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Oct 26 2021 05:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 (Pro Hac Vice submitted)

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15 *Attorneys for Proposed Intervenor Federal Housing Finance Agency*

16 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

17 FEDERAL HOUSING FINANCE

18 AGENCY, in its capacity as Conservator for
19 the Federal National Mortgage Association,

20 Petitioner,

21 vs.

22 EIGHTH JUDICIAL DISTRICT COURT,

23 Clark County, Nevada; and, THE

24 HONORABLE NADIA KRALL, Judge

25 Respondents,

26 WESTLAND LIBERTY VILLAGE, LLC;

27 WESTLAND VILLAGE SQUARE, LLC;

28 and FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Real Parties in Interest.

Case No. 82666

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1 and in challenging the preliminary injunction. Mr. Johnson has substantial expertise
2 in that area; to require FHFA to substitute other counsel would disserve the interests
3 of justice, and would unnecessarily burden FHFA in its efforts to efficiently and
4 effectively manage the Fannie Mae conservatorship with counsel of its choice.
5 FHFA respectfully submits that Mr. Johnson's expertise would be particularly
6 helpful to the Court at the recently scheduled oral argument.
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9 In addition, Mr. Johnson has since been admitted to practice in the underlying
10 district court case pro hac vice because he demonstrated that good cause and special
11 circumstances weighed in favor of his admission. Thus, he already serves as counsel
12 of record for FHFA in the principal matter at issue in FHFA's writ petition, and thus
13 is more knowledgeable about the proceedings in that action than other counsel would
14 be. It would be most efficient for FHFA and useful for the Court for Mr. Johnson to
15 present the argument in this case.
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19 **BACKGROUND**

20 On April 6, 2021, FHFA filed a motion to associate Mr. Johnson as counsel
21 in this proceeding under SCR 42. On April 22, 2021, this Court denied that motion.
22 The Court noted that Mr. Johnson had applied to appear in Nevada courts eight times
23 over the past three years, in excess of the presumptive five appearances described in
24 SCR 42(6)(a). Accordingly, the Court held that FHFA had not demonstrated "good
25 cause and special circumstances warranting an appearance in excess of the
26 limitation." Order Denying Mot. at 1-2.
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ARGUMENT

I. Mr. Johnson Is No Longer Above the Presumptive Limit For Attorney Appearances

Due to the passage of time, Mr. Johnson's motion to associate no longer faces the court-imposed presumption against admission to practice in this Court. Supreme Court Rule 42(6)(a) states that "[i]t shall be presumed, absent special circumstances, and only upon a showing of good cause, that more than 5 appearances by any attorney granted under this rule in a 3-year period is excessive use of this rule" and is cause for denial of the motion to associate. Attached hereto as Exhibit D is an affidavit from Mr. Johnson stating that he was granted *pro hac vice* admission by Nevada courts once in 2018, twice in 2019, and once in May 2021. Mr. Johnson also filed two motions to associate in this Court relating to the underlying case. *See Fed. Nat'l Mortg. Ass'n v. Westland Liberty Village, LLC*, No. 82174 (Doc. 21-09906); *FHFA v. Eighth Jud. Dist. Ct.*, No. 82666 (Doc. 21-09924). As those motions were denied, they do not count as "appearances" for the purposes of Rule 42(6)(a).¹ *See* Ex. D. Accordingly, Mr. Johnson's prior appearances before this Court are not

¹ Even if the Court were to construe Rule 42(6)(a) as counting all *applications* rather than *appearances* such that a court's denial of Mr. Johnson's motion to associate would count against the presumptive limit, Mr. Johnson could still be considered to be under the presumptive limit, *First*, the Court could conclude that Mr. Johnson's motions to associate in each of the three Westland proceedings should be deemed as one appearance for the purpose of Rule 42, given that FHFA's involvement in each action relates to the district court's issuance of a preliminary injunction that restrains or constrains FHFA's conservatorship powers. And *second*, the Court could decline to count Mr. Johnson's prior unsuccessful motion in this proceeding.

1 presumptively deemed to be in “excessive use” of the Court’s rules permitting
2 association with Nevada courts by out-of-state attorneys.

3 4 **II. Good Cause and Special Circumstances Weigh in Favor of Granting Mr. 5 Johnson’s Renewed Motion to Associate**

6 There is good cause for this Court to grant Mr. Johnson’s renewed motion to
7 associate. This Court is aware of FHFA’s significant statutory oversight
8 responsibilities of the national secondary mortgage market, including over Fannie
9 Mae, an entity in FHFA’s conservatorship. HERA authorizes FHFA to appear
10 through attorneys of the Agency’s own choosing. 12 U.S.C. § 4513(c)(1). Since
11 FHFA’s creation in 2008, Arnold & Porter Kaye Scholer LLP has coordinated and
12 implemented FHFA’s legal strategy concerning HERA’s interpretation and
13 application throughout the United States.

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15
16 Through Arnold & Porter’s representation of FHFA, Mr. Johnson has
17 significant expertise relating to certain HERA provisions. As relevant here, Mr.
18 Johnson has substantial experience litigating the HERA provision mandating that
19 “no court may take any action to restrain or affect the exercise of powers or
20 functions of [FHFA] as a conservator.” *See* 12 U.S.C. § 4617(f). Mr. Johnson also
21 has significant expertise in the interpretation and application of another HERA
22 provision that is likely to be more relevant in the related district court proceedings:
23 he has litigated cases around the country where a HERA provision precluding the
24 imposition of liability for “any amounts in the nature of fines or penalties” on the
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1 conservatorships is implicated. *See* 12 U.S.C. § 4617(j)(4).

2 Another of HERA’s provisions, 12 U.S.C. § 4617(j)(3) (the “Federal
3 Foreclosure Bar”), is relevant to hundreds of cases that have percolated through
4 Nevada state and federal courts over the last several years. FHFA designated Mr.
5 Johnson to advance the Agency’s interests and to coordinate the Agency’s
6 participation, while striving to respect and comply with Nevada’s *pro hac vice*
7 requirements and limitations. To that end, FHFA did not seek to have Mr. Johnson
8 admitted *pro hac vice* in each case in which it intervened or filed an amicus brief
9 with the Nevada Supreme Court, but instead did so only in those cases in which the
10 agency believed that HERA expertise would be particularly useful to the Court’s
11 resolution of the issues before it.
12

13 As set forth in more detail in the Affidavit of Michael A.F. Johnson (Exhibit
14 D), granting this application will serve judicial efficiency and save party resources,
15 and will allow the Court to benefit from Mr. Johnson’s knowledge of the HERA
16 issues before it—expertise relating to a narrow area of federal law governing the
17 federal conservator of two federally chartered, non-Nevada corporations.
18

19 New and special circumstances also weigh in favor of granting Mr. Johnson’s
20 renewed motion to associate. *First*, on October 5, 2021, this Court issued an order
21 on scheduling oral argument in this proceeding. Now that it is certain that the Court
22 will hear oral argument on this important issue of federal law, FHFA would be best
23 served if its seasoned counsel were to participate in that proceeding. FHFA
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1 respectfully submits that Mr. Johnson’s substantial experience litigating HERA-
2 related matters would be useful to this Court at oral argument.

3
4 *Second*, on May 13, 2021—after this Court denied Mr. Johnson’s motion to
5 associate—the district court approved Mr. Johnson’s request to associate with that
6 Court under SCR 42 in the action from which this writ proceeding arises. *See* Exhibit
7 E, Order Approving Application for Association of Counsel Under Supreme Court
8 Rule 42. After a hearing, where the parties presented arguments similar to those
9 made in this motion, including arguments by Westland against Mr. Johnson’s
10 admission, the district court concluded that “Mr. Johnson has demonstrated good
11 cause and special circumstances to exceed the presumptive limit set forth in Rule
12 42(6)(a)” and “admitted [Mr. Johnson] to practice in the above entitled Court for the
13 purposes of the above-entitled matter only.” *Id.* If anything, the unique procedural
14 posture of this writ proceeding and the narrow focus on HERA’s application to the
15 challenged preliminary injunction weighs even more heavily in favor of granting
16 Mr. Johnson’s renewed motion to associate in this proceeding.

17
18 For the reasons stated herein, FHFA respectfully requests that the Court find
19 that special circumstances and good cause exist to grant FHFA’s motion to associate
20 Mr. Johnson.

1 DATED: October 26, 2021.

2 FENNEMORE CRAIG, P.C.

3
4 By: /s/ John D. Tennert
5 Leslie Bryan Hart, Esq. (SBN 4932)
6 John D. Tennert, Esq. (SBN 11728)
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14 LLP

15 By: /s/ Michael A.F. Johnson
16 Michael A.F. Johnson, Esq.
17 (Pro Hac Vice Submitted)
18 601 Massachusetts Avenue, NW
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21 (Fax) 202-942-5999
22 michael.johnson@apks.com

23 *Attorneys for Petitioner Federal Housing*
24 *Financing Agency*

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on October 26, 2021, a true and correct copy of the **RENEWED MOTION TO ASSOCIATE COUNSEL**, was transmitted electronically through the Court's e-filing system to the attorney(s) associated with this case.

Kelly H. Dove, Esq. Nathan G. Kanute, Esq. - Reno Bob L. Olson, Esq. David L. Edelblute, Esq. Snell & Wilmer L.L.P. 3883 Howard Hughes Parkway Suite 110 Las Vegas, NV 89169 Joseph G. Went, Esq. Lars K. Evensen, Esq. Sydney R. Gambee, Esq. Holland & Hart L.L.P. 9555 Hillwood Dr., 2 nd Floor Las Vegas, NV 89134 <i>Attorneys for Real Party in Interest Federal National Mortgage Association</i>	J. Colby Williams, Esq. Philip R. Erwin, Esq. Campbell & Williams 700 S. Seventh St. Las Vegas, NV 89101 John Benedict, Esq. The Law Offices of John Benedict 2190 E. Pebble Road, Suite 260 Las Vegas, NV 89123 John W. Hofsaess, Esq. (Pro Hac Vice) Westland Real Estate Group 520 W. Willow St. Long Beach, CA 90806 Brian W. Barnes, Esq. Cooper & Kirk, PLLC 1523 New Hampshire, N.W. Washington, DC 20036 <i>Attorneys for Real Parties in Interest and Westland Village Square</i>
---	---

/s/ *Claudio Lerma*
An Employee of Fennemore Craig, P.C.

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL HOUSING)
FINANCE AGENCY,)
Petitioner,)
)
v.)
EIGHTH JUDICIAL)
DISTRICT COURT, Clark)
County, Nevada, et al.)
Respondents.)
_____)

CASE NO.: 82666

VERIFIED APPLICATION FOR
ASSOCIATION OF COUNSEL UNDER
NEVADA SUPREME COURT RULE 42

Michael A.F. Johnson, Petitioner, respectfully represents:
First Middle Name Last

1. Petitioner resides at 7207 Chestnut Street
Street Address

Chevy Chase, Montgomery, Maryland, 20815
City County State Zip Code

(301) 656-2352
Telephone

2. Petitioner is an attorney at law and a member of the law firm of: Arnold & Porter Kaye Scholer LLP

with offices at 601 Massachusetts Ave., NW
Street Address

Washington, n/a, D.C., 20001
City County State Zip Code

(202) 942-5783, michael.johnson@apks.com
Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by
The Federal Housing Finance Agency to provide legal representation in connection
with the above-entitled matter now pending before the above referenced court.



4. Since December of 1998, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of the District of Columbia where petitioner regularly practices law.

5. Petitioner was admitted to practice before the following United States District Courts, United States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states on the dates indicated for each, and is presently a member in good standing of the bars of said Courts:

ADMITTED

DATE

See Attached

6. Is Petitioner currently suspended or disbarred in any court? You must answer yes or no. If yes, give particulars; e.g., court, jurisdiction, date: No

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No

8. Has Petitioner ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No



9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No

10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No

11. Petitioner, or any member of petitioner's firm, has/have filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matters, if none, indicate so: *(do not include Federal Pro Hacs)*

<u>Date of Application</u>	<u>Cause</u>	<u>Title of Court Administrative Body or Arbitrator</u>	<u>Was Application Granted or Denied?</u>
<u>See Attached</u>			

(If necessary, please attach a statement of additional applications)

12. Nevada Counsel of Record for Petition in this matter is:
(must be the same as the signature on the Nevada Counsel consent page)

<u>John</u>	<u>D.</u>	<u>Tennert</u>	<u>11728</u>
First Name	Middle Name	Last Name	NV Bar #

who has offices at Fennemore Craig, P.C.
Firm Name/Company

<u>7800 Rancharrah Parkway</u>	<u>Reno</u>	<u>Washoe</u>
Street Address	City	County

<u>89511</u>	<u>(775) 788-2200</u>
Zip Code	Phone Number



13. The following accurately represents the names and addresses of each party in this matter, WHETHER OR NOT REPRESENTED BY COUNSEL, and the names and addresses of each counsel of record who appeared for said parties: (You may attach as an Exhibit if necessary.)

NAME

MAILING ADDRESS

See Attached

14. Petitioner agrees to comply with the provisions of Nevada Supreme Court Rule 42(3) and (13) and Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State of Nevada in accordance with provisions as set forth in SCR 42(3) and (13). Petitioner respectfully requests that Petitioner be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

I, Michael A.F. Johnson, do hereby swear/affirm under penalty of perjury that the
Print Petitioner Name
assertions of this application and the following statements are true:

- 1) That I am the Petitioner in the above entitled matter.
- 2) That I have read Supreme Court Rule (SCR) 42 and meet all requirements contained therein, including, without limitation, the requirements set forth in SCR 42(2), as follows:

(A) I am not a member of the State Bar of Nevada;

(B) I am not a resident of the State of Nevada;

(C) I am not regularly employed as a lawyer in the State of Nevada;



(D) I am not engaged in substantial business, professional, or other activities in the
State of Nevada;

(E) I am a member in good standing and eligible to practice before the bar of any
jurisdiction of the United States; and

(F) I have associated a lawyer who is an active member in good standing of the
State Bar of Nevada as counsel of record in this action or proceeding.

3) That I have read the foregoing application and know the contents thereof; that the same
is true of my own knowledge except as to those matters therein stated on information and belief,
and as to the matter I believe them to be true.

That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards
of this state with respect to the law of this state governing the conduct of attorneys to the same
extent as a member of the State Bar of Nevada; that I understand and shall comply with the
standards of professional conduct required by members of the State Bar of Nevada; and that I am
subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions
occurring in the course of such appearance.

DATED this _____ day of 10/19/2021, 2021.

Michael AF Johnson

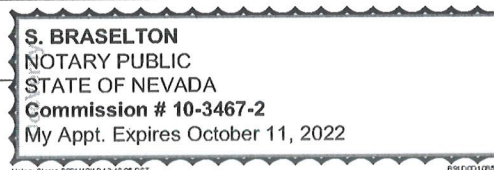
Signed on 2021/10/19 13:49:05 -8:00

Petitioner/Affiant (blue ink)

STATE OF NEVADA)
) ss
WASHOE COUNTY)

Subscribed and sworn to before me
this _____ day of 10/19/2021, 2021

S. Braselton
Signed on 2021/10/19 13:48:05 -8:00
Notary Public



Notarial act performed by audio-visual communication



QUESTION 5**Federal Court Admissions**

Court	Admission Date	Active Status & Good Standing?	Bar Number
Supreme Court of the United States	October 5, 2009	Yes	No bar number assigned.
U.S. Court of Appeals for the First Circuit	October 9, 2013	Yes	1160381
U.S. Court of Appeals for the Second Circuit	April 16, 2014	Yes	No bar number assigned
U.S. Court of Appeals for the Third Circuit	April 29, 2013	Yes	No bar number assigned.
U.S. Court of Appeals for the Fourth Circuit	February 28, 2005	Yes	No bar number assigned.
U.S. Court of Appeals for the Sixth Circuit	May 24, 2012	Yes	No bar number assigned.
U.S. Court of Appeals for the Seventh Circuit	April 12, 2013	Yes	No bar number assigned.
U.S. Court of Appeals for the Eighth Circuit	May 6, 2013	Yes	No bar number assigned
U.S. Court of Appeals for the Ninth Circuit	July 30, 2013	Yes	No bar number assigned.
U.S. Court of Appeals for the Eleventh Circuit	May 21, 2013	Yes	No bar number assigned.
U.S. Court of Appeals for the District of Columbia Circuit	November 30, 2012	Yes	54497
U.S. Court of Appeals for the Federal Circuit	January 15, 2004	Yes	Attorney Number 054356
U.S. Court of Federal Claims	February 26, 1998	Yes	No bar number assigned.
U.S. District Court for the Eastern District of Virginia	November 3, 2000	Yes	41588
U.S. District Court for the District of Columbia	June 6, 2005	Yes	460879
U.S. District Court for the District of Maryland	February 5, 2007	Yes	16941
U.S. District Court for the Western District of Michigan	January 31, 2012	Yes	No bar number assigned.
U.S. District Court for the Eastern District of Michigan	February 10, 2012	Yes	No bar number assigned.
U.S. District Court for the Eastern District of Wisconsin	October 9, 2012	Yes	No bar number assigned.
U.S. District Court for the Western District of New York	June 26, 2013	Yes	No bar number assigned.

State Court Admissions

Court	Date	Active Status & Good Standing?	Bar Number
District of Columbia Court of Appeals	December 7, 1998	Yes	460879
Supreme Court of Virginia	October 9, 1997	Yes	41588

QUESTION 11

Date of Appl.	Cause	Title of Court Administrative Body or Arbitrator	Was Application Granted or Denied?
12/10/18	Saticoy Bay LLC-Series 7549 Lintwhite St. v. Federal National Mortgage Assoc., et al. Case No. A-18-785034-C	District Court Clark County, Nevada	Granted
5/2/19	The Eagle and the Cross, LLC v. Bank of America, N.A., et al. Case No. 76305	Supreme Court of the State of Nevada	Granted
5/8/19	Chao Ma v. JPMorgan Chase Bank, N.A. Case No. 75398	Supreme Court of the State of Nevada	Granted
4/06/21	Federal National Mortgage Assoc. v. Westland Liberty Village, LLC, et al. Case No. 82174	Supreme Court of the State of Nevada	Denied as Moot
4/01/21	Federal National Mortgage Assoc. v. Westland Liberty Village, LLC, et al. Case No. A-20-819412-B	District Court Clark County, Nevada	Granted
4/06/21	Federal Housing Finance Agency. v. Westland Liberty Village, LLC, et al. Case No. 82666	Supreme Court of the State of Nevada	Denied

QUESTION 13

PARTIES

COUNSEL FOR APPELLANT FEDERAL HOUSING FINANCE AGENCY:

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(Pro Hac Vice to be submitted)
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COUNSEL FOR RESPONDENT EIGHTH JUDICIAL DISTRICT COURT and THE HONORABLE KERRY FARLEY:

COUNSEL FOR REAL PARTIES IN INTEREST WESTLAND LIBERTY VILLAGE, LLC and WESTLAND VILLAGE SQUARE, LLC:

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702-382-5222

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The Law Offices of John Benedict
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Long Beach, CA 90806

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David L. Edelblute, Esq.
Snell & Wilmer L.L.P.
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Las Vegas, NV 89169

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambée, Esq.
Holland & Hart L.L.P.
9555 Hillwood Dr., 2nd Floor
Las Vegas, NV 89134

EXHIBIT B

EXHIBIT B

Supreme Court of Virginia

AT RICHMOND

Certificate

I, Muriel-Theresa Pitney, Acting Clerk of the Supreme Court of Virginia,

do hereby certify that

Michael Alexander Johnson

was admitted to practice as an attorney and counsellor at the bar of this Court on October 27, 1997.

I further certify that so far as the records of this office are concerned, Michael Alexander Johnson is a member of the bar of this Court in good standing.

Witness my hand and seal of said Court

This 15th day of October

A.D. 2021

By: Melinda Layman
Deputy Clerk



On behalf of JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals,
the District of Columbia Bar does hereby certify that

Michael A Johnson

was duly qualified and admitted on December 7, 1998 as an attorney and counselor entitled to
practice before this Court; and is, on the date indicated below, a(n)
ACTIVE member in good standing of this Bar.

**In Testimony Whereof,
I have hereunto subscribed my
name and affixed the seal of this
Court at the City of
Washington, D.C., on October
15, 2021.**

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Issued By:

Michael A Johnson
District of Columbia Bar Membership

For questions or concerns, please contact the D.C. Bar Membership Office at 202-626-3475 or email
memberservices@dcbar.org.

EXHIBIT C

EXHIBIT C

1 STAT

2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Case No. 82666

5 Federal Housing Finance
6 Agency

7 vs.

8 Eighth Judicial District
9 Court, Clark County, Nevada
/

10 STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE
11 42 (3) (b)

12
13 THE STATE BAR OF NEVADA, in response to the application of
Petitioner, submits the following statement pursuant to SCR42(3):

14 SCR42(6)**Discretion.** The granting or denial of a motion to associate
15 counsel pursuant to this rule by the court is discretionary. The
16 court, arbitrator, mediator, or administrative or governmental
17 hearing officer may revoke the authority of the person permitted to
18 appear under this rule. Absent special circumstances, repeated
appearances by any person or firm of attorneys pursuant to this rule
shall be cause for denial of the motion to associate such person.

19 (a) **Limitation.** It shall be presumed, absent special
20 circumstances, and only upon showing of good cause, that
21 more than 5 appearances by any attorney granted under
this rule in a 3-year period is excessive use of this
rule.

22 (b) **Burden on applicant.** The applicant shall have the
23 burden to establish special circumstances and good cause
24 for an appearance in excess of the limitation set forth
25 in subsection 6(a) of this rule. The applicant shall set
forth the special circumstances and good cause in an
affidavit attached to the original verified application.

26 1. DATE OF APPLICATION: 10/20/2021

27 2. APPLYING ATTORNEY: Michael Alexander Johnson, Esq.

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///
///

1 3. FIRM NAME AND ADDRESS: Arnold & Porter Kaye Scholer, LLP, 601
2 Massachusetts Ave., NW, Washington, DC 20001

3 4. NEVADA COUNSEL OF RECORD: John D. Tennert, Esq., Fennemore
4 Craig, P.C., 7800 Rancharrah Pkwy, Reno, NV 89511

5 5. In addition to the present application, petitioner made the
6 following previous applications within the last three years:

7 12/6/2018 ADMISSION GRANTED
8 5/1/2019 ADMISSION GRANTED
9 5/7/2019 ADMISSION GRANTED
10 3/29/2021 ADMISSION GRANTED
11 3/30/2021 ADMISSION DENIED
12 3/30/2021 ADMISSION DENIED

13 DATED this October 26, 2021


14 
15 Suzy Moore
16 Member Services Admin.
17 Pro Hac Vice Processor
18 STATE BAR OF NEVADA
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EXHIBIT D

EXHIBIT D

AFFIDAVIT OF MICHAEL A.F. JOHNSON
(Nev. Sup. Ct. Case No. 82666)

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

I, Michael A.F. Johnson, being first duly sworn, do hereby swear under penalty of perjury the laws of the State of Nevada as follows:

1. I am over the age of 21 years. The statements I offer in this affidavit are true and correct to the best of my knowledge, information, and belief.

2. I have personal knowledge of each of the matters stated herein and could testify competently to the same under oath in a court of law if called upon to do so.

3. I submit this affidavit to support my Verified Application for Association of Counsel Under Supreme Court Rule 42.

4. Supreme Court Rule 42(6)(a) provides, as a general rule, that "absent special circumstances, and only upon a showing of good cause, that more than 5 appearances by any attorney granted under this rule in a 3-year period is excessive use of this rule." Supreme Court Rule 42(6)(b) provides that the applicant "shall have the burden to establish special circumstances and good cause for an appearance in excess of the limitation set forth in subsection 6(a) of this rule."

5. Over the past three years, Nevada courts have granted my requests to appear in four related cases. Thus, Supreme Court Rule 42(6)(b) does not apply to this application, as I have not been granted leave to appear under SCR 42 in five or more cases. As a result, Rule 42(6)'s default "discretionary" standard applies, with no presumption against a grant. I make this submission to demonstrate that special circumstances and good cause exist to support my appearance in this case, and that the Court should therefore allow me to appear under Rule 42 in any event.

6. I am an attorney with the law firm of Arnold & Porter Kaye Scholer LLP, an international law firm acting as counsel for the Federal Housing Finance Agency ("FHFA").

1 7. FHFA is an independent federal agency responsible for the oversight of vital
2 components of the national secondary mortgage market, including the Federal National
3 Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation
4 ("Freddie Mac") (together, "the Enterprises").

5 8. On September 6, 2008, FHFA's Director invoked the power granted FHFA under
6 the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat.
7 2654, to place the Enterprises into conservatorships. *See* U.S.C. § 4617(a). Since then, FHFA
8 has been each Enterprise's Conservator.

9 9. In its capacity as Conservator, FHFA succeeded to "all rights, titles, powers, and
10 privileges" of the Enterprises and their respective stockholders, boards of directors and officers.
11 *See* 12 U.S.C. § 4617(b)(2)(A)(i). Accordingly, the Conservator is authorized to participate, at
12 its discretion, in litigation involving the Enterprises in a manner consistent with the conservator's
13 duties.

14 10. I have appeared as counsel for FHFA in many cases that have been filed over the
15 past six years in the Nevada Supreme Court, the District Courts of the State of Nevada, in the
16 United States District Court for the District of Nevada and in the United States Court of Appeals
17 for the Ninth Circuit in which the Enterprises and other parties were litigating the interpretation
18 and application of NRS 116.3116(2), which allows a HOA a limited super-priority lien security
19 payment for past due HOA fees, and permits properly conducted foreclosures and public
20 auctions to extinguish all other deed-of-trust interests. *SFR Invs. Pool I, LLC v. U.S. Bank, NA.*,
21 334 P.3d 408 (Nev. 2014) ("the Chapter 116 Cases"). However, as the Nevada Supreme Court
22 and the Ninth Circuit have concluded, federal law precludes this result when the owner of the
23 deed of trust is an Enterprise in FHFA conservatorship. *See* 12 U.S.C. § 4617(j)(3) ("No
24 property" of the Conservator "shall be subject to ... foreclosure ... without the [FHFA's]
25 consent."); *id.* § 4617(b)(2)(A)(i) (the Conservator succeeds to "all rights, titles, powers, and
26 privileges" of the Enterprises); *Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l*
27 *Mortg. Ass'n*, 134 Nev. Adv. Op. 36, __ Nev. __ (2018) (en banc); *Berezovsky v. Moniz*, 869

1 F.3d 923 (9th Cir. 2017); *Elmer v. JPMorgan Chase Co.*, No. 15-17407, 2017 WL 3822061 (9th
2 Cir. Aug. 31, 2017) (unpublished); *Fed. Home Loan Mortg. Corp. v. SFR Invs. Pool 1, LLC*, 893
3 F.3d 1136 (9th Cir. 2018).

4 11. FHFA has retained Arnold & Porter Kaye Scholer LLP to coordinate and
5 implement its legal strategy in the Chapter 116 Cases. I am the primary contact person at Arnold
6 & Porter Kaye Scholer LLP for these matters. FHFA has retained Leslie Bryan Hart and the law
7 firm of Fennemore Craig, P.C. to assist as local counsel in these cases.

8 12. In addition to appearing in Chapter 116 Cases in which FHFA is a party, FHFA
9 has submitted amicus briefs in the Nevada Supreme Court in cases where FHFA is not a direct
10 party but an Enterprise's property interest is at stake.

11 13. In the past three years I have submitted six applications for *pro hac vice*
12 admission in Nevada courts. Two of these applications were submitted in the District Court for
13 Clark County, including one in the district court case concerning the matters at issue in this writ
14 petition proceeding. Both those applications were granted. I submitted the other four
15 applications for admission to the Nevada Supreme Court, including in this action and in the
16 related interlocutory appeal from the order entering the preliminary injunction at issue here. This
17 Court denied my applications in this proceeding and the related interlocutory appeal, and granted
18 the two applications in unrelated matters. Accordingly, over the past three years I have been
19 granted leave to appear *pro hac vice* under SCR 42 only four times. A list of all cases in which I
20 filed a motion to associate within the past three years is attached hereto as **Exhibit 1**.

21 14. I have been admitted *pro hac vice* in the Nevada Supreme Court on 11 occasions,
22 9 of which were on applications submitted more than 3 years ago, all in Chapter 116 cases. I
23 participated in oral argument in four of those cases—in *Nationstar*, *Christine View*, *Green Tree*
24 and *Holm International*. In each instance, the Court permitted me to argue for FHFA as an
25 amicus curiae, and in each instance and the Court ruled consistently with the position FHFA
26 asserted. In my view, my participation in these cases, including at oral argument, assisted the
27 Court.

1 15. Although the issues presented to this Court in the current case differ from those
2 presented in the Chapter 116 Cases, all involve federal statutory powers and protections
3 Congress granted FHFA in its capacity as conservator. Here, because FHFA is statutorily
4 empowered as Conservator to “perform all [of Fannie Mae’s] functions in [Fannie Mae’s]
5 name,” 12 U.S.C. § 4617(b)(2)(B)(iii), and has succeeded to all rights, titles, powers, privileges,
6 and assets of Fannie Mae, 12 U.S.C. § 4617(b)(2)(A)(i), the preliminary injunction entered
7 earlier in this action implicates 12 U.S.C. § 4617(f), which mandates that “no court may take
8 any action to restrain or affect the exercise of powers or functions of FHFA as a conservator.”

9 16. Granting this application will serve judicial efficiency and save party resources as
10 FHFA has retained my firm and me in connection with matters raised in this state and in other
11 states that similarly involve the interpretation of FHFA’s governing statute and the scope of the
12 Conservator’s authority under federal law. Although Arnold & Porter Kaye Scholer LLP has a
13 group of attorneys working on the cases pending in the federal and state courts of Nevada, I
14 have been the FHFA’s principal representative at numerous hearings in the United States
15 District Court for the District of Nevada, and the Ninth Circuit, as well as other courts around
16 the country. FHFA respectfully requests that the Court find that special circumstances and good
17 cause exist to grant my application under Rule 42 in this case.

18 17. Based on the foregoing, I respectfully submit that the Court should exercise its
19 discretion to allow me to appear in this matter under SCR 42, and, if necessary or useful, to find
20 that special circumstances and good cause exist to permit my appearance in this case.

21 DATED: October 14, 2021

22
23 District of Columbia:

24
25 SUBSCRIBED and SWORN to before
26 me this on October 14, 2021

27 Jean A. Jantz
28 Notary Public



Michael A.F. Johnson



EXHIBIT E

EXHIBIT E

1 ORAP
2
3
4
5

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 FEDERAL NATIONAL MORTGAGE
9 ASSOCIATION,

CASE NO.: A-20-819412-B

10 Appellant,

DEPT. NO.: XIII

11 vs.

12 WESTLAND LIBERTY VILLAGE, LLC, a
13 Nevada limited liability company; and
14 WESTLAND VILLAGE SQUARE, LLC, a
15 Nevada limited liability company,

16 Respondents.

17 AND ALL RELATED CLAIMS
18

19 **~~[Proposed]~~ ORDER APPROVING APPLICATION FOR ASSOCIATION**
20 **OF COUNSEL UNDER SUPREME COURT RULE 42**

21 Michael A.F. Johnson, having filed his Verified Application for Association of Counsel
22 under Nevada Supreme Court Rule 42, the Nevada Bar having submitted its statement dated
23 March 30, 2021 and as amended on April 28, 2021, said application having been duly served,
24 and the Court having concluded that Mr. Johnson has demonstrated good cause and special
25 circumstances to exceed the presumptive limit set forth in Rule 42(6)(a), and the Court orders as
26 follows:
27
28

///

///

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18290556

1 **IT IS HEREBY ORDERED** that said Application is granted and Michael A.F. Johnson,
2 Esq., is hereby admitted to practice in the above entitled Court for the purposes of the above-
3 entitled matter only.

4 ~~DATED this _____ day of May, 2021.~~

Dated this 13th day of May, 2021



DISTRICT COURT JUDGE

8 APPROVED AS TO FORM:

9 By: /s/ John Benedict
10 John Benedict, Esq.
11 The Law Offices of John Benedict
12 2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123

13 John W. Hofsaess, Esq. (Pro Hac Vice)
14 Westland Real Estate Group
520 W. Willow St.
15 Long Beach, CA 90806
Attorneys for Defendant/Third Party Plaintiff/
16 *Counterclaimant Westland Liberty Village, LLC and Westland Village Square*

17 Submitted by:

18 By: Leslie Bryan Hart
19 Leslie Bryan Hart, Esq., (SBN 4932)
20 John D. Tennert, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
7800 Rancharra Parkway
21 Reno, Nevada 89511
(Tel) 775-788-2228 (Fax) 775-788-2229
22 lhart@fennemorelaw.com; jtennert@fennemorelaw.com

23 *(Pro Hac Vice granted)*
24 Michael A.F. Johnson, Esq.
ARNOLD & PORTER KAYE SCHOLER LLP
25 601 Massachusetts Avenue, NW
Washington, DC 20001
26 (Tel) 202-942-5000 (Fax) 202-942-5999
michael.johnson@apks.com

27 *Attorneys for Intervenor Federal Housing Finance Agency*
28

Carmon, Pamela

From: Hart, Leslie Bryan <lhart@fennemorelaw.com>
Sent: Wednesday, May 12, 2021 8:43 AM
To: Carmon, Pamela
Subject: FW: Proposed Orders re: PHV and Intervention

From: John Benedict <John@benedictlaw.com>
Sent: Tuesday, May 11, 2021 4:39 PM
To: Hart, Leslie Bryan <lhart@fennemorelaw.com>; Kanute, Nathan <nkanute@swlaw.com>; jgwent@hollandhart.com
Cc: John Hofsaess <john.h@westlandreg.com>; Johnson, Michael A.F. <Michael.Johnson@arnoldporter.com>; Angelyn <Angelyn@benedictlaw.com>; Olson, Bob <bolson@swlaw.com>
Subject: Re: Proposed Orders re: PHV and Intervention

Good Afternoon Ms. Hart,

I have conferred with John Hofsaess, and you may affix my e-signature to both orders and submit them.
Thank you.

While I have everyone on one email, no one has responded to my email from Friday. I think two business days are sufficient to provide times for a 2.34 meeting time. I'll go ahead and circulate a time in the afternoon this week via a calendar invite, and whoever is on the call is on, and whoever cannot make it won't be.

Thanks.

Sincerely,

John Benedict, Esq.

[Martindale-Hubbell® Preeminent Peer Review Rating™](#)
[with Very High Criteria for General Ethics](#)

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From: Hart, Leslie Bryan <lhart@fennemorelaw.com>
Sent: Monday, May 10, 2021 1:46 PM

To: John Benedict <John@benedictlaw.com>; Kanute, Nathan <nkanute@swlaw.com>; jgwent@hollandhart.com <JGWent@hollandhart.com>

Cc: John Hofsaess <john.h@westlandreg.com>; Johnson, Michael A.F. <Michael.Johnson@arnoldporter.com>; Angelyn <Angelyn@benedictlaw.com>; Olson, Bob <bolson@swlaw.com>

Subject: RE: Proposed Orders re: PHV and Intervention

Good afternoon,

Attached please find the proposed Orders (1) granting FHFA's intervention, and (2) granting Mike Johnson's PHV application.

John and John, if acceptable to you, can you please sign the proposed intervention order and return to me for submission?

Thank you. Leslie

Leslie Bryan Hart, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2228 | F: 775.788.2229

lhart@fennemorelaw.com | [View Bio](#)



Fennemore has expanded to California. [Read more here.](#)

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COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage,
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Admitting to Practice was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 5/13/2021

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21 Lara Taylor	ljtaylor@swlaw.com
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25 Bob Olson	bolson@swlaw.com

26
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