ECF 21;

9 Trustee's amended opposition to confirmation of plan
10 number 1, combined with trustee's recommendation for dismissal,
11 filed about a month later, October 16, 2019, ECF 22;

12 Objection to debtor's proposed plan filed by The Bank
13 of New York Mellon, formerly known as The Bank of New York, as
14 trustee for the Certificateholders of CWALT, Inc. Alternative
15 Loan Trust 2005-2 Mortgage Passthrough Certificate Services,
16 Series 2005-2 -- and for sake of sanity and shortness on the
17 record here today, I'll call that entity "BNY" -- filed
18 October 17, 2019, ECF 24;

19 BNY's motion to dismiss, which is the matter pending
20 before me today, filed October 17, 2019, ECF 25;

21 Declaration of Jamie K. Combs in support of BNY's
22 motion to dismiss filed that same day, October 17, 2019, ECF
23 26, many documents appended to that;

24 Debtor's amended statement of financial affairs filed
25 October 29, 2019, ECF 33;



1 Trustee's second amended opposition to confirmation
2 of plan number 1, combined with trustee's recommendation for
3 dismissal, filed October 31st, 2019, ECF 35;

4 Debtor's ex parte motion for referral to the mortgage
5 modification mediation program filed November 4, 2019, ECF 36;

6 Court's order granting the ex parte motion for
7 referral to the mortgage modification mediation program filed
8 November 6, 2019, ECF 42;

9 The trustee's third amended opposition to
10 confirmation of plan number 1, combined with trustee's
11 recommendation for dismissal filed November 13, 2019, ECF 44.

12 There is no timely or written response or opposition
13 to BNY's motion to dismiss, which was heard on a full notice
14 period and not on shortened time. Court has also considered
15 the arguments of counsel for BNY and the debtor at the November
16 20th, 2019 hearing on BNY's unopposed motion to dismiss
17 debtor's Chapter 13 case.

18 On the record before it, the Court is fully advised
19 with respect to the issues that pend for resolution and enters
20 the following findings of fact and conclusions of law.

21 Starting with findings of fact. The facts
22 underpinning the Court's oral ruling today are comprised of the
23 entire record before it as I previously summarized it on the
24 record. Those facts are undisputed as the debtor has failed to
25 file a timely opposition to BNY's motion to dismiss or even so



1 much as a declaration. The following non-inclusive set of
2 facts is particularly germane to the Court's analysis today.

3 Debtor purchased real property locally known as 6017
4 Guild Court, Las Vegas, Clark County, Nevada -- and I'll call
5 that "the property." He did that in December of 2004. But he
6 didn't pay cash. In order to complete the purchase of the
7 property in 2004, debtor borrowed \$616,020 from Countrywide.
8 To secure repayment of that mortgage loan, debtor granted
9 Countrywide a deed of trust against the property. BNY is the
10 current beneficiary of that deed of trust against the property,
11 and Bayview Loan Servicing, LLC, which I will just call
12 "Bayview," services the underlying mortgage loan for BNY.

13 Debtor subsequently defaulted on the loan and then
14 filed a Chapter 7 bankruptcy petition on December 8, 2007,
15 commencing Chapter 7 Case Number 07-18260-mkn, which I will
16 just call the "2007 case."

17 In the 2007 case, the Chapter 7 Trustee abandoned the
18 property. Debtor received his Chapter 7 discharge on March 17,
19 2008, and the 2007 case was ultimately closed on July 9th of
20 2010.

21 In 2011, debtor entered into a mortgage loan
22 modification agreement which established a modified principal
23 balance of the mortgage loan secured by the deed of trust on
24 the property. As modified, the principal balance of that
25 mortgage loan was set at \$720,797.08. Remember, debtor only



1 borrowed \$616,020 when he first acquired the property. Debtor
2 then promptly defaulted on the modified mortgage loan. After
3 defaulting on the modified mortgage loan secured by the deed of
4 trust on the property, debtor opted to participate in the
5 foreclosure mediation program offered through the State of
6 Nevada.

7 Between 2015 and 2018, a three-year period, four
8 different mediation sessions were conducted in the Eighth
9 Judicial District Court for Clark County, Nevada, Case Number
10 A-15-727704-J, Case A-15-729443-J, Case A-17-756557-J, and
11 last, Case A-18-775019-FM. None of those four mediation
12 sessions proved anywhere near successful. In fact, in the last
13 mediation session that was conducted in late 2018, debtor
14 refused to provide any documentation to allow BNY or its
15 servicer, Bayview, to evaluate alternatives other than
16 foreclosure.

17 At the conclusion of the last of the four rounds of
18 mediation under the State of Nevada's Foreclosure Mediation
19 Program, which was conducted on October 12th, 2018, at the end
20 of a three-year-plus span, a certificate was issued terminating
21 the mediation process. Debtor didn't like that, sought
22 judicial review of the issuance of the certificate terminating
23 the mediation process under the State of Nevada's Foreclosure
24 Mediation Program. The related case was filed with the
25 district court for Clark County, Nevada. It's styled Dennis



1 Baham, petitioner, versus First American Trustee Servicing
2 Solutions and Bayview Loan Servicing, LLC, respondents, Case
3 Number A-18-775019-FM. I will call that the "judicial review
4 case."

5 In the judicial review case, debtor argued generally
6 that BNY and/or Bayview did not participate in the mediation in
7 good faith and/or did not have authority to proceed with the
8 foreclosure. District Court for Clark County Nevada rejected
9 the debtor's claims, entering its order denying relief in the
10 judicial review case on February 27, 2019.

11 March 28, 2019, debtor filed an appeal for the
12 decision of the Clark County District Court in the judicial
13 review case. That appeal is still pending. No order granting
14 a stay pending appeal is evident from my review of the record.

15 BNY filed its foreclosure mediation certificate with
16 the Clark County Recorder's Office on March 29, 2019. Having
17 obtained a foreclosure mediation certificate that terminated
18 the last in the series of mediations conducted over a
19 three-year period under the State of Nevada's Foreclosure
20 Mediation Program, BNY issued a notice of foreclosure sale
21 regarding its deed of trust against the property, setting the
22 foreclosure sale for June 7, 2019 at 9 a.m.

23 On May 24, 2019, and apparently believing that the
24 best defense against foreclosure is a good offense, debtor and
25 two other individuals commenced a proposed class-action lawsuit



1 against Bayview in the District Court for Clark County Nevada,
2 styled Dennis Baham, Chuck J. Reineck, and Jeanette J. Reineck,
3 plaintiffs, versus Bayview Loan Servicing, LLC, defendant, Case
4 Number A-19-795507-C, which I will call the "class-action
5 lawsuit." Class-action lawsuit alleged that BNY's servicer,
6 Bayview, had conducted unlicensed debt collection activities in
7 violation in the Fair Debt Collection Practices Act and N.R.S.
8 649.370 and seeks monetary damages.

9 Less than a week later, on May 30th of 2019, debtor
10 filed yet another lawsuit in the District Court for Clark
11 County Nevada, styled Dennis Baham, plaintiff, versus Bayview,
12 First American Trustee Servicing Solutions, and BNY,
13 defendants, Case Number A-19-795762-C. This time, instead of
14 seeking monetary damages, debtor sought an injunction to
15 prevent BNY and Bayview from proceeding with foreclosure
16 remedies under Nevada law, and I will call that the "injunction
17 lawsuit."

18 In the injunction lawsuit, debtor initially succeeded
19 in obtaining an ex parte temporary restraining order that
20 prevented BNY from proceeding with its June 7, 2019 foreclosure
21 sale of the property. The sale was therefore rescheduled to
22 July 10th of 2019. On June 27, 2019, the class-action lawsuit
23 was removed to the United States District Court for the
24 District of Nevada, where it is now pending before Judge Gordon
25 as Case Number 2:19-cv-01125.



1 On July 9, 2019, the day before the rescheduled July
2 10, 2019 foreclosure sale of the property, the Clark County
3 District Court conducted a preliminary injunction hearing in
4 the injunction lawsuit. At that hearing, the Clark County
5 District Court, in the injunction lawsuit, extended the
6 temporary restraining order for two weeks, provided that the
7 TRO would expire on July 23rd, 2019 at five o'clock p.m., but
8 declined to issue a preliminary injunction as the debtor has
9 requested due to the pending appeal in the judicial review
10 case.

11 July 10, 2019, foreclosure sale having been precluded
12 by the extension of the TRO in the injunction case to July
13 23rd, 2019 at 5 p.m., the foreclosure sale of the property was
14 again rescheduled, this time for August 7th of 2019.

15 Dissatisfied, debtor filed an emergency motion for
16 remand with the Nevada Court of Appeals in the judicial review
17 cases asking the appellate court to grant a limited remand to
18 the Clark County District Court, quote, "for the limited
19 purpose of allowing the district court to hear and rule on
20 debtor's argument that Bayview was no legally authorized to
21 foreclose when it initiated the foreclosure process because
22 Bayview was an unlicensed collection agency at the time it sent
23 the notice of default," never mind the fact that the default
24 had been in existence for years. On July 19th, 2019, the
25 Nevada Court of Appeals issued its order denying debtor's



1 motion for remand.

2 After the Nevada Court of Appeals denied debtor's
3 motion for remand, the debtor turned once more to the district
4 court for Clark County, this time in the judicial review case,
5 seeking to have the Court alter or amend its earlier decision
6 declining to invalidate the mediation certificate BNY had
7 obtained under the State of Nevada's Mortgage Foreclosure
8 Mediation Program.

9 On August 13, 2019, the Clark County District Court
10 issued its order denying the petitioner's -- or the debtor's
11 motion to alter/amend the judgment in the judicial review case,
12 in which it also, quote, "denied petitioner's alternative
13 motion to stay the judgment pending appellate review," closed
14 quote.

15 On August 1st of 2019, debtor had also filed an
16 "emergency motion for relief under N.R.A.P. 27(c)," closed
17 quote, with the court of appeals seeking to stay the upcoming
18 August 7, 2019 foreclosure sale while the appeal from the
19 judicial review case was pending. On August 6, 2019, the
20 Nevada Court of Appeals issued its order denying stay,
21 declining to stay the August 7, 2019 foreclosure sale of the
22 property.

23 On August 6, 2019, the same day that the Nevada Court
24 of Appeals order denying stay was entered and the day before
25 the scheduled foreclosure sale of the property, which had been



1 continued twice already, debtor filed his skeletal Chapter 13
2 bankruptcy petition commencing this case and triggering the
3 automatic stay under 11 U.S.C. Section 362(a). Two weeks
4 later, on August 20, 2019, debtor filed schedules and
5 statements that he had signed under oath in support of his
6 bankruptcy petition.

7 As amended, debtor's petition shows that he lives at
8 the property, ECF 3, Page 2 of 7. Neither the pending appeal
9 and the judicial review case, the class-action lawsuit pending
10 in the United States District Court for the District of Nevada,
11 nor the injunction lawsuit are disclosed anywhere in debtor's
12 bankruptcy schedules or statement of financial affairs, and the
13 Court has, in this particular context, absolutely no belief
14 that that was by oversight. Those three cases have been
15 litigated very recently prior to the filing of this bankruptcy
16 case. ECF 14, Schedule A/B, Pages 3 through 8 of 45,
17 particularly Page 7 of 45, Schedule A/B, Item 33, also ECF 14,
18 statement of financial affairs, Page 27 of 45, Part 4, Question
19 9.

20 Debtors's sworn Schedule A/B shows the property at a
21 value of \$770,000, ECF 14, Page 3 of 45. Debtor's sworn
22 Schedule D acknowledges that Bayview, BNY's servicer, has a
23 \$944,000 first mortgage that encumbers the property, leaving no
24 exempt equity in the property. Notably, Schedule D filed with
25 the Court under oath by the debtor does not claim that



1 Bayview's secured claim is either contingent, unliquidated, or
2 disputed, ECF 14, Page 11 of 45.

3 Perhaps unsurprisingly, debtor does not claim a
4 homestead exemption with respect to the property, which is
5 underwater by a minimum of \$174,000 by debtor's own admissions
6 in his bankruptcy schedules, again which were filed with the
7 Court under oath, ECF 14, Pages 9 and 10 of 45.

8 Debtor's Schedule I filed with the court under oath
9 shows that the debtor has combined monthly income of \$6,071.08,
10 ECF 14, Page 21 of 45.

11 Debtor's Schedule J filed with the court under oath
12 shows monthly expenses of \$3,841 and monthly net income of
13 \$2,230.08, but at Line 4, which requires disclosure of, quote,
14 the rental or home ownership expenses for your residence,
15 including first mortgage payments and any rent for the ground
16 or lot, debtor's response is \$0.00, ECF 14, Pages 22 and 23 of
17 45.

18 But debtor's contractual monthly mortgage payment
19 obligation, which he hasn't honored since September 1st of
20 2011, is \$3,757.29. When his scheduled monthly net income is
21 adjusted accordingly, it is \$-1,527.21.

22 While debtor's Schedule J shows \$2,230.08 in monthly
23 net income without any home ownership expenses, his plan
24 proposes to pay \$2,230 monthly payments to the trustee, of
25 which just \$1500 would be paid to Bayview. \$1500 payment on a

1 770-plus-thousand-dollar house. Over a 60-month period,
2 Bayview would receive a total of \$90,000 under that plan, but
3 the debtor's pre-petition delinquency on his mortgage alone,
4 which has accrued while the debtor hasn't made any mortgage
5 payments for over eight years, is \$301,619.02. The unpaid
6 principal balance of debtor's mortgage loan is \$718,832.58, and
7 BNY's filed proof of claim is in the total sum of \$942,225.90,
8 and that's just one creditor's claim.

9 BNY seeks dismissal of this case for cause including,
10 without limitation, bad faith in the filing of the debtor's
11 bankruptcy petition. As noted previously, debtor failed to
12 file a timely opposition or any sort of a statement under oath
13 suggesting to the contrary.

14 Conclusions of law are these. We'll start with
15 jurisdiction, venue, and core proceedings. Court concludes
16 that it has jurisdiction over debtor's Chapter 13 bankruptcy
17 case, 28 U.S.C. Section 1334(a), 157(a), Local Rule 1001(b)(1).
18 Venue is proper in the District of Nevada, 28 U.S.C. Section
19 1408(1). Under Local Rule 9014.2(c), the Court may *sua sponte*
20 determine and enter an order on whether a proceeding is a core
21 proceeding not subject to entry of final orders or judgment by
22 the bankruptcy court unless the district court withdraws the
23 reference first.

24 Also, under 28 U.S.C. Section 157(b)(3):

25 "The bankruptcy judge shall determine, on the judge's



1 own motion or on timely motion of a party, whether a
2 proceeding is a core proceeding under this subsection
3 or is a proceeding that is otherwise related to a
4 case under title 11. A determination that a
5 proceeding is not a core proceeding shall not be made
6 solely on the basis that its resolution may be
7 affected by State law."

8 As required by 28 U.S.C. Section 157(b) (3),
9 contemplated by Local Rule 9014.2(c), and on its own motion,
10 Court determines that the issues raised by this contested
11 dismissal motion are core proceedings as to which the Court may
12 enter a final order or judgment in a manner consistent with
13 Article 3 of the United States Constitution without withdrawal
14 of the reference by the United States District Court for the
15 District of Nevada. Statutorily, under 28 U.S.C. Section
16 157(b) (2) (A), the Court finds that this is also a
17 constitutionally core proceedings as the matters that are dealt
18 with here arise under the Bankruptcy Code and specifically
19 11 U.S.C. Section 1307(c) and 349(a).

20 So the controlling statute then is next up in the
21 calculus. The starting point for determining congressional
22 intent is the statutory text. It's well established that when
23 the language of the Code is plain, the sole function of the
24 Court, at least where the disposition required by the text is
25 not absurd, is to enforce it according to its terms, Dale v.



1 Maney (In re Dale), 505 B.R. 8, 11 (9th Cir. B.A.P. 2014),
2 citing Lamie v. U.S. Trustee, 540 U.S. 526, 634 (2004).

3 BNY's dismissal motion is predicated primarily upon
4 11 U.S.C. Section 1307(c), which reads in pertinent part,
5 Section 1307, Conversion or Dismissal:

6 "(c) Except as provided in subsection (f) of this
7 section" --

8 -- which relates to cases filed by farmers and is inapplicable
9 here --

10 -- "on request of a party in interest or the United
11 States trustee and after notice and a hearing, the
12 court may convert a case under this chapter to a case
13 under chapter 7 of this title, or may dismiss a case
14 under this chapter, whichever is in the best
15 interests of creditors and the estate, for cause."

16 Cause is not a term that's defined in the Bankruptcy
17 Code, but Section 1307(c) contains a noninclusive list of 11
18 factual scenarios which have proven to establish cause for
19 conversion or dismissal. See generally 11 U.S.C. Section
20 1307(c) (1) through (11), inclusive.

21 BNY also requested the Court, quote, "dismiss this
22 case with prejudice and allow BNY to foreclose," closed quote,
23 ECF 25, Page 11 of 12, Lines 5 and 6. In that regard 11 U.S.C.
24 Section 349(a) becomes relevant, which reads, Section 349,
25 Effect of dismissal:



1 "(a) Unless the court, for cause, orders otherwise,
2 the dismissal of a case under this title does not bar
3 the discharge, in a later case under this title, of
4 debts that were dischargeable in the case dismissed;
5 nor does the dismissal of a case under this title
6 prejudice the debtor with regard to the filing of a
7 subsequent petition under this title, except as
8 provided in section 109(g) of this title,"
9 which is not applicable here.

10 So the question then is whether and to what extent
11 BNY has established that cause exists for dismissal of this
12 bankruptcy case in the context of Section 1307(c). In order to
13 reach that decision, it's necessary to understand how to
14 determine whether bad faith is present in a Chapter 13 case,
15 such that cause exists for dismissal or conversion. Although
16 it's not expressly listed in Section 1307(c), bad faith can
17 constitute cause for dismissal of a Chapter 13 bankruptcy case
18 under that section of the Bankruptcy Code.

19 So Ninth Circuit Court of Appeals explained, not too
20 long ago, quote, "A Chapter 13 petition may be dismissed 'for
21 cause' pursuant to Section 1307(c) of the Bankruptcy Code if it
22 was filed in bad faith," In re Eisen, 14 F.3d 469, 470 (9th
23 Cir. 1994) *per curiam*. We review for clear error a bankruptcy
24 court's determination on whether or not a plan was filed in bad
25 faith, citing the Eisen case at 470.



1 In determining whether a debtor acted in bad faith,
2 the bankruptcy judge must review the totality of the
3 circumstances and consider the following factors: first,
4 whether the debtor misrepresented facts in his petition or
5 plan, unfairly manipulated the Bankruptcy Code, or otherwise
6 filed his Chapter 13 petition or plan in an inequitable manner;
7 second, the debtor's history of filings and dismissals; third,
8 whether the debtor only intended to defeat state court
9 litigation; and fourth, whether egregious behavior is present.

10 That summary -- and that's the end of the quote --
11 comes from the case of HSBC Bank USA, N.A. v. Blendheim (In re
12 Blendheim), 803 F.3d 477, 499 (9th Cir. 2015), citing Leavitt
13 v. Soto, 171 F.3d 1219, 1224 (9th Cir. 1999).

14 "Bankruptcy courts should determine a debtor's good
15 faith on a case-by-case basis, taking into account the
16 particular features of each Chapter 13 plan," Blendheim at 499,
17 citing a case called In re Goeb, G-O-E-B, 675 F.2d 1386, 1390
18 (9th Cir. 1982).

19 Having considered the totality of the circumstances,
20 the Court concludes that this case was indeed filed in bad
21 faith, and the reasons are as follows.

22 Walking through the factors that the Ninth Circuit
23 Court of Appeals referenced in Blendheim, which this Court, by
24 the way, does not view as being talismanic. They don't have to
25 all be met. It's just to ensure that if you have those as



1 touchstones, that the Court's discretion in deciding whether or
2 not bad faith is present is exercised in a way that is not
3 arbitrary and capricious.

4 Looking to the factors that are referenced by the
5 Ninth Circuit in the Blendheim case, the first is -- and the
6 court concludes as follows.

7 The preponderance of the evidence demonstrates that
8 the debtor misrepresented facts in his petition, schedules, and
9 statement of financial affairs and does seek to unfairly
10 manipulate the Bankruptcy Code in that he filed his Chapter 13
11 petition in an inequitable manner. Here's the reasons why:

12 In Schedule J filed with this court under oath,
13 debtor represents that his home ownership expense, inclusive of
14 his contractual monthly first mortgage payment, is \$0.00, ECF
15 14, Pages 22 and 23 of 45, and that is patently false.
16 Debtor's contractual monthly mortgage payment obligation, which
17 he hasn't honored since September 1st of 2011 is \$3,757.29, BNY
18 Proof Claim, Claim Number 7.

19 Schedule J, next, filed with the court under oath,
20 debtor represents that his monthly net income is \$2,230.08.
21 That is misleading, at a minimum, and, at worse, is patently
22 false. When his scheduled monthly net income is adjusted to
23 reflect his actual contractual mortgage payment of \$3,757.29 on
24 a monthly basis, his actual monthly net income is \$-1,527.21.
25 That is plainly insufficient to fund a confirmable Chapter 13



1 plan when all of the true facts of this case are carefully
2 considered.

3 Next, in the pending proposed Chapter 13 plan, debtor
4 represents that he owes no pre-petition mortgage arrearages,
5 and he does that despite the fact that he hasn't made a
6 mortgage payment related to the property since September of
7 2011, ECF Number 15, Page 2 of 5, Section 4.2, and that, too,
8 is patently false. The pre-petition mortgage arrears that have
9 accrued while the debtor has languished in the property without
10 having made a single mortgage payment in over eight years is
11 \$301,692.02, an amount, in and of itself, that exceeds the
12 debtor's entire and inflated monthly net income figure shown in
13 his schedules of \$2,230.08 over a 60-month period, which
14 pencils out to just \$133,804.80. SO even accepting debtor's
15 falsely inflated monthly net income figure, debtor cannot cure
16 the \$301,692.02 mortgage arrearage, much less make the ongoing
17 mortgage payments required in connection with the property.

18 Next, in the pending proposed Chapter 13 plan, this
19 debtor represents that the property is not his principal
20 residence, ECF 15, Page 2 of 5, Section 4.1. That, too, is
21 false. As amended, debtor's petition shows that he does live
22 in the property, ECF 3, Page 2 of 7, and that is no small
23 oversight as mortgages secured by a debtor's residence are not
24 generally subject to modification under Chapter 13 of the
25 Bankruptcy Code, 11 U.S.C. Section 1322(b)(2).



1 Finally, debtor failed to schedule any of the
2 lawsuits he filed in the Nevada District Court for Clark County
3 or the pending appeal in Nevada Court of Appeals, ECF 14,
4 Schedule A/B, Pages 3 through 8 of 45, particularly Page 7 of
5 45, Schedule A/B, Item 33, and also ECF 14, the statement of
6 financial affairs, Page 27 of 45, Part 4, Question 9.

7 Debtor's history of filings and dismissal show only
8 one prior filing back in 2007, Chapter 7 Case Number 07-18260,
9 and BNY's complaint about debtor's bad faith is not predicated
10 primarily on the multiple filing sort of a concern.

11 The third factor, the Court finds the preponderance
12 of the evidence plainly shows that debtor's sole intent in
13 filing this bankruptcy case was to defeat the inevitable
14 foreclosure following years of state court litigation and
15 almost a decade of failure to make mortgage payments.

16 The preponderance of the evidence in this case shows
17 that this debtor has retained possession of the property
18 despite having not made a mortgage payment in over eight years,
19 accruing an arrearage of over \$300,000 on the mortgage debt
20 that enabled him to purchase the property in the first place.
21 During that eight-year period, debtor has utilized essentially
22 every non-bankruptcy judicial forum available to him to hinder,
23 delay, and avoid foreclosure by his mortgage lender. And when
24 there was finally no further hope of a procedural delay or stay
25 pending appeal to be obtained from the Nevada State District or



1 Appellate Court, only then debtor filed this Chapter 13
2 bankruptcy petition. He did so to invoke the automatic stay.
3 He did it at a point when he cannot even cure the \$300,000-plus
4 mortgage arrearage on the property, lacks sufficient income to
5 keep his mortgage payments current going forward, and simply
6 cannot propose a confirmable plan as a result.

7 The preponderance of the evidence in the fourth
8 factor is -- establishes that exactly the type of egregious
9 behavior which warrants dismissal of this case for cause in the
10 form of bad faith is present here. Eight years in possession
11 of a home scheduled at a value of three-quarters of a million
12 dollars, no mortgage payments during that timeframe, exhaustive
13 litigation in state court to avoid foreclosure. And when no
14 remaining forums for delay in the state court realm were
15 available, debtor files this bankruptcy petition just hours
16 before a rescheduled foreclosure sale that had been scheduled
17 twice previously.

18 Debtor's bankruptcy petition, schedules, and
19 statements, when they were filed with the court under oath, are
20 patently false and are seriously misleading. There is no
21 realistic hope that this debtor can ever file a confirmable
22 plan, all this in a case where the debtor concedes that there
23 is no equity in the subject property and doesn't even claim a
24 homestead exemption with respect to the property in dispute.

25 When all of the facts of this case are considered in



1 their totality, they clearly establish what I consider to be a
2 textbook example of the egregious behavior in the context of
3 bad faith calculus under Section 1307(c) that warrants
4 dismissal under that section.

5 When the totality of the circumstances present in
6 this case are carefully examined using the lens of the four
7 non-talismanic factors identified by the Ninth Circuit in the
8 Blendheim case and with no single factor controlling the
9 calculus, this Court concludes that BNY has definitively
10 carried the burden of proving by a preponderance of the
11 evidence that cause in the form of bad faith exists for
12 dismissal of this debtor's Chapter 13 case. As a result, this
13 case will be dismissed under Section 1307(c). Court finds
14 further that the debtor -- or excuse me, that BNY has also
15 established that cause exists to dismiss this case with
16 prejudice with a bar to refiling of a bankruptcy petition by
17 this debtor for a period of 180 days after the docketing of the
18 dismissal order under 11 U.S.C. Section 349(a).

19 So the order is as follows for today then. For the
20 reasons stated on the record, which constitute the Court's
21 findings of fact and conclusions of law required under Federal
22 Rule of Civil Procedure 52, applicable here under Bankruptcy
23 Rule 9014 and 7052, BNY's dismissal motion is granted. This
24 case is dismissed, and a bar to refiling -- the bar to the
25 debtor's refiling of a bankruptcy case for a period of 180 days



1 from the docketing of the Court's written order following
2 today's oral ruling will be imposed pursuant to 11 U.S.C.
3 Section 349(a). The Court will prepare the required order.

4 So, Ms. Mendoza, what have I managed to overlook on
5 my three o'clock calendar today?

6 THE CLERK: Nothing, Your Honor.

7 THE COURT: All right. Seeing nothing further, we're
8 adjourned. Have a good day.

9 MS. HURTIK: Thank you.

10 THE CLERK: Thank you, Your Honor. All rise.

11 (Proceedings concluded at 3:36 p.m.)

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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

Alicia J. Jarrett

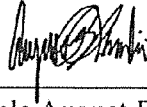
ALICIA JARRETT, AAERT NO. 428
ACCESS TRANSCRIPTS, LLC

DATE: December 14, 2019



EXHIBIT Z

EXHIBIT Z



Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
December 06, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:

DENNIS BAHAM,

Debtor.

) Case No.: 19-15039-abl

) Chapter 13

) Hearing Date: December 3, 2019

) Hearing Time: 3:00 p.m.

**ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE
WITH 180 DAY BAR TO REFILING**

On December 3, 2019, the Court issued its oral ruling on BNY's Motion to Dismiss ("Motion") (ECF No. 25).¹ The Motion was filed on behalf of The Bank of New York Mellon ("Creditor").

At the December 3, 2019 hearing, attorney Carrie E. Hurtik appeared on behalf of Dennis Baham ("Debtor"). Attorney Jamie K. Combs appeared on behalf of the Creditor.

To the extent that the Court made findings of fact and conclusions of law in the course of its oral ruling on December 3, 2019, those findings of fact and conclusions of law are incorporated into this Order by this reference pursuant to FED. R. CIV. P. 52, made applicable in

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of the Court.

1 this contested matter pursuant to FED. R. BANKR. P. 9014(a) and (c) and 7052.

2 For the reasons stated on the record:

3 **IT IS ORDERED** that the Motion is **GRANTED**, and the Debtor's bankruptcy case is
4 **DISMISSED WITH PREJUDICE**.

5 **IT IS FURTHER ORDERED** that Debtor is barred from filing any petition for relief in
6 the District of Nevada for a period of 180 days from the date of this Order.

7 Copies sent to all parties via CM/ECF Electronic Filing.
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EXHIBIT AA

EXHIBIT AA

APN: 125-14-810-039

Recording Requested by :
First American Title Insurance Company

When Recorded Mail To:
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

TS No. : NV1400259949
TSG Number: 8457622

Inst #: 20200122-0002229
Fees: \$42.00
01/22/2020 01:54:05 PM
Receipt #: 3965212
Requestor:
FIRST AMERICAN MORTGAGE SOL
Recorded By: CDE Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 12/21/2004. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 02/14/2020 at 09:00 A.M., First American Trustee Servicing Solutions, LLC, as duly appointed Trustee under and pursuant to Deed of Trust recorded 12/23/2004, as Instrument No. 20041223-0002350, in book , page , of Official Records in the office of the County Recorder of CLARK County, State of Nevada. Executed by:

DENNIS BAHAM

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized, (Payable at time of sale in lawful money of the United States) At the Front Entrance of Nevada Legal News 930 S. Fourth St, Las Vegas, NV 89101
All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as: AS MORE FULLY DESCRIBED IN THE ABOVE MENTIONED DEED OF TRUST APN# 125-14-810-039

The street address and other common designation, if any, of the real property described above is purported to be:

6017 GUILD CT, LAS VEGAS, NV 89131-2331

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.

TS No.:

NV1400259949

TSG Number:

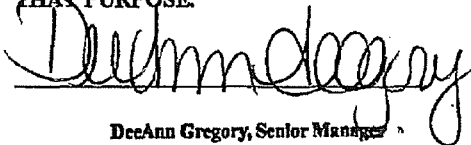
8457622

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$ 954,315.39. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the County where the real property is located.

THIS PROPERTY IS SOLD AS-IS, THE LENDER AND ITS ASSETS ARE UNABLE TO VALIDATE THE CONDITION, DEFECTS OR DISCLOSURE ISSUES OF SAID PROPERTY AND BUYER WAIVES THE DISCLOSURE REQUIREMENT UNDER NRS 113.130 BY PURCHASING THIS SALE AND SIGNING SAID RECEIPT.

If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagor, the Mortgagee or the Mortgagee's attorney.

First American Trustee Servicing Solutions, LLC MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE.



Date: 1-21-2020

DeeAnn Gregory, Senior Manager

First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063
Fax Only: (817) 699-1487
FOR TRUSTEE'S SALE INFORMATION PLEASE CALL 800-280-2832

State of Texas
County of Dallas

Before me Aida Chehali a Notary Public, on this day personally appeared

DeeAnn Gregory, known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 01/21/20

Witness my hand and official seal

Signature: Aida Chehali

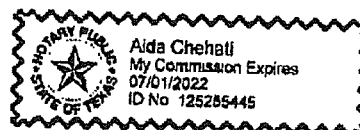


EXHIBIT A

TS No: NV1400259949

TSG Number: 8457622

PARCEL I: LOT 39 IN BLOCK A OF FINAL MAP OF ELKHORN/JONES, A RESIDENTIAL PLANNED DEVELOPMENT AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114 OF PLATS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, EXCEPTING THEREFROM A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATES RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925 OF OFFICIAL RECORDS, AS THE SAME MAP FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
PARCEL II: A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATE RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

EXHIBIT BB

EXHIBIT BB

APN Number:125-14-810-039

Recording Requested By
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

When Recorded & Mail Tax Statements To :
THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2
55 Beattie Place Ste 500
Greenville SC 29601

Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

Inst #: 20200310-0003510

Fees: \$42.00

RPTT: \$2636.70 Ex #:

03/10/2020 03:49:19 PM

Receipt #: 4014624

Requestor:

FIRST AMERICAN MORTGAGE S

Recorded By: DOBLC Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

TRUSTEES DEED UPON SALE

The undersigned hereby affirms that there is no Social Security Number contained in this document

The undersigned grantor declares under penalty of perjury

- 1) The grantee herein WAS the foreclosing Beneficiary
- 2) The amount of the unpaid debt together with costs was..... \$ 942,944.13
- 3) The amount paid by the Grantee at the trustee sale was..... \$ 516,600.00
- 4) The documentary transfer tax is \$ 2,636.70

5) Said property is INCORPORATED / UNINCORPORATED LAS VEGAS

And First American Trustee Servicing Solutions, LLC, (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without warranty, expressed or implied to :

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-2

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of
CLARK in the State of Nevada, described as follows :

See Exhibit A attached hereto and made a part hereof.

Recitals :

This conveyance is made pursuant to the powers conferred upon the Trustee by that certain Deed of Trust dated
12/21/2004 and executed by ,

DENNIS BAHAM

Page | 1

APN Number : 125-14-810-039
Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

as Trustor, and recorded 12/23/2004, as Instrument No. 20041223-0002350, of Official Records of CLARK County, Nevada, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the County Recorder of said County.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the Recorded of said County.

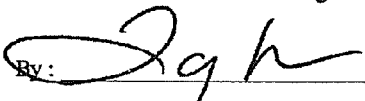
All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been met.

Said property was sold by said Trustee at public auction on 02/28/2020 at the place named in the Notice of Sale, in the County of CLARK State of Nevada, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said trustee the amount of \$ 516,600.00 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligations then secured by said Deed of Trust.

The undersigned hereby affirms that there is no Social Security Number contained in this document

Date : MAR 02 2020

First American Trustee Servicing Solutions, LLC

By : 
Tammy Rossum, Supervisor

FATICO submits this document for recordation as a courtesy for physical convenience only. FATICO has not examined this document for its validity, sufficiency, or effect, if any, upon title to the real property described herein.

State of Texas
County of Dallas

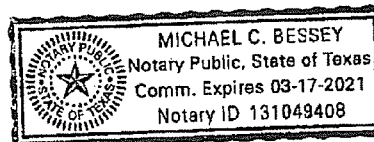
Before me MICHAEL C. BESSEY, a Notary Public, on this day personally appeared

Tammy Rossum, known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 03/02/2020

Witness my hand and official seal

Signature : 



APN Number : 125-14-810-039
Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

Exhibit A

Legal Description

PARCEL I: LOT 39 IN BLOCK A OF FINAL MAP OF ELKHORN/JONES, A RESIDENTIAL PLANNED DEVELOPMENT AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114 OF PLATS, PAGE 14, IN THE

OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. EXCEPTING THEREFROM A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATES RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925 OF OFFICIAL RECORDS, AS THE SAME MAP FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II: A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND

FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATE RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a. 125-14-810-039
b. _____
c. _____
d. _____

2. Type of Property

- a. ☐ Vacant Land
c. ☐ Condo/Twnhse
e. ☐ Apt. Bldg
g. ☐ Agricultural
☐ Other _____
b. ☒ Single Fam. Res.
d. ☐ 2-4 Plex
f. ☐ Comm'/Ind'l
h. ☐ Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording : _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 516,600.00

b. Deed in Lieu of Foreclosure Only (value of property)

(_____)

c. Transfer Tax Value

\$ 516,600.00

d. Real Property Transfer Tax Due

\$ 2,636.70

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption : _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____

Capacity Tammy Rossum, Supervisor

Signature _____

Capacity Chet Sconyers, Vice President

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: First American Trustee Servicing Solutions, LLC

Address: 4795 Regent Blvd, Mail Code 1011-F
City: Irving
State: TX Zip: 75063

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-2

Address: 55 Beattie Place Ste 500
City: Greenville
State: SC Zip: 29601

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

Print Name: First American Trustee Servicing Solutions, LLC

Escrow #: NV1400259949/8457622

Address: 4795 Regent Blvd, Mail Code 1011-F
City: IRVING

State: TX Zip: 75063

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
6/26/2020 3:36 PM
Steven D. Grierson
CLERK OF THE COURT



Dennis Baham, Plaintiff(s)
vs.
Bayview Loan Servicing, LLC,
Defendant(s)

Case No.: A-19-795762-C

Department 4

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Consolidate and Motion to Dismiss in the above-entitled matter is set for hearing as follows:

Date: August 11, 2020
Time: 9:00 AM
Location: RJC Courtroom 12D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Imelda Murrieta
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Imelda Murrieta
Deputy Clerk of the Court

COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
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Steven D. Grierson
CLERK OF THE COURT



COGBURN LAW
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
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Erik W. Fox, Esq.
Nevada Bar No. 8804
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2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: 4

OST HEARING REQUESTED

**MOTION TO WITHDRAW AS COUNSEL OF RECORD ON REQUEST FOR
ORDER SHORTENING TIME**

Jamie S. Cogburn, Esq. and Erik W. Fox, Esq. of Cogburn Law, pursuant to Nevada
Supreme Court Rule 46, Local Rule 7.40, and Eighth Judicial District Court Rule 2.35, move this
court for an order granting their withdraw as counsel of record for Plaintiff, Dennis Baham, in this
matter. This Motion is made and based upon the papers and pleadings on file herein, the following

Memorandum of Points and Authorities, any exhibits attached hereto, and any oral argument this Court may choose to entertain.

ORDER SHORTENING TIME

Upon the Declaration of Erik W. Fox, Esq., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the above-entitled matter will be shortened and will be heard on the 3rd day of August, 2020, at the hour of 3:00 a.m. ^{Chamber Calendar} _____ m. in Department 4 of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any oppositions shall be filed by July 20, 2020 and any replies shall be filed by July 27, 2020.

Dated: July 10, 2020


DISTRICT COURT JUDGE

Respectfully submitted by:

COGBURN LAW

By: /s/Erik W. Fox
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Erik W. Fox, Esq.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

...

...

...

DECLARATION OF ERIK W. FOX, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

Erik W. Fox, Esq., declares as follows:

1. I am an Associate Attorney with Cogburn Law, counsel for Plaintiff, Dennis Baham in the above-stated action.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. There is a pending Motion to Consolidate and Motion to Dismiss before this Court and a later filed matter, A810458.

4. This matter was filed in connection with the Foreclosure Mediation Petition (A775019). It was not dismissed after Judge Bell rendered her determination on the Petition.

5. Baham should be permitted additional time to respond to the pending Motion to Consolidate and Dismiss, as he is searching for counsel.

6. While Cogburn Law has appeared in this matter, Cogburn Law has not appeared in the A810458 matter before Judge Gonzalez.

7. The consolidation of these cases where Cogburn Law has not appeared in the A810458 matter, would confuse the scope of representation. As such, Cogburn Law respectfully requests this Court grant this Motion to withdraw, and with additional time for Baham to respond to the points raised related to dismissal.

8. Plaintiff has been informed of the filing of the instant Motion.

9. Plaintiff's last known address and telephone number are:

Dennis Baham
6017 Guild Court
Las Vegas, NV 89131
(702) 303-1263

10. This motion must be heard on an Order Shortening Time because the deadline for response to the request for dismissal is pending.

11. No delay in discovery or trial would result with the granting of this instant motion.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 7th day of July, 2020.

/s/Erik W. Fox
Erik W. Fox, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

Supreme Court Rule 46 provides in pertinent part:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or the client.

Furthermore, EDCR 7.40 reads as follows:

(a) When a party has appeared by counsel, the party cannot thereafter appear on the party's own behalf in the case without the consent of the court. Counsel who has appeared for any party must represent that party in the case and shall be recognized by the court and by all parties as having control of the case. The court in its discretion may hear a party in open court although the party is represented by counsel.

(b) Counsel in any case may be changed only:

(1) When a new attorney is to be substituted in place of the attorney withdrawing, by the written consent of both attorneys and the client, which must be filed with the court and served upon all parties or their attorneys who have appeared in the action, or

1 (2) When no attorney has been retained to replace the attorney withdrawing,
2 by order of the court, granted upon written motion, and

3 (i) If the application is made by the attorney, the attorney must include in
4 an affidavit the address, or last known address, at which the client may be served
5 with notice of further proceedings taken in the case in the event the application for
6 withdrawal is granted, and the telephone number, or last known telephone number,
7 at which the client may be reached and the attorney must serve a copy of the
8 application upon the client and all other parties to the action or their attorneys, or

9 (ii) If the application is made by the client, the client must state in the
10 application the address at which the client may be served with notice of all further
11 proceedings in the case in the event the application is granted, and the telephone
12 number, or last known telephone number, at which the client may be reached and
13 must serve a copy of the application upon the client's attorney and all other parties
14 to the action or their attorneys.

15 (c) No application for withdrawal or substitution may be granted if a delay of the
16 trial or of the hearing of any other matter in the case would result.

17 Cogburn Law is no longer able to represent Plaintiff in this matter because the
18 consolidation imposes a burden with respect to the scope of representation as Cogburn Law has
19 not been retained or appeared in the A810458 matter.

20 Plaintiff has been informed that Cogburn Law is no longer able to serve as his counsel in
21 this action and the instant motion is being filed. Further, Plaintiff has been instructed of the need
22 to retain new counsel and/or to proceed pro se, and to comply with all court rules and deadlines.

23 The last known contact information for Plaintiff is as follows:

24 Dennis Baham
25 6017 Guild Court
Las Vegas, NV 89131
(702) 303-1263

There have been previous communications with Plaintiff at said address and telephone
number. Plaintiff has been informed that undersigned counsel is unable to continue to represent
him through multiple emails and telephone communications.

1 Because undersigned counsel has complied with the requirements of S.C.R. 46 and
2 EDCR 7.40, the application to withdraw as counsel of record for Plaintiff in the above-captioned
3 matter should be GRANTED.

4 **II. CONCLUSION**

5 Based upon the foregoing, Cogburn Law respectfully requests that the Court grant this
6 Motion to Withdraw as Counsel of Record for Plaintiff Dennis Baham and permit him an
7 additional 14-day period to respond to the pending motion.

8 Dated this 7th day of July, 2020.

9 COGBURN LAW

11 By: /s/Erik W. Fox
12 Jamie S. Cogburn, Esq.
13 Nevada Bar No. 8409
14 Erik W. Fox, Esq.
15 Nevada Bar No. 8804
16 2580 St. Rose Parkway, Suite 330
17 Henderson, Nevada 89074
18 *Attorneys for Plaintiff*

COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

COGBURN LAW
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
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Erik W. Fox, Esq.
Nevada Bar No. 8804
ewf@cogburncares.com
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Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: 4

Consolidation Pending With:

Case No.: A-20-810458-C

Dept.: 11

Hearing Date: August 11, 2020

Hearing Time: 9:00 a.m.

**STIPULATION AND ORDER TO CONTINUE HEARING AND RELATED
DEADLINES**

IT IS HEREBY STIPULATED by and between Plaintiff, Dennis Baham and Defendants,
The Bank of New York Mellon, as Trustee for the Certificate Holders of CWALT, Inc., Alternative
Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 and Bayview Loan
Servicing, LLC ("Defendants"), through their respective attorneys of record, to continue the

1 hearing on Defendants' Motion to Consolidate and Motion to Dismiss and related opposition and
2 reply deadlines for a period of two (2) weeks. Plaintiff's Opposition shall be due by July 24, 2020,
3 and Defendants' Reply shall be due consistent with the Court's new hearing date of August 25,
4 2020, or such other time as the Court orders.

5 Dated this 15th day of July, 2020.

Dated this 15th day of July, 2020.

6 COGBURN LAW

WRIGHT, FINLAY & ZAK, LLP

7 By: /s/Erik W. Fox

By: /s/Darren T. Brenner

8 Jamie S. Cogburn, Esq.
9 Nevada Bar No. 8409
10 Erik W. Fox, Esq.
11 Nevada Bar No. 8804
12 2580 St. Rose Parkway, Suite 330
13 Henderson, Nevada 89074
14 *Attorneys for Plaintiff*

Darren T. Brenner, Esq.
Nevada Bar No. 8386
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
*Attorneys for Defendant Bayview Loan
Servicing, LLC*

12 Dated this 15th day of July, 2020.

13 AKERMAN LLP

14 By: /s/Natalie L. Winslow

15 Natalie L. Winslow, Esq.
16 Nevada Bar No. 12125
17 1635 Village Center Circle, Suite 200
18 Las Vegas, Nevada 89134
19 *Attorneys for The Bank of New York
20 Mellon, as Trustee for the Certificate
21 Holders of CWALT, Inc., Alternative
22 Loan Trust 2005-2, Mortgage Pass-
23 Through Certificates, Series 2005-2*

20 ...
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Baham v. Bayview Loan Servicing, LLC

Case No.: A-19-795762-C

Stipulation and Order to Continue Hearing and Related Deadlines

ORDER

The foregoing stipulation between the parties to continue the hearing on Defendants' Motion to Consolidate and Motion to Dismiss and related opposition and reply deadlines is hereby GRANTED.

The hearing shall be continued to the 11 day of August, 2020, at the hour of 9:00 a.m. in Department 4 of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any oppositions shall be filed by see above and any replies shall be filed by see above.

IT IS SO ORDERED.

Dated: _____

Dated this 23rd day of July, 2020



DISTRICT COURT JUDGE

78B 14A 031D 4C58

Kerry Earley
District Court Judge

Respectfully submitted by:

COGBURN LAW

By: /s/Erik W. Fox
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Erik W. Fox, Esq.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Dennis Baham, Plaintiff(s)	CASE NO: A-19-795762-c
vs.	DEPT. NO. Department 4
Bayview Loan Servicing, LLC, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court’s electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/23/2020

Erik Fox	ewf@cogburncares.com
Natalie Winslow	natalie.winslow@akerman.com
Ariel Stern	ariel.stern@akerman.com
Jamie Combs	jamie.combs@akerman.com
DEFAULT ACCOUNT	NVefile@wrightlegal.net
Jason Craig	jcraig@wrightlegal.net
Akerman LLP	AkermanLAS@akerman.com
Katie Johnson	kjj@cogburncares.com
File Clerk	efile@cogburncares.com
Darren Brenner	dbrenner@wrightlegal.net



NOTA

Peter B. Mortenson, Esq.
Nevada Bar No. 5725

MORTENSON & RAFIE, LLP

10781 W. Twain Avenue

Las Vegas, NV 89135

Ph: 702-363-4190

Fx: 702-363-4107

Email: manager@nvlaw.us

Attorney for Dennis Baham

DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that PETER B. MORTENSON, ESQ., of the law firm of
MORTENSON & RAFIE, LLP, does hereby appear on behalf of the Plaintiff,

//

//

MORTENSON & RAFIE, LLP

10781 West Twain Avenue
Las Vegas, Nevada 89135
Telephone (702) 363-4190 Facsimile (702) 363-4107

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DENNIS BAHAM.

DATED this 3 day of August, 2020.

MORTENSON & RAFIE, LLP

/s/ Peter B. Mortenson

Peter B. Mortenson, Esq.
Nevada Bar No. 5725
10781 W. Twain Avenue
Las Vegas, NV 89135
Ph: (702) 363-4190
Attorney for Dennis Baham

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MORTENSON & RAFIE, LLP and that on this 3 day of August, 2020, I caused the above and foregoing document *Notice Of Appearance* to be served as follows:

- [X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.
- [] By placing same to be deposited for mailing in the United States Mail, enclosed in a sealed envelope upon which first class postage prepaid in Las Vegas, Nevada.
- [] Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.
- [] By hand delivery to the attorney listed below:

To the address, email address, and/or facsimile number listed below:

Erik W. Fox	ewf@cogburncares.com
Katie Johnson	kjj@cogburncares.com
Jamie Combs	jamie.combs@akerman.com
Akerman LLP	AkermanLAS@akerman.com
Ariel Stern	ariel.stern@akerman.com
Natalie Winslow	natalie.winslow@akerman.com
DEFAULT ACCOUNT	NVefile@wrightlegal.net
Darren Brenner	dbrenner@wrightlegal.net
Jason Craig	jcraig@wrightlegal.net

/s/Richard Waltjen

An employee of MORTENSON & RAFIE, LLP



COGBURN LAW
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
jsc@cogburncares.com
Erik W. Fox, Esq.
Nevada Bar No. 8804
ewf@cogburncares.com
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: 4

Consolidation Pending With:

Case No.: A-20-810458-C

Dept.: 11

Hearing Date: August 11, 2020

Hearing Time: 9:00 a.m.

AMENDED

**STIPULATION AND ORDER TO CONTINUE HEARING AND RELATED
DEADLINES**

IT IS HEREBY STIPULATED by and between Plaintiff, Dennis Baham and Defendants,
The Bank of New York Mellon, as Trustee for the Certificate Holders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 and Bayview

COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

1 Loan Servicing, LLC (“Defendants”), through their respective attorneys of record, to continue
2 the hearing on Defendants’ Motion to Consolidate and Motion to Dismiss and related opposition
3 and reply deadlines for a period of two (2) weeks. Plaintiff’s Opposition shall be due by July 24,
4 2020, and Defendants’ Reply shall be due consistent with the Court’s new hearing date of
5 August 25, 2020, or such other time as the Court orders.

6 Dated this 15th day of July, 2020.

Dated this 15th day of July, 2020.

7 COGBURN LAW

WRIGHT, FINLAY & ZAK, LLP

8 By: /s/Erik W. Fox

By: /s/Darren T. Brenner

Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Erik W. Fox, Esq.
Nevada Bar No. 8804
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

Darren T. Brenner, Esq.
Nevada Bar No. 8386
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
*Attorneys for Defendant Bayview Loan
Servicing, LLC*

13 Dated this 15th day of July, 2020.

14 AKERMAN LLP

15 By: /s/Natalie L. Winslow

Natalie L. Winslow, Esq.
Nevada Bar No. 12125
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
*Attorneys for The Bank of New York
Mellon, as Trustee for the Certificate
Holders of CWALT, Inc., Alternative
Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

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COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

1 ...

2

Baham v. Bayview Loan Servicing, LLC

Case No.: A-19-795762-C

3

Stipulation and Order to Continue Hearing and Related Deadlines

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ORDER

5

The foregoing stipulation between the parties to continue the hearing on Defendants'

6

Motion to Consolidate and Motion to Dismiss and related opposition and reply deadlines is

7

hereby GRANTED.

8

The hearing shall be continued to the 25 day of August, 2020, at the

9

hour of 9:00 a.m. in Department 4 of the Eighth Judicial District Court, located at the Regional

10

Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

11

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any oppositions shall

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be filed by see above and any replies shall be filed by see above.

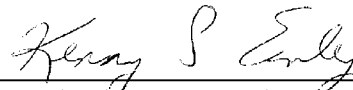
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IT IS SO ORDERED.

14

Dated: August 6, 2020

15



16

DISTRICT COURT JUDGE

17

Respectfully submitted by:

18

COGBURN LAW

19

20

By: /s/Erik W. Fox

21

Jamie S. Cogburn, Esq.

Nevada Bar No. 8409

22

Erik W. Fox, Esq.

Nevada Bar No. 8804

23

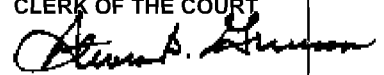
2580 St. Rose Parkway, Suite 330

Henderson, Nevada 89074

24

Attorneys for Plaintiff

25



DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, PLAINTIFF(S)
VS.
BAYVIEW LOAN SERVICING LLC,
DEFENDANT(S)

CASE NO: A-19-795762-C

DEPARTMENT 4

NOTICE OF RESCHEDULING OF HEARING

Please be advised that the date and time of a hearing set before the **Honorable Kerry Earley** has been changed. The **Motion to Consolidate and Motion to Dismiss** has been **rescheduled** to the **17th day of September, 2020, at 9:00 AM.**

By: Deborah Boyer
Deborah Boyer
Judicial Executive Assistant
to Judge Kerry Earley
Department 4

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, I served a copy of the foregoing document

☐ by causing the original of the same to be deposited in the United States Mail, postage prepaid, addressed as follows:

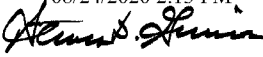
☐ by placing a copy in the attorney's folder located in the Regional Justice Center to:

Aaron R. Maurice
Maurice Wood
Attn: Aaron Maurice, Esq
9525 Hillwood Drive, Suite 140
Las Vegas, NV 89134

Dennis Baham
6017 Guild CT
Las Vegas, NV 89131

Natalie L Winslow
Akerman LLP
Attn: Natalie L. Winslow
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134

Deborah Boyer
Deborah Boyer,
Judicial Executive Assistant


CLERK OF THE COURT

1 COGBURN LAW
2 Jamie S. Cogburn, Esq.
3 Nevada Bar No. 8409
4 jsc@cogburncares.com
5 Erik W. Fox, Esq.
6 Nevada Bar No. 8804
7 ewf@cogburncares.com
8 2580 St. Rose Parkway, Suite 330
9 Henderson, Nevada 89074
10 Telephone: (702) 748-7777
11 Facsimile: (702) 966-3880

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 DENNIS BAHAM, an individual,

11 Plaintiff,

12 vs.

13 BAYVIEW LOAN SERVICING, LLC, a
14 Foreign Limited Liability Company; FIRST
15 AMERICAN TRUSTEE SERVICING
16 SOLUTIONS, L.L.C., a Foreign Limited
17 Liability Company; and BANK OF NEW
18 YORK MELLON f/k/a THE BANK OF NEW
19 YORK AS TRUSTEE FOR THE
20 CERTIFICATE HOLDERS OF CWALT,
21 INC., ALTERNATIVE LOAN TRUST 2005-
22 2, MORTGAGE PASS-THROUGH
23 CERTIFICATES, SERIES 2005-2,

24 Defendants.

Case No.: A-19-795762-C
Dept. No.: 4

Date of Hearing: August 3, 2020
Time of Hearing: CHAMBERS

25 **ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD**

26 Cogburn Law's Motion to Withdraw as Counsel of Record for Plaintiff, Dennis Baham,
27 having come on for hearing on August 3, 2020, no opposition having been filed, and good cause
28 appearing therefore,

29 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Cogburn Law's Motion
30 to Withdraw as Counsel of Record for Plaintiff, Dennis Baham is hereby GRANTED.

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff can be
2 reached via his new counsel of record, Peter B. Mortenson, Esq. of Mortenson & Rafie, LLP,
3 pursuant to the Notice of Appearance filed on August 3, 2020.

4 IT IS SO ORDERED.

5 Dated: _____

Dated this 24th day of August, 2020



DISTRICT COURT JUDGE
429 BF5 0A1D A695
Kerry Earley
District Court Judge

9 Submitted by:

10 COGBURN LAW

12 By: /s/Erik W. Fox

13 Jamie S. Cogburn, Esq.
14 Nevada Bar No. 8409
15 Erik W. Fox, Esq.
16 Nevada Bar No. 8804
17 2580 St. Rose Parkway, Suite 330
18 Henderson, Nevada 89074

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-19-795762-C

7 vs.

DEPT. NO. Department 4

8 Bayview Loan Servicing, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/24/2020

15 Erik Fox

ewf@cogburncares.com

16 Natalie Winslow

natalie.winslow@akerman.com

17 Ariel Stern

ariel.stern@akerman.com

18 Jamie Combs

jamie.combs@akerman.com

19 DEFAULT ACCOUNT

NVefile@wrightlegal.net

20 Jason Craig

jcraig@wrightlegal.net

21 Akerman LLP

AkermanLAS@akerman.com

22 Richard Waltjen, Esq.

rwaltjen@nvlaw.us

23 Katie Johnson

kjj@cogburncares.com

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DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

**OPPOSITION TO MOTION TO
DISMISS AND COUNTERMOTION
FOR LEAVE TO AMEND
COMPLAINT**

**OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION FOR LEAVE
TO AMEND COMPLAINT**

Plaintiff, DENNIS BAHAM, by and through his counsel, Mortenson & Rafie, LLP,
hereby files this *Opposition To Motion To Dismiss And Countermotion For Leave To Amend
Complaint*. This Opposition is based on the following points and authorities, all pleadings and
papers on file herein, and any argument of

**PLEADING
CONTINUES
IN NEXT
VOLUME**