

1 **NOAS**
2 **WRIGHT, FINLAY & ZAK, LLP**
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9 *Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC*

Electronically Filed
Mar 29 2021 02:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

9 **OCWEN LOAN SERVICING, LLC, a foreign**
10 **Limited Liability Company,**
11 **Plaintiff,**
12 **vs.**

Case No.: A-14-696357-C
Dept. No.: IV

NOTICE OF APPEAL

13 **CHERSUS HOLDINGS, LLC, a Domestic**
14 **Limited Liability Company; FIRST 100, LLC,**
15 **a Domestic Limited Liability Company;**
16 **SOUTHERN TERRACE HOMEOWNERS**
17 **ASSOCIATION, a Domestic Non-Profit**
18 **Corporation; RED ROCK FINANCIAL**
19 **SERVICES, LLC, a Foreign Limited Liability**
20 **Company; UNITED LEGAL SERVICES,**
21 **INC., a Domestic Corporation; DOES I**
22 **through X; and ROE CORPORATIONS XI**
23 **through XX, inclusive,**
24 **Defendants.**

25 **CHERSUS HOLDINGS, LLC, a Domestic**
26 **Limited Liability Company,**
27 **Counterclaimant,**
28 **vs.**

OCWEN LOAN SERVICING, LLC, a Foreign
Limited Liability Company,
Counter-Defendants.

PLEASE TAKE NOTICE that Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC hereby appeals to the Supreme Court of Nevada (1) Findings of Fact, Conclusions of Law and Order filed on May 6, 2019; (6) Notice of Entry of Order filed on May 7, 2019; (3) Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for

1 Reconsideration Pursuant to NRCP 59 and 60 filed on February 20, 2020, (4) Notice of Entry
2 entered on February 20, 2020, (5) Order Granting Judgment in Favor of Counterclaimant
3 Chersus Holdings, LLC filed on March 22, 2021; (6) Notice of Entry of Order Granting
4 Judgment in Favor of Counterclaimant Chersus Holdings, LLC filed on March 22, 2021; (7) and
5 all orders rendered final thereby.

6 DATED this 23rd day of March, 2021.

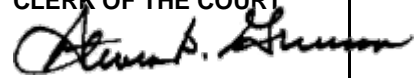
7 WRIGHT, FINLAY & ZAK, LLP
8 /s/ Aaron D. Lancaster
9 Aaron D. Lancaster, Esq.
10 Nevada Bar No. 10115
11 7785 W. Sahara Ave., Suite 200
12 Las Vegas, Nevada 89117
13 *Attorney for Plaintiff/Counter-Defendant, Ocwen*
14 *Loan Servicing, LLC*

15 **CERTIFICATE OF SERVICE**

16 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
17 ZAK, LLP, and that on this 23rd day of March, 2021, I did cause a true copy of **NOTICE OF**
18 **APPEAL** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to
19 NEFCR 9, addressed as follows:

20 Michelle Adams	michellea@nelsonlawfirmnv.com
21 Legal Assistant	legalassistant@nelsonlawfirmnv.com
22 Master Calendering	mail@nelsonlawfirmnv.com
23 Vernon A. Nelson	vnelson@nelsonlawfirmnv.com
24 Robert E. Atkinson	Robert@nv-lawfirm.com
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29 /s/ Lisa Cox
30 An Employee of WRIGHT, FINLAY & ZAK, LLP



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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; FIRST 100, LLC,
a Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, a Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign
Limited Liability Company,
Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

**OCWEN LOAN SERVICING, LLC'S
CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement.

Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC.

2. Identify the judges issuing the decision(s), judgment(s), or order(s) appealed from.

1 The Honorable Judge Kerry Earley, Eighth Judicial District Court, Dept. IV.

2 The Honorable Judge Nadia Krall, Eighth Judicial District Court, Dept. IV.

3 **3. Identify all parties to the proceedings in the district court.**

4 Plaintiff: Ocwen Loan Servicing, LLC

5 Defendant: Chersus Holdings, LLC

6 Defendant: Southern Terrace Homeowners Association

7 Defendant: First 100, LLC (Default Entered Against)

8 Defendant: Red Rock Financial Services, LLC (Dismissed)

9 Defendant: United Legal Services, Inc. (Dismissed)

10 **4. Identify all parties involved in this appeal.**

11 Appellant/Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

12 Respondent/Defendant/Counter-Claimant: Chersus Holdings, LLC

13 Respondent/Defendant: Southern Terrace Homeowners Association

14 **5. Set forth the name, law firm, address, and telephone number of all counsel on the**
15 **appeal and identify the party or parties whom they represent.**

16 Appellant: OCWEN LOAN SERVICING, LLC

17 Counsel: WRIGHT, FINLAY & ZAK, LLP

18 Aaron D. Lancaster, Esq.

19 7785 W. Sahara Ave., Suite 200

20 Las Vegas, Nevada 89117

21 (702) 475-7964

22 Respondent: CHERSUS HOLDINGS, LLC

23 Counsel: THE LAW OFFICE OF VERNON NELSON

24 Vernon A. Nelson, Esq.

25 9480 S. Eastern Ave., Suite 252

26 Las Vegas, Nevada 89123

27 (702) 476-2500

28 Respondent: SOUTHERN TERRACE HOMEOWNERS ASSOCIATION

Counsel: SURUR LAW GROUP

Ashlie L. Surur, Esq.

561 Ivy Spring St.

Las Vegas, Nevada 89138

(702) 316-4111

6. Indicate whether any attorney identified above in response to question 5 is not

1 **licensed to practice law in Nevada.**

2 All counsel listed above are licensed to practice in Nevada.

3 **7. Indicate whether appellant was represented by appointed or retained counsel in the**
4 **district court.**

5 The Appellant was represented by retained counsel from the law firm of Wright, Finlay
6 & Zak, LLP, in the district court.

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

9 The Appellant is represented by retained counsel listed above on this appeal.

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

12 No such leave was either requested or granted.

13 **10. Indicate the date the proceedings commenced in the district court.**

14 The Honorable Judge Kerry Earley, Eighth Judicial District Court, entered the following
15 orders: Findings of Fact, Conclusions of Law and Order filed on May 6, 2019, and Order
16 Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for
17 Reconsideration Pursuant to NRCP 59 and 60 on February 20, 2020.

18 The Honorable Judge Nadia Krall, Eighth Judicial District Court, entered an Order
19 Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC filed on March
20 22, 2021.

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

24 This is a quiet title action related to a NRS 116 homeowners association's non-judicial
25 foreclosure sale. The district court granted summary judgment in favor of Chersus
26 Holdings, LLC and Southern Terrace Homeowners Association ("HOA"). Ocwen Loan
27 Servicing, LLC filed a Motion to Alter or Amend Judgment and for Reconsideration
28 Pursuant to NRCP 59 and 60. The district court granted reconsideration. Subsequently,

1 the district court entered an Order Denying Ocwen Loan Servicing, LLC's Motion to
2 Alter or Amend Judgment and for Reconsideration Pursuant to NRC 59 and 60. In
3 association with the order granted summary judgment in favor of Chersus Holdings,
4 LLC, the district court entered an Order Granting Judgment in Favor of Counterclaimant
5 Chersus Holdings, LLC filed on March 22, 2021. Ocwen Loan Servicing, LLC now
6 appeals from the Findings of Fact, Conclusions of Law and Order filed on May 6, 2019,
7 Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and
8 for Reconsideration Pursuant to NRC 59 and 60 on February 20, 2020 and Order
9 Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC filed on March
10 22, 2021.

11 **12. Indicate whether the case involves the possibility of settlement.**

12 This case may have a reasonable possibility of settlement.

13 **12. Indicate whether the case has previously been the subject of an appeal to or original**
14 **writ proceeding in the Supreme Court.**

15 Appellant filed a Notice of Appeal on March 6, 2020. On October 8, 2020, the Supreme
16 Court filed an Order to Show Cause why the appeal should not be dismissed for lack of
17 jurisdiction as the damage aspect of Chersus Holdings, LLC's claim had not been
18 determined. On November 6, 2020, Appellant filed a Response to Order to Show Cause;
19 and Motion for Voluntary Dismissal of Appeal.

20 **13. Indicate whether the case involves child custody or visitation.**

21 This case does not involve child custody or visitation.

22 DATED this 23rd day of March, 2021.

23 WRIGHT, FINLAY & ZAK, LLP

24 /s/ Aaron D. Lancaster

25 Aaron D. Lancaster, Esq.

26 Nevada Bar No. 10115

27 7785 W. Sahara Ave., Suite 200

28 Las Vegas, Nevada 89117

*Attorney for Plaintiff/Counter-Defendant, Ocwen
Loan Servicing, LLC*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 23rd day of March, 2021, I did cause a true copy of **OCWEN LOAN SERVICING, LLC'S CASE APPEAL STATEMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

Michelle Adams	michellea@nelsonlawfirmllv.com
Legal Assistant	legalassistant@nelsonlawfirmllv.com
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Thomas N. Beckom	tbeckom@mccarthyholthus.com
Ashlie Surur	Ashlie@sururlaw.com

/s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-14-696357-C

Ocwen Loan Servicing, LLC, Plaintiff(s)
vs.
Chersus Holdings, LLC, Defendant(s)

§
§
§
§
§
§

Location: **Department 4**
 Judicial Officer: **Krall, Nadia**
 Filed on: **02/19/2014**
 Case Number History:
 Cross-Reference Case Number: **A696357**
 Supreme Court No.: **80781**

CASE INFORMATION

Statistical Closures

03/22/2021 Summary Judgment
 12/03/2020 Summary Judgment

Case Type: **Title to Property**
 Subtype: **Quiet Title**

Case Status: **03/22/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-14-696357-C
 Court Department 4
 Date Assigned 01/04/2021
 Judicial Officer Krall, Nadia

PARTY INFORMATION

Lead Attorneys

Plaintiff Ocwen Loan Servicing, LLC

Nitz, Dana J.
Retained
 702-228-7717(W)

Defendant Chersus Holdings, LLC

Nelson, Vernon A.
Retained
 702-476-2500(W)

First 100 LLC

Red Rock Financial Services LLC
 Removed: 12/06/2016
 Dismissed

Red Rock Financial Services LLC
 Removed: 10/17/2018
 Dismissed

Southern Terrance Homeowners Association

Surur, Ashlie L
Retained
 702-909-0838(W)

United Legal Services Inc
 Removed: 02/02/2018
 Dismissed

Atkinson, Robert E.
Retained
 702-614-0600(W)

Counter Claimant Chersus Holdings, LLC
 Removed: 05/06/2019
 Dismissed

Nelson, Vernon A.
Retained
 702-476-2500(W)

Counter Defendant Ocwen Loan Servicing, LLC
 Removed: 05/06/2019
 Dismissed

Nitz, Dana J.
Retained
 702-228-7717(W)

Short Trial Judge Judge Pro Tempore

DATE


EVENTS & ORDERS OF THE COURT

INDEX

CASE SUMMARY













CASE NO. A-14-696357-C

EVENTS

02/19/2014	 Complaint Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Complaint</i>
02/19/2014	 Initial Appearance Fee Disclosure Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Initial Appearance Fee Disclosure</i>
02/19/2014	Case Opened
02/20/2014	 Lis Pendens Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Lis Pendens</i>
03/07/2014	 Summons Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Summons - Chersus Holdings LLC</i>
03/20/2014	 Notice of Firm Name Change Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Firm Name Change</i>
03/28/2014	 Initial Appearance Fee Disclosure Filed By: Defendant Chersus Holdings, LLC <i>Initial Appearance Fee Disclosure</i>
03/28/2014	 Answer and Counterclaim Filed By: Defendant Chersus Holdings, LLC <i>Answer and Counter-claim</i>
04/16/2014	 Motion for Summary Judgment Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Plaintiff Ocwen Loan Servicing, LLC'S Motion for Summary Judgment</i>
04/22/2014	 Amended Certificate of Service Party: Plaintiff Ocwen Loan Servicing, LLC <i>Amended Certificate of Service</i>
05/09/2014	 Countermotion For Summary Judgment Filed By: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant's Opposition to Motion for Summary Judgment and Defendant/Counter-Claimant's Countermotion for Summary Judgment</i>
05/27/2014	 Reply in Support Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Plaintiff's Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment</i>
09/05/2014	 Notice of Association of Counsel Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Association of Counsel</i>
09/23/2014	

CASE SUMMARY

CASE NO. A-14-696357-C

	 Reply to Opposition Filed by: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant's Reply in Response to Plaintiff's Opposition to Defendant/Counter-Claimant's Countermotion for Summary Judgment</i>
10/31/2014	 Supplemental Brief Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Supplemental Brief in Opposition to Defendant/Counterclaimant's Motion for Summary Judgment</i>
11/04/2014	 Supplement Filed by: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant's Supplemental Brief in Support of Countermotion for Summary Judgment</i>
11/13/2014	 Motion to Strike Filed By: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant Chersus Holdings, LLC'S Motion to Strike Plaintiff / Counterdefendant Ocwen Loan Servicing, LLC'S Supplemental Brief in Opposition to Defendant/Counter-Claimant's Motion for Summary Judgment on an Order Shortening Time</i>
11/25/2014	 Opposition to Motion Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing's Opposition to Motion to Strike</i>
11/25/2014	 Reply Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing's Reply to Supplement to Summary Judgment</i>
11/25/2014	 Affidavit in Support Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Affidavit of Thomas N. Beckom, Esq. in Support of Request Under NRCP 56(F)</i>
12/03/2014	 Reply Filed by: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant Chersus Holdings, LLC's Reply in Response to Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC's Opposition to Motion to Strike Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC's Supplemental Brief in Opposition to Defendant/Counter-Claimant's Motion for Summary Judgment on an Order Shortening Time</i>
12/31/2014	 Supplemental Brief Filed By: Defendant Chersus Holdings, LLC <i>Defendant/Counter-Claimant Chersus Holdings, LLC's Supplemental Briefing in Response to Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC's Supplemental Briefing In Opposition To Chersus Holdings, LLC's Countermotion for Summary Judgment</i>
01/06/2015	 Order Denying Motion Filed By: Defendant Chersus Holdings, LLC <i>Order Denying Defendant / Counter-Claimant Chersus Holdings, LLC's Motion to Strike</i>
01/07/2015	 Notice of Entry of Order Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order</i>
06/12/2015	 Notice of Early Case Conference

CASE SUMMARY

CASE NO. A-14-696357-C

	<p>Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Early Case Conference</i></p>
08/17/2015	<p> Answer to Counterclaim Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing's Answer to Counterclaim</i></p>
08/20/2015	<p> Joint Case Conference Report Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Joint Case Conference Report</i></p>
09/04/2015	<p> Notice to Appear for Discovery Conference <i>Notice to Appear for Discovery Conference</i></p>
10/06/2015	<p> Scheduling Order Filed By: Short Trial Judge Judge Pro Tempore <i>Scheduling Order</i></p>
11/17/2015	<p> Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i></p>
03/11/2016	<p> Notice of Association of Counsel Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Association of Counsel</i></p>
03/28/2016	<p> Substitution of Attorney Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Substitution of Attorney</i></p>
03/28/2016	<p> Motion Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint; or, in the alternative, Motion to Stay Litigation</i></p>
04/14/2016	<p> Opposition Filed By: Defendant Chersus Holdings, LLC <i>Chersus Limited Opposition to Ocwen Motion for Leave to Amend</i></p>
05/20/2016	<p> Order Granting Motion Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Order Granting Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint</i></p>
06/08/2016	<p> Stipulation and Order Filed by: Defendant Chersus Holdings, LLC <i>Stipulation and Order to Extend Discovery and Trial [First Request]</i></p>
06/13/2016	<p> Notice of Entry of Order Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order</i></p>
06/21/2016	<p> Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i></p>
06/23/2016	

CASE SUMMARY

CASE NO. A-14-696357-C

	 Notice of Entry of Order Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Entry of Order Granting Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint</i>
06/24/2016	 Amended Complaint Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>First Amended Complaint</i>
07/28/2016	 Lis Pendens Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Lis Pendens</i>
07/29/2016	 Answer and Counterclaim Filed By: Defendant Chersus Holdings, LLC <i>Answer to First Amended Complaint and Counter-claim Against Plaintiff</i>
08/04/2016	 Summons Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Summons</i>
08/04/2016	 Summons Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Summons</i>
08/04/2016	 Summons Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Summons</i>
08/04/2016	 Summons Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Summons</i>
08/25/2016	 Answer to Counterclaim Filed By: Defendant Chersus Holdings, LLC <i>Ocwen's Answer to the Counterclaim</i>
10/20/2016	 Affidavit of Service Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Affidavit of Service - Unitec Legal Services Inc</i>
10/20/2016	 Affidavit of Service Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Affidavit of Service - Southern Terrace Homeowners Association</i>
10/20/2016	 Affidavit of Service Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Affidavit of Service - Red Rock Financial Services LLC</i>
10/21/2016	 Affidavit of Service Filed By: Plaintiff Ocwen Loan Servicing, LLC Party Served: Defendant First 100 LLC <i>Affidavit of Service - First 100 LLC</i>

CASE SUMMARY

CASE NO. A-14-696357-C

10/22/2016	 Initial Appearance Fee Disclosure Filed By: Defendant United Legal Services Inc <i>Initial Appearance Fee Disclosure</i>
10/22/2016	 Answer to Amended Complaint Filed By: Defendant United Legal Services Inc <i>United Legal Services Inc.'s Answer to Amended Complaint</i>
10/31/2016	 Motion to Dismiss Filed By: Defendant Red Rock Financial Services LLC <i>Defendant Red Rock Financial Services, LLC's Motion to Dismiss Ocwen Loan Servicing, LLC's First Amended Complaint or, in the Alternative, Motion for Summary Judgment</i>
10/31/2016	 Initial Appearance Fee Disclosure Filed By: Defendant Red Rock Financial Services LLC <i>Initial Appearance Fee Disclosure</i>
12/06/2016	 Stipulation and Order for Dismissal Without Prejudice Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Stipulation and Order to Dismiss Defendant Red Rock Financial Services, LLC Without Prejudice</i>
01/03/2017	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/03/2017	 Stipulation and Order Filed by: Defendant Chersus Holdings, LLC <i>Stipulation and Order to Extend Discovery and Trial [Second]</i>
01/05/2017	 Notice of Entry of Order Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order</i>
02/21/2017	 Notice of Appearance Party: Defendant Southern Terrance Homeowners Association <i>Notice of Appearance</i>
02/21/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Southern Terrance Homeowners Association <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
03/20/2017	 Notice of Intent to Take Default Party: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Intent to Take Default</i>
04/07/2017	 Demand for Jury Trial Filed By: Defendant Southern Terrance Homeowners Association <i>Southern Terrace Homeowners Association's Demand for Jury Trial</i>
04/07/2017	 Disclosure Statement Party: Defendant Southern Terrance Homeowners Association <i>Southern Terrace Homeowners Association's Corporate Disclosure Statement</i>
04/07/2017	 Answer to Amended Complaint

CASE SUMMARY

CASE NO. A-14-696357-C

Filed By: Defendant Southern Terrace Homeowners Association
Southern Terrace Homeowners Association's Answer to First Amended Complaint

04/13/2017	 Early Case Conference Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Supplemental Early Case Conference</i>
05/09/2017	 Notice of Entry Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Entry of Order</i>
05/26/2017	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Stipulation and Order to Extend Discovery and Continue Trial Date (Third Request)</i>
05/31/2017	 Amended Order Setting Jury Trial <i>Amended Order Setting Jury Trial</i>
05/31/2017	 Amended Affidavit of Service Party: Plaintiff Ocwen Loan Servicing, LLC <i>Amended Affidavit of Service</i>
07/18/2017	 Substitution of Attorney Filed by: Defendant Chersus Holdings, LLC <i>Substitution of Counsel</i>
09/18/2017	 Motion to Amend Complaint Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Motion for Leave to Amend Its Complaint</i>
10/02/2017	 Notice of Non Opposition Filed By: Defendant Chersus Holdings, LLC <i>Notice of Non-Opposition</i>
11/04/2017	 Motion for Summary Judgment <i>United Legal Services Inc.'s Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Causes of Action [Wrongful Foreclosure and Tortious Interference with Contract]</i>
11/06/2017	 Certificate of Service <i>Certificate of Service</i>
12/04/2017	 Opposition to Motion Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Opposition to United Legal Services Inc.'s Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Causes of Action [Wrongful Foreclosure and Tortious Interference with Contract]</i>
12/12/2017	 Notice of Rescheduling <i>Notice of Rescheduling</i>
12/15/2017	 Order Granting Motion <i>Order Granting Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint</i>
12/20/2017	 Stipulation and Order

CASE SUMMARY

CASE NO. A-14-696357-C

Stipulation and Order for Extension of Time and Continuance of Hearing of United Legal Services, Inc.'s Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Causes of Action

01/13/2018



Notice of Entry of Order
Notice of Entry of Order

01/23/2018



Second Amended Complaint
Second Amended Complaint

01/29/2018



Stipulation and Order
Filed by: Defendant Chersus Holdings, LLC
Stipulation and Order to Extend Discovery and Continue Trial Date (Fourth Request)

02/02/2018



Stipulation and Order for Dismissal Without Prejudice
Stipulation and Order to Dismiss Defendant, United Legal Services Inc. Without Prejudice

03/06/2018



Summons Electronically Issued - Service Pending
Summons

03/06/2018



Summons Electronically Issued - Service Pending
Summons

03/09/2018



Answer and Counterclaim
Filed By: Defendant Chersus Holdings, LLC
Answer to Second Amended Complaint and Counterclaim Against Plaintiff

03/19/2018



Affidavit of Service
Filed By: Plaintiff Ocwen Loan Servicing, LLC
Party Served: Defendant Red Rock Financial Services LLC
Affidavit of Service - Red Rock Financial Services LLC (on 2nd Amended Comp)

03/23/2018



Affidavit of Service
Filed By: Plaintiff Ocwen Loan Servicing, LLC
Party Served: Defendant First 100 LLC
Affidavit of Service - First 100 LLC (on 2nd Amended Comp)

04/05/2018



Answer to Amended Complaint
Southern Terrace Homeowners Association s Answer To Second Amended Complaint

04/10/2018



Notice of Entry of Stipulation and Order
Notice of Entry of Stipulation and Order to Dismiss United Legal Services Without Prejudice

06/06/2018



Motion to Dismiss
Filed By: Plaintiff Ocwen Loan Servicing, LLC
Defendant Red Rock Financial Services, LLC's Motion to Dismiss Ocwen Loan Servicing, LLC's Second Amended Complaint

06/28/2018



Stipulation and Order
Stipulation and Order to Continue Hearing on Defendant Red Rock Financial Services, LLC's Motion to Dismiss Ocwen Loan Servicing, LLC's Second Amended Complaint

07/20/2018



Notice of Intent to Take Default
Three Day Notice of Intent to Take Default Against First 100, LLC

CASE SUMMARY

CASE NO. A-14-696357-C

08/10/2018	 Order Setting Civil Jury Trial <i>Amended Order Setting Civil Bench Trial</i>
08/22/2018	 Stipulation and Order <i>Stipulation and Order to Continue Deadline for Dispositive Motions and Continue Trial Date</i>
08/27/2018	 Amended Order Setting Jury Trial <i>Amended Order Setting Jury Trial</i>
10/15/2018	 Default Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Default - First 100, LLC (on 2nd Amended Comp)</i>
10/17/2018	 Stipulation and Order for Dismissal Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Stipulation and Order to Dismiss Defendant, Red Rock Financial Services, LLC</i>
10/18/2018	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Entry of Stipulation and Order to Dismiss Defendant, Red Rock Financial Services, LLC</i>
10/18/2018	 Notice of Entry of Default Party: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Entry of Default</i>
10/19/2018	 Motion for Summary Judgment Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Motion for Summary Judgment</i>
10/19/2018	 Request for Judicial Notice Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Request for Judicial Notice in support of Motion for Summary Judgment</i>
10/22/2018	 Motion for Summary Judgment Filed By: Defendant Chersus Holdings, LLC <i>Chersus Holdings LCC Motion for Summary Judgment</i>
10/24/2018	 Errata Filed By: Defendant Chersus Holdings, LLC <i>ERR - Errata to Defendant Chersus Holdings Motion for Summary Judgment</i>
10/24/2018	 Exhibits Filed By: Defendant Chersus Holdings, LLC <i>EXHS - Exhibits to Errata to Def Chersus Holdings MSJ</i>
11/09/2018	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Opposition to Defendant Chersus Holdings' Motion for Summary Judgment</i>
11/13/2018	 Motion for Summary Judgment

CASE SUMMARY

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Southern Terrace Homeowners Association s Motion For Summary Judgment

11/15/2018	 Notice of Motion Filed By: Defendant Chersus Holdings, LLC <i>Notice of Motion</i>
11/16/2018	 Opposition to Motion For Summary Judgment Filed By: Defendant Chersus Holdings, LLC <i>Defendant/ Counterclaimant, Chersus Holdings, LLC's Opposition to Plaintiff, Ocwen Loan Servicing, LLC's Motion for Summary Judgment</i>
11/19/2018	 Stipulation and Order <i>Stipulation And Order To Extend Time For Southern Terrace Homeowners Association To File It s Motion For Summary Judgment</i>
11/20/2018	 Notice of Entry <i>Notice of Entry of Stipulation And Order To Extend Time For Southern Terrace Homeowners Association To File It s Motion For Summary Judgment</i>
12/06/2018	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
12/10/2018	 Opposition to Motion For Summary Judgment <i>Ocwen Loan Servicing, LLC's Opposition to Southern Terrace Homeowners Association's Motion for Summary Judgment</i>
01/03/2019	 Reply Filed by: Defendant Chersus Holdings, LLC <i>CHERSUS HOLDINGS, LLC REPLY TO OCWEN S OPPOSITION TO CHERSUS HOLDINGS, LLC MOTION FOR SUMMARY JUDGMENT</i>
01/03/2019	 Reply Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Reply in Support of Motion for Summary Judgment</i>
02/20/2019	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Ocwen Loan Servicing, LLC's Motion for Summary Judgment'southern Terrave Homeowners Assocaition's Motion for Summary Judgment, January 22, 2019</i>
05/06/2019	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Chersus Holdings, LLC <i>Findings of Fact, Conclusions of Law and Order</i>
05/07/2019	 Notice of Entry of Order Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order</i>
06/06/2019	 Notice of Change of Address Filed By: Defendant Chersus Holdings, LLC <i>Notice of Change Address</i>
06/11/2019	 Motion to Reconsider Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration</i>

CASE SUMMARY

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Pursuant to N.R.C.P. 59 and 60

06/11/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/02/2019	 Opposition to Motion Filed By: Defendant Chersus Holdings, LLC <i>Opposition to Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60</i>
07/11/2019	 Reply in Support Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Reply in support of Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60</i>
07/12/2019	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
08/14/2019	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
09/06/2019	 Notice <i>Ocwen Loan Servicing, LLC's Notice of Supplemental Authority in Support of Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60</i>
09/18/2019	 Supplemental Filed by: Defendant Chersus Holdings, LLC <i>Response to Notice of Supplemental Authority</i>
10/04/2019	 Notice of Rescheduling of Hearing <i>Motion to Alter or Amend Judgment and for Reconsideration and Opposition to Alter or Amend Judgment</i>
10/12/2019	 Memorandum of Costs and Disbursements Filed By: Defendant Chersus Holdings, LLC <i>Memorandum of Costs and Disbursements</i>
10/12/2019	 Motion for Judgment Filed By: Defendant Chersus Holdings, LLC <i>Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, tatutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Orders for Specific Performance</i>
10/12/2019	 Declaration Filed By: Defendant Chersus Holdings, LLC <i>Declaration of John Zimmer</i>
10/12/2019	 Declaration Filed By: Defendant Chersus Holdings, LLC <i>Declaration of Jagdish Mehta in Support of Chersus's Motion For: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Orders for Specific Performance</i>
10/12/2019	 Declaration Filed By: Defendant Chersus Holdings, LLC

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Declaration of Vernon Nelson

10/12/2019	 Memorandum of Costs and Disbursements Filed By: Defendant Chersus Holdings, LLC <i>Memorandum of Costs and Disbursements</i>
10/15/2019	 Motion to Retax <i>Ocwen Loan Servicing, LLC's Motion to Retax and Settle Costs</i>
10/16/2019	 Notice of Motion Filed By: Defendant Chersus Holdings, LLC <i>Notice of Motion</i>
10/16/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/29/2019	 Opposition to Motion Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Opposition to Chersus Holdings, LLC's Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings, LLC; and (3) Orders for Specific Performance</i>
10/30/2019	 Order Denying Motion Filed By: Defendant Chersus Holdings, LLC <i>(1/27/20 Reversed) Order Denying Plaintiff's Motion for Reconsideration</i>
11/07/2019	 Notice of Entry <i>NOTICE OF ENTRY ORDER DENYING PLAINTIFF S MOTION FOR RECONSIDERATION</i>
11/07/2019	 Notice of Entry <i>NOTICE OF ENTRY ORDER DENYING PLAINTIFF S MOTION FOR RECONSIDERATION</i>
11/07/2019	 Notice of Entry Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order Denying Plaintiffs Motion for Reconsideration</i>
11/17/2019	 Reply to Motion Filed By: Defendant Chersus Holdings, LLC <i>Chersus Holdings, LLC'S Reply to Ocwen Loan Servicing, LLC'S Opposition to Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Orders for Specific Performance.</i>
11/18/2019	 Motion to Reconsider <i>Ocwen Loan Servicing, LLC's Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60</i>
11/19/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/18/2019	 Motion Filed By: Defendant Chersus Holdings, LLC <i>Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30,2019 Order Pursuant to NRCP 59 and 60 on Order Shortening Time (First Request)</i>

CASE SUMMARY

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12/19/2019	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
12/20/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/20/2019	 Motion to Vacate Filed By: Defendant Chersus Holdings, LLC <i>Motion to Vacate Hearing on Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60</i>
12/30/2019	 Opposition to Motion <i>Ocwen Loan Servicing, LLC's Opposition to Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60</i>
12/30/2019	 Declaration Filed By: Defendant Chersus Holdings, LLC <i>Second Declaration of Jagdish Mehta</i>
01/27/2020	 Order Granting Motion <i>Order Granting Ocwen Loan Servicing, LLC's Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60</i>
02/03/2020	 Notice of Entry of Order Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Entry of Order</i>
02/20/2020	 Order Filed By: Defendant Chersus Holdings, LLC <i>Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60</i>
02/20/2020	 Notice of Entry Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order Denying Ocwen Loan Servicing LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60</i>
03/06/2020	 Notice of Appeal Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Appeal</i>
03/06/2020	 Case Appeal Statement Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Case Appeal Statement</i>
03/18/2020	 Proof of Service Filed by: Defendant Chersus Holdings, LLC <i>Proof of Service</i>
03/18/2020	 Proof of Service Filed by: Defendant Chersus Holdings, LLC <i>Proof of Service</i>

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09/14/2020	 Request Filed by: Plaintiff Ocwen Loan Servicing, LLC <i>Request for Transcripts</i>
10/05/2020	 Recorders Transcript of Hearing <i>Transcript of Proceedings; February 6, 2020; Ocwen Loan Servicing, LLC Mot to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59&60.</i>
12/03/2020	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case - Summary Judgment</i>
12/09/2020	 Notice of Hearing <i>PROVE UP HEARING</i>
01/04/2021	Administrative Reassignment - Judicial Officer Change <i>Judicial Reassignment to Judge Nadia Krall</i>
01/12/2021	 Notice of Association of Counsel Filed By: Defendant Southern Terrace Homeowners Association <i>Notice of Association of Counsel</i>
01/12/2021	 Notice of Appearance <i>Notice of Appearance of Steven T. Jaffe, Esq.</i>
03/01/2021	 Substitution of Attorney Filed by: Defendant Southern Terrace Homeowners Association <i>Substitution of Attorneys for Defendant, Southern Terrace Homeowners Association</i>
03/04/2021	 Request for Judicial Notice Filed By: Defendant Chersus Holdings, LLC <i>Request for Judicial Notice</i>
03/22/2021	 Order Filed By: Defendant Chersus Holdings, LLC <i>Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC</i>
03/22/2021	 Notice of Entry Filed By: Defendant Chersus Holdings, LLC <i>Notice of Entry of Order Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC</i>
03/23/2021	 Notice of Appeal Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Notice of Appeal</i>
03/23/2021	 Case Appeal Statement Filed By: Plaintiff Ocwen Loan Servicing, LLC <i>Ocwen Loan Servicing, LLC's Case Appeal Statement</i>

DISPOSITIONS

12/06/2016	Order of Dismissal Without Prejudice (Judicial Officer: Earley, Kerry) Debtors: Red Rock Financial Services LLC (Defendant) Creditors: Ocwen Loan Servicing, LLC (Plaintiff) Judgment: 12/06/2016, Docketed: 12/13/2016
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CASE SUMMARY

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02/02/2018	Order of Dismissal Without Prejudice (Judicial Officer: Earley, Kerry) Debtors: United Legal Services Inc (Defendant) Creditors: Ocwen Loan Servicing, LLC (Plaintiff) Judgment: 02/02/2018, Docketed: 02/02/2018
10/17/2018	Order of Dismissal Without Prejudice (Judicial Officer: Earley, Kerry) Debtors: Red Rock Financial Services LLC (Defendant) Creditors: Ocwen Loan Servicing, LLC (Plaintiff) Judgment: 10/17/2018, Docketed: 10/17/2018
05/06/2019	Summary Judgment (Judicial Officer: Earley, Kerry) Debtors: Ocwen Loan Servicing, LLC (Plaintiff) Creditors: Southern Terrance Homeowners Association (Defendant) Judgment: 05/06/2019, Docketed: 05/07/2019
05/06/2019	Order of Dismissal With Prejudice (Judicial Officer: Earley, Kerry) Debtors: Ocwen Loan Servicing, LLC (Plaintiff) Creditors: Chersus Holdings, LLC (Defendant) Judgment: 05/06/2019, Docketed: 05/07/2019
05/06/2019	Judgment (Judicial Officer: Earley, Kerry) Debtors: Ocwen Loan Servicing, LLC (Counter Defendant) Creditors: Chersus Holdings, LLC (Counter Claimant) Judgment: 05/06/2019, Docketed: 05/07/2019 Comment: Certain Claims
05/06/2019	Partial Summary Judgment (Judicial Officer: Earley, Kerry) Debtors: Ocwen Loan Servicing, LLC (Counter Defendant) Creditors: Chersus Holdings, LLC (Counter Claimant) Judgment: 05/06/2019, Docketed: 05/07/2019 Comment: Certain Claims
05/06/2019	Order of Dismissal With Prejudice (Judicial Officer: Earley, Kerry) Debtors: Ocwen Loan Servicing, LLC (Counter Defendant) Creditors: Chersus Holdings, LLC (Counter Claimant) Judgment: 05/06/2019, Docketed: 05/07/2019
03/22/2021	Judgment Plus Legal Interest (Judicial Officer: Krall, Nadia) Debtors: Ocwen Loan Servicing, LLC (Plaintiff) Creditors: Chersus Holdings, LLC (Defendant) Judgment: 03/22/2021, Docketed: 03/23/2021 Total Judgment: 79,172.17
	HEARINGS
09/25/2014	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Thompson, Charles) <i>Plaintiff Ocwen Loan Servicing, LLC'S Motion for Summary Judgment</i>
09/25/2014	Opposition and Countermotion (8:30 AM) (Judicial Officer: Thompson, Charles) <i>Defendant/Counter-Claimant's Opposition to Motion for Summary Judgment and Defendant/Counter-Claimant's Countermotion for Summary Judgment</i>
09/25/2014	 All Pending Motions (8:30 AM) (Judicial Officer: Thompson, Charles) Continued for Chambers Decision; Journal Entry Details: <i>PLAINTIFF OCWEN LOAN SERVICING, LLC'S, MOTION FOR SUMMARY JUDGMENT... DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND DEFENDANT/COUNTER-CLAIMANT'S COUNTERMOTION FOR SUMMARY JUDGMENT Attorney Donna Dimaggio present for Defendant Chersus Holdings. At request of counsel, COURT ORDERED, Plaintiff's Motion for Summary Judgment is WITHDRAWN. A briefing scheduled is set as follows for the Defendant/Counter-Claimant's</i>

CASE SUMMARY

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Countermotion for Summary Judgment: Plaintiff's Supplemental Briefing Due: 10/21/14
Defendant's Opposition Due: 11/4/14 Plaintiff's Reply Due: 11/25/14 DECISION: 12/24/14 -
CHAMBERS COURT ORDERED, matter SET for Decision: Defendant/Counter-Claimant's
Countermotion for Summary Judgment on the Chambers Calendar. Ms. Dimaggio inquired as
to the Plaintiff's lis pendens on the property. Mr. Fink advised he would look at it and contact
her. Court noted if not, Defendant will file a Motion with attorney's fees and it will be Granted.
12/24/14 DECISION: DEFENDANT/COUNTER-CLAIMANT'S COUNTERMOTION FOR
SUMMARY JUDGMENT - CHAMBERS ;

12/09/2014



Minute Order (3:00 AM) (Judicial Officer: Earley, Kerry)

Defendant/Counter-Claimant Chersus Holdings, LLC's Motion to Strike Plaintiff/
Counterdefendant Ocwen Loan Servicing, LLC's Supplemental Brief in Opposition to
Defendant/Counter-Claimant's Motion for Summary Judgment on an Order Shortening Time --
- DENIED BY MINUTE ORDER 12/9/14

Minute Order - No Hearing Held;

Journal Entry Details:

Pursuant to EDCR 2.23, the Court has decided this matter without oral argument. The Court
having reviewed Defendant/Counter-Claimant Chersus Holdings, LLC's Motion to Strike
Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC's Supplemental Brief In Opposition
To Defendant/Counter-Claimant's Motion For Summary Judgment On An Order Shortening
Time and the papers and pleadings on file herein, hereby DENIES the instant Motion. To
address any claimed prejudice, Defendant/Counter-Claimant Chersus Holdings, LLC shall
have up to and including January 2, 2015, to file a Response to Plaintiff/Counter-Defendant
Ocwen Loan Servicing's Reply To Supplement To Summary Judgment. No further briefing will
be permitted. Decision on this matter is CONTINUED to the Court's CHAMBER Calendar on
January 26, 2015. The hearing currently scheduled for December 11, 2014, at 8:30 AM is
hereby VACATED. Ms. DiMaggio to prepare the Order and circulate for approval as to form
and content. CLERK'S NOTE: A copy of this Minute Order was distributed to the following
parties via e-mail: Donna DiMaggio, Esq. ddimaggio@weildrage.com] and Kristin A.
Schuler-Hintz, Esq. [khintz@mccarthyholthus.com]. (KD 12/9/14) ;

12/11/2014

CANCELED Motion to Strike (8:30 AM) (Judicial Officer: Earley, Kerry)

Vacated

Defendant/Counter-Claimant Chersus Holdings, LLC's Motion to Strike Plaintiff/
Counterdefendant Ocwen Loan Servicing, LLC's Supplemental Brief in Opposition to
Defendant/Counter-Claimant's Motion for Summary Judgment on an Order Shortening Time

05/04/2015



Decision (3:00 AM) (Judicial Officer: Earley, Kerry)

Decision: Defendant/Counter-Claimant's Countermotion for Summary Judgment

Pursuant to 12/9/14 Minute Order

Minute Order - No Hearing Held;

Journal Entry Details:

This matter came before the court for Plaintiff OCWEN's Motion for Summary Judgment,
Defendant/Counter-Claimant Chersus Holdings, LLC's Opposition thereto, as well as
Defendant/Counter-Claimant's Countermotion for Summary Judgment. At the oral argument
scheduled for September 25, 2014, Plaintiff withdrew its Motion for Summary Judgment and
the Court set a briefing schedule for supplements to Defendant/Counter-Claimant's
Countermotion. Having reviewed the matters, along with all pleadings, points, and authorities
therein, the court hereby DENIES Defendant/Counter-Claimant's Countermotion for summary
judgment. First, the court FINDS that Chersus Holdings, LLC has not met its burden of
establishing the requisite facts to support its countermotion for summary judgment. Further
the Court FINDS there are genuine issues of material fact including, but not limited to,
whether the HOA sale was validly conducted, whether any tender of payment was made to pay
off the superpriority lien prior to the HOA foreclosure sale, or whether there was a federally-
protected interest in the subject loan. Counsel for Plaintiff to prepare the Order, to be
approved as to form and content by counsel for the Defendant/Counter-Claimant. CLERK'S
NOTE: The above minute order has been distributed to: Thomas N. Beckom, Esq.,
(TBeckom@mccarthyholthus.com) and Jason G. Martinez, Esq.,
(jmartinez@ggrmlawfirm.com). aw;

09/22/2015



Discovery Conference (9:30 AM) (Judicial Officer: Bulla, Bonnie)


Scheduling Order Will Issue;

Journal Entry Details:

CASE SUMMARY

CASE NO. A-14-696357-C

Counsel indicated the parties are waiting on a decision from a pending summary judgment motion from December 2014. Ms. Schuler-Hintz stated there is an indication there is a ruling, but parties are not aware of what the decision is and there has been no order filed. Discovery Commissioner will follow up on the summary judgment order with Judge Earley. Counsel anticipate 2 - 3 days for trial re: Quiet Title / Declaratory Relief. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 06/24/16; adding parties, amended pleadings, and initial expert disclosures DUE 03/28/16; rebuttal expert disclosures DUE 04/26/16; dispositive motions TO BE FILED BY 07/25/16. Scheduling Order will issue.;

05/02/2016	<p>Motion to Amend (3:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint; or, in the alternative, Motion to Stay Litigation</i></p> <p>Motion Granted; Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint; or, in the alternative, Motion to Stay Litigation</p> <p>Journal Entry Details:</p> <p><i>This matter came before the court for Plaintiff OCWEN Loan Servicing, LLC s Motion for Leave to Amend Its Complaint; or, in the alternative, Motion to Stay Litigation and Defendant/Counter-Claimant s Opposition thereto. Having reviewed the pleading, along with the points and authorities therein, the court orders Plaintiff s Motion to Amend GRANTED pursuant to NRCP 15(a). Counsel for Plaintiff to prepare the Order, to be approved as to form and content by counsel for the Defendant/Counter-Claimant. CLERK'S NOTE: The above minute order has been distributed to: Dana J. Nitz, Esq., (dnitz@wrightlegal.com) and Neil Durrant, Esq., (ndurrant@weildrage.com). aw;</i></p>
09/28/2016	<p>CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bonaventure, Joseph T.)</p> <p><i>Vacated - per Commissioner</i></p>
10/10/2016	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Commissioner</i></p>
12/07/2016	<p>CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Stipulation and Order</i></p> <p><i>Defendant Red Rock Financial Services, LLC's Motion to Dismiss Ocwen Loan Servicing, LLC's First Amended Complaint or, in the Alternative, Motion for Summary Judgment</i></p>
03/01/2017	<p>CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Stipulation and Order</i></p>
03/13/2017	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Stipulation and Order</i></p>
09/27/2017	<p>CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Stipulation and Order</i></p>
10/09/2017	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated - per Stipulation and Order</i></p>
10/23/2017	<p>Motion for Leave (3:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Ocwen Loan Servicing LLC's Motion for Leave to Amend it's Complaint</i></p>
11/02/2017	<p> Minute Order (2:00 PM) (Judicial Officer: Earley, Kerry)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>This matter came before the court for Plaintiff/Counter-Defendant OCWEN Loan Servicing, LLC s Motion for Leave to Amend Its Complaint, filed September 18, 2017 by counsel Natalie C. Lehman, Esq. A Notice of Non-Opposition was field October 2, 2017 by counsel Melissa Ingleby, Esq. Having received no Opposition to the matter and pursuant to NRCP 15(a), EDCR 2.20, and for good cause showing, the Court hereby GRANTS Plaintiff/Counter-Defendant Motion. Counsel for Plaintiff/Counter-Defendant to prepare the Order. Vernon a. Nelson, Jr., Esq. vnelson@nelsonlawfirmllv.com; Dana J. Nitz, Esq. dnitz@wrightlegal.net CLERK'S NOTE: This Minute Order was electronically served by Court Clerk, P. Irby, to all registered parties for Odyssey File & Serve./pi (11-2-17);</i></p>

CASE SUMMARY

CASE NO. A-14-696357-C

02/21/2018	CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Stipulation and Order</i> <i>United Legal Services Inc's Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Cause of Action [Wrongful Foreclosure and Tortious Interference with Contract]</i>
02/28/2018	CANCELED Pretrial/Calendar Call (9:30 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Stipulation and Order</i>
03/12/2018	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Stipulation and Order</i>
09/26/2018	CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - Superseding Order</i>
10/08/2018	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - Superseding Order</i>
10/16/2018	CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Hardcastle, Kathy) <i>Vacated</i> <i>Defendant Red Rock Financial Services LLC's Motion to Dismiss Ocwen Loan Servicing LLC's Second Amended Complaint</i>
01/10/2019	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) 01/10/2019, 01/22/2019 <i>Ocwen Loan Servicing, LLC's Motion for Summary Judgment</i> Continued;
01/10/2019	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) 01/10/2019, 01/22/2019 <i>Southern Terrace Homeowners Association's Motion for Summary Judgment</i> Continued;
01/10/2019	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) 01/10/2019, 01/22/2019 <i>Notice of Motion</i> Continued;
01/10/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Earley, Kerry) Matter Heard; Journal Entry Details: <i>OCWEN LOAN SERVICING, LLC'S MOTION FOR SUMMARY JUDGMENT SOUTHERN TERRACE HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT NOTICE OF MOTION Ms. Surur requested a continuance. Mr. Nitz had no objection. Ms. Surur stated she would be out of the country at the beginning of trial. Counsel stated there was a 5-year rule issue, however counsel agreed to waive the 5-year rule. Court advised a stipulation and order of the parties would be required. Mr. Nitz stated he would prepare the Order. CONTINUED TO: 1/22/19 9:00 AM;</i>
01/22/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Earley, Kerry) Matter Heard; Journal Entry Details: <i>OCWEN LOAN SERVICING, LLC'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT CHERSUS HOLDINGS' MOTION FOR SUMMARY JUDGMENT...SOUTHERN TERRACE HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT Mr. Nitz argued regarding case law and merits of the Ocwen's Motion for Summary Judgment. Mr. Nelson argued in opposition of the Motion and reviewed applicable case law. Ms. Surur addressed the notice issue, and requested supplemental briefing be provided by counsel, if necessary. COURT FURTHER ORDERED, Ocwen Loan Servicing, LLC's Motion for Summary Judgment DENIED. Mr. Nelson argued regarding Atkinson deposition testimony. Mr. Nitz provided opposition regarding foreclosure deed recitals and applicable case law. Court inquired</i>

CASE SUMMARY


CASE NO. A-14-696357-C


regarding slander of title, wrongful foreclosure and declaratory relief. COURT STATED FINDINGS, and ORDERED Chersus Holdings' Motion for Summary Judgment GRANTED; slander of title claim WITHDRAWN. COURT ORDERED, South Terrace Homeowners Association's Motion for Summary Judgment GRANTED IN PART; second cause of action DISMISSED WITH PREJUDICE pursuant to Rule 12(b)(5), third cause of action GRANTED, fourth cause of action GRANTED, fifth cause of action GRANTED, sixth cause of action GRANTED, seventh cause of action GRANTED, eighth cause of action GRANTED, and ninth cause of action GRANTED. Mr. Nelson stated he would prepare a Findings of Fact and Conclusions of Law. Upon counsels' inquiry, Court agreed to waive the 10 days for the Order to be submitted.;

01/31/2019 CANCELED Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry)
Vacated

02/19/2019 CANCELED Jury Trial (9:00 AM) (Judicial Officer: Earley, Kerry)
Vacated

09/19/2019 CANCELED Motion to Amend Judgment (9:00 AM) (Judicial Officer: Earley, Kerry)
Vacated
Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60



10/21/2019  Motion (3:00 AM) (Judicial Officer: Earley, Kerry)
Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 and Opposition to Ocwen Loan Servicing, LLC Motion to Alter or Amend Judgment and for Reconsideration.
Dismissed;
Journal Entry Details:
This matter came before the Court on October 21, 2019 on Plaintiff's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60, filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July, 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019, and a Notice of Supplemental Authority on September 6, 2019. Having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, the Court hereby enters its decision. COURT FINDS that NRCP 59(e) states that A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment. COURT FINDS that NRCP 59(f) states that The 28-day time periods specified in this rule cannot be extended under Rule 6(b). COURT FINDS that here, the Notice of Entry of the Judgment in question, the Findings of Fact, Conclusions of Law and Order granting summary judgment for Defendants Chersus Holdings, LLC and Southern Terrace Homeowners Association, was entered on May 6, 2019. COURT FINDS that Plaintiff's Motion to Alter or Amend Judgment was filed on June 11, 2019, 36 days after the Judgment was entered. THEREFORE, Plaintiff's Motion is DISMISSED pursuant to NRCP 59(e). The hearing scheduled for October 24, 2019 at 9am is hereby VACATED. Counsel for Defendants to prepare and submit the Order. ;

01/03/2020  Minute Order (3:00 AM) (Judicial Officer: Earley, Kerry)
Minute Order - No Hearing Held;
Journal Entry Details:
This matter came before the Court on Ocwen Loan Servicing, LLC's Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60, filed on November 18, 2019 by counsel Dana Jonathon Nitz, Esq. Defendant's Motion to Vacate Hearing on Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60 was filed on December 20, 2019 by counsel Vernon A. Nelson, Jr., Esq., wherein Defendant noted it was not filing an Opposition. Having reviewed all points, authorities, and exhibits, the Court hereby renders its opinion. Pursuant to EDCR 2.20, NRCP 59, NRCP 60, and for good cause shown, the Court hereby GRANTS Plaintiff's Motion for Reconsideration of the Court's October 30, 2019 Order. The October 30, 2019 Order denying Ocwen's June 11, 2019 Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 is hereby REVERSED, and a hearing set for this Motion is hereby set in Department IV on February 6, 2020 at 9:00 am. The hearing currently set on January 7, 2020 for Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order, and the hearing currently set on January 7, 2020 for Chersus Holding, LLC's Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory,

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-14-696357-C

	<p>and Punitive Damages; (2) Order Awarding Attorney s Fees to Chersus Holdings, LLC; and (3) Orders for Specific Performance are hereby VACATED. Counsel for Plaintiff to prepare and submit the Order. CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (1/3/20 amn).;</p>
01/07/2020	<p>CANCELED Motion for Judgment (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated</i></p> <p><i>Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, tatutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Orders for Specific Performance</i></p>
01/07/2020	<p>CANCELED Motion For Reconsideration (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated</i></p> <p><i>Ocwen Loan Servicing LLC's Motion for Reconsideration of the Court's October 30,2019 Order Pursuant to NRCP 59 and 60</i></p>
01/07/2020	<p>CANCELED Motion (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Vacated</i></p> <p><i>Defendant's Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30,2019 Order Pursuant to NRCP 59 and 60 on Order Shortening Time (First Request)</i></p>
02/06/2020	<p> Motion to Amend Judgment (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60</i></p> <p><i>Denied;</i></p> <p><i>Journal Entry Details:</i></p> <p><i>Mr. Jurani argued for reconsideration of the Court's order as the wrong analysis was applied by the Court. Argument regarding commercial reasonably and the factoring agreement. Opposition by Mr. Nelson. Statement there were multiple bidders present at the sale and the price was \$3,500.00. COURT ORDERED, motion for reconsideration, DENIED. Court finds that a Prove Up Hearing was necessary and would contact counsel with a Court date. Court advised that Ms. Surur was excused from attending the Prove Up Hearing. Mr. Nelson to prepare the order.;</i></p>
03/04/2021	<p> Prove Up (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p><i>Matter Heard;</i></p> <p><i>Journal Entry Details:</i></p> <p><i>Mr. Nelson stated case history. Mr. Lancaster stated they filed an objection to the bill of costs. Colloquy regarding Jagdish Mehta sworn and testified. Johnathan Zimmer sworn and testified. COURT ORDERED, Judgment GRANTED as follows: Rental loss \$58,050.00; costs in the amount it stated on the record and that are listed in the memorandum of costs and disbursements, filed October 12, 2019. The Court advised it was not going to order any award for taxes, trash, title policy and home inspection. As to specific Performance, COURT ORDERED, Ocwen to comply with any requests from the title company that is hired by Chersus to transfer title. COURT FINDS that on Attorney's fees it was reasonable for Ocwen to reject the offer of judgment based on the constant and current flux of law on these foreclosure issues. COURT FURTHER FINDS, attorney's fees were not warranted under NRS Section 45. COURT did not find that Ocwen acted with any malice based on the law that was in effect at the time. The Court advised it was also not going to award punitive or treble damages or for the personal property. Mr. Lancaster to prepare Order and provide to Mr. Lancaster as to form and content. ;</i></p>

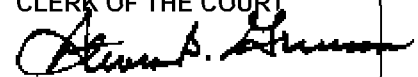
DATE

FINANCIAL INFORMATION

Defendant Red Rock Financial Services LLC	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 3/24/2021	0.00
Defendant United Legal Services Inc	
Total Charges	423.00

CASE SUMMARY**CASE NO. A-14-696357-C**

Total Payments and Credits	423.00
Balance Due as of 3/24/2021	0.00
Defendant Chersus Holdings, LLC	
Total Charges	623.00
Total Payments and Credits	623.00
Balance Due as of 3/24/2021	0.00
Defendant Southern Terrance Homeowners Association	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 3/24/2021	0.00
Plaintiff Ocwen Loan Servicing, LLC	
Total Charges	726.00
Total Payments and Credits	726.00
Balance Due as of 3/24/2021	0.00
Plaintiff Ocwen Loan Servicing, LLC	
Appeal Bond Balance as of 3/24/2021	500.00



1 **FFCO**
2 VERNON A. NELSON, JR., ESQ.
3 Nevada Bar No.: 6434
4 THE LAW OFFICE OF VERNON NELSON
5 9480 S. Eastern Ave., Ste. 252
6 Las Vegas, NV 89123
7 Tel.: 702-476-2500
8 Fax.: 702-476-2788
9 E-Mail: vnelson@nelsonlawfirmnv.com
10 Attorneys for Defendant Chersus Holdings, LLC

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DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; First 100, LLC, a
Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, A Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

Defendant,

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

2 Plaintiff/Counter-Defendant, Ocwen Loan Servicing LLC, ("Plaintiff" or "Ocwen"),
3 Defendant/Counter-Claimant, Chersus Holdings, LLC ("Chersus" or "Defendant Chersus"), and
4 Defendant Southern Terrace Homeowner's (hereinafter "the HOA") filed competing Motions for
5 Summary Judgment (the "Competing MSJ Motions"). The Court scheduled a hearing on January 22,
6 2019 to consider the Competing MSJ Motions, and the parties' respective oppositions to the
7 Competing MSJ Motions (the "MSJ Hearing"). Ocwen appeared through its counsel of record, Dana
8 Nitz, Esq. of the law firm of Wright, Finlay, & Zak, LLP. Defendant Chersus appeared through its
9 counsel of record, Vernon Nelson of the Law Offices of Vernon Nelson, PLLC. The HOA appeared
10 through its counsel of record, Ashlie Surur, Esq. of the law firm of Hall, Jaffe & Clayton, LLP.
11 Having duly considered all arguments and evidence presented by the parties including the arguments
12 made by counsel at the MSJ Hearing, and finding good cause therefore, the Court makes the
13 following Findings of Fact and Conclusions of Law:

14 **I. FINDINGS OF FACT**

15 **A. FACTUAL BACKGROUND**

16 ***1. Prior to Litigation***

17 **a. Harrison Loan Documents.**

18 1. On or about March 13, 2008, Joseph F. Harrison and Bonnie L. Harrison (hereinafter the
19 "Harrisons") purchased the property located at 5946 Lingerin Breeze St, Las Vegas, NV 89148
20 (APN 163-31-611-022) (hereinafter the "Property").

21 2. The Deed of Trust executed by the Harrisons (hereinafter the "Deed of Trust") identified
22 Direct Equity Mortgage, LLC as the Lender and Mortgage Electronic Registration Systems, Inc.
23 ("MERS") as beneficiary acting solely as a nominee for Lender and Lender's successors and assigns,
24 Nevada Title Company as Trustee, and secured a loan in the amount of \$234,739.00 (hereinafter the
25 "Harrison Loan").

26 3. On July 23, 2012, an Assignment of Deed of Trust was recorded, reflecting that MERS
27 assigned the Deed of Trust to GMAC Mortgage, LLC.
28

b. HOA Lien Documents.

4. The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Southern Terrace (the "CC&Rs"), which were recorded on August 9, 2001.

5. On December 8, 2011, a Lien for Delinquent Assessments (the "HOA Lien") was recorded against the Property by Red Rock Financial Services ("Red Rock") on behalf of the HOA. The HOA Lien was recorded as Instrument Number 201112080002960. The HOA Lien provides that Red Rock was officially assigned as agent by the HOA, in accordance with NRS 116, as outlined in the HOA's CC&Rs, and that Red Rock notified Mr. and Mrs. Harrison that the HOA imposed the HOA Lien on the Property.

6. On February 2, 2012, a Notice of Default and Election to Sell Pursuant to the HOA Lien was recorded against the Property by Red Rock, on behalf of the HOA, as Instrument Number 201202020000465. The Notice of Default and Election to Sell shows Red Rock notified Mr. and Mrs. Harrison that it had recorded a Notice that made it known that their obligation under the CC&Rs had been breached; and therefore, the HOA was declaring any and all amounts secured, due and payable, and electing the Property to be sold to satisfy the HOA Lien.

7. On May 2, 2013, a Notice of Foreclosure Sale was recorded against the Property by a new Trustee, United Legal Services, Inc. ("ULS"), as Instrument Number 01305020000105. The Notice of Foreclosure Sale shows that Mr. and Mrs. Harrison were notified and warned: (a) the sale of their property was imminent; (b) they had to pay the specified amount or risk losing their home; (c) if they continued to be in Default under the HOA Lien their home could be sold at auction, and (d) the auction was scheduled to be held on May 25, 2013 at 9:00AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123.

8. On or around May 28, 2013, a Foreclosure Deed upon Sale (the "First 100 Foreclosure Deed") was executed conveying Property to First 100, LLC ("First 100") pursuant to a sale (the "HOA Foreclosure" or the "HOA Sale") held under NRS Chapter 116 foreclosing on the HOA Lien. First 100 subsequently recorded the First 100 Foreclosure Deed on May 29, 2013 as Instrument number 201305290002514.

1 9. The first page of the First 100 Foreclosure Deed includes the following recitals:

2 *This conveyance is made pursuant to the powers conferred upon Agent by NRS*
3 *Chapter 116, the foreclosing Association's governing documents (CC&R's), and the*
4 *notice of the Lien for Delinquent Assessments, recorded on December 8, 2011 as*
5 *instrument 201112080002960 in the Official Records of the Recorder of Clark County,*
6 *Nevada. Default occurred as set forth in the Notice of Default and Election to Sell,*
7 *recorded on February 2, 2012 as instrument 201202020000465 in the Official Records*
8 *of the Recorder of Clark County, Nevada. All requirements of law have been complied*
9 *with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of*
10 *the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing,*
11 *posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with*
12 *the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164,*
13 *sold the property at public auction on May 25, 2013.*

14 **c. Subsequent Transfers of the Property.**

15 10. On August 24, 2012, a Substitution of Trustee was recorded, reflecting that Cooper
16 Castle Law Firm ("Cooper Castle") was substituted as Trustee under the Deed of Trust.

17 11. On March 6, 2013, a Notice of Breach and Default and of Election to Cause Sale of Real
18 Property Under Deed of Trust was recorded by Cooper Castle.

19 12. On October 23, 2013, First 100 sold the Subject Property to Defendant Chersus which
20 recorded its deed on January 13, 2014 as instrument number 201401130001734.

21 13. On or around December 20, 2013, GMAC Mortgage, LLC purported to foreclose on the
22 Property pursuant to its Deed of Trust. Plaintiff purportedly purchased the Property at the resulting
23 foreclosure sale (the "Deed of Trust Foreclosure" or the "Trustee Sale").

24 14. Plaintiff recorded its Trustee's Deed Upon Sale on January 7, 2014 (the "Ocwen Deed")
25 as instrument Number 201401070000775.

26 **2. The Litigation**

27 **a. Litigation Related to Ocwen's Initial Complaint**

28 15. Ocwen filed its initial Complaint commencing this action on February 19, 2014. Chersus
was the sole Defendant in the Complaint. In its Complaint, Ocwen alleged it is the owner of the
Property. Ocwen alleged it obtained its ownership interest in the Property via the Deed of Trust
Foreclosure. Ocwen alleged that any interest First 100 may have obtained in the Property was
subject to the Deed of Trust and that the Deed of Trust Foreclosure extinguished First 100's interest

1 in the Property; and any interest Chersus may have acquired in the Property. Ocwen asserted claims
2 for quiet title, and declaratory relief.

3 16. Chersus filed its Answer and Counterclaim on March 28, 2014. Chersus denied the
4 material allegations in the Complaint. In its Counterclaim, Chersus alleged that on November 13,
5 2014, First 100 put GMAC and Ocwen on actual notice that the HOA Lien had been foreclosed upon
6 and the Deed of Trust had been extinguished. Chersus alleged Ocwen was on constructive and actual
7 notice of the HOA Foreclosure. Yet, despite such notice Plaintiff wrongfully proceeded to acquire
8 the Property vial the Deed of Trust Foreclosure. Chersus asserted claims for wrongful foreclosure,
9 quiet title, declaratory relief, and conversion.

10 17. Plaintiff filed a Motion for Summary Judgment in April 2014. Defendant filed its
11 Opposition and a Countermotion for Summary Judgment (the "First MSJ Motions").

12 **b. The SFR Decision.**

13 18. During the pendency of the First MSJ Motions, the NV Supreme Court decided *SFR*
14 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) (the "SFR
15 Decision").

16 **c. Plaintiff Files Amended Complaint.**

17 19. Due to the SFR Decision, Plaintiff moved for leave to amend its complaint.

18 20. The Court granted Plaintiff's motion and it First Amended Complaint on June 24, 2016.
19 In its First Amended Complaint, Plaintiff restated its allegations against First 100; and it added
20 several defendants including, the HOA, Red Rock Financial Services LLC, ("Red Rock") and United
21 Legal Services, Inc. ("United").

22 **d. Allegations Included In First Amended Complaint Against Chersus**

23 ***(1) The Deed of Trust Priority Allegations.***

24 21. Plaintiff alleged: (a) any interest First 100 may have obtained in the Property was subject
25 to the Deed of Trust; (b) the Deed of Trust Foreclosure extinguished any interest that First 100 or
26 Chersus had in the Property; and (c) the HOA sale was invalid if it extinguished the Deed of Trust
27 (the "Deed of Trust Priority Allegations").
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1 ***(5) The CC&R Allegations***

2 25. Plaintiff alleged: (a) the CC&Rs for the HOA provided the HOA Lien was subordinate to
3 the Plaintiff's Deed of Trust; (b) the CC&Rs had a mortgagee protection clause; (c) due to the
4 mortgagee protection clause, and the lack of notice, Plaintiff did not know it had to attend the HOA
5 Sale to protect its Deed of Trust (the "CC&R Allegations").

6 ***(6) The Commercially Unreasonable Allegations***

7 26. Plaintiff alleged the HOA Sale was required to be performed in a commercially
8 reasonable manner and Defendants failed to do so. Thus, the HOA sale was invalid. Plaintiff alleged
9 the HOA Sale was not commercially reasonable because: (a) the fair market value of the Property, at
10 the time of the sale, greatly exceeded the purchase price; and (b) notice of the correct superpriority
11 amount was not provided. Plaintiff also referenced the mortgagee protection clause and alleged that
12 potential bidders were aware of the mortgagee protection clause.

13 27. Based on this alleged knowledge of potential bidders, Plaintiff alleged on the sale was
14 commercially unreasonable because: (a) proper notice that the HOA intended to foreclose on the
15 superpriority portion of the dues owing was not given; causing prospective bidders to not appear for
16 the HOA Sale; (b) proper notice was not given prospective bidders did not appear for the sale; (c)
17 Defendants knew Plaintiff would rely on the mortgagee protection clause and Plaintiff would not
18 know the HOA was foreclosing on superpriority amounts, due to the lack of notice, which resulted in
19 Plaintiff being absent; thereby allowing First 100 to acquire the property for a fraction of market
20 value. (d) Defendants knew (I) prospective bidders would be less likely to attend the HOA Sale due
21 to the mortgagee protection clause, (II) there would be an absence of prospective bidders. Plaintiff
22 made various allegations that the HOA Sale and NRS Chapter 116 were unconstitutional (the
23 "Commercially Unreasonable Allegations").

24 ***(7) The HOA's Duties Allegations***

25 28. Plaintiff alleged the circumstances of the HOA sale breached the HOA's and HOA's
26 trustee's obligations of good faith under NRS 116.1113 and their duty to act in a commercially
27 reasonable manner (the "HOA's Duties Allegations").

28 ***(8) The BFP Allegations***

1 29. Plaintiff alleged: (a) First 100 and Chersus are “professional foreclosure sale purchasers;”
2 (b) First 100 and Chersus had actual, constructive or inquiry notice of Plaintiff’s Deed of Trust; and
3 (c) because of their “notice” of the Deed of Trust, and their status as “professional foreclosure sale
4 purchasers,” First 100 or Chersus cannot be deemed bona fide purchasers for value (the “BFP
5 Allegations”).

6 ***(9) Plaintiff’s Damages Allegations***

7 30. Plaintiff alleged that if its Deed of Trust was not reaffirmed or restored, it was entitled to
8 damages from the HOA in the amount of the fair market value of the Property, or the unpaid balance
9 of due under Deed of Trust and underlying note, at the time of the HOA Sale, whichever is greater
10 (“Plaintiff’s Damages Allegations”).

11 31. Based on the allegations above, Plaintiff asserted claims for (a) Quiet Title and
12 Declaratory relief; (b) Preliminary and permanent injunctions; (c) Wrongful foreclosure against the
13 HOA, Red Rock, and ULS; (d) Negligence versus the HOA, Red Rock and ULS; (e) Negligence per
14 se versus the HOA, Red Rock, and ULS; (f) Breach of contract versus the HOA, Red Rock and ULS;
15 (g) Misrepresentation versus the HOA; (h) Unjust enrichment versus the HOA; (i) Tortious
16 interference with contract.

17 **e. Chersus’s Counterclaims**

18 32. On July 29, 2016, Chersus filed its Answer to the First Amended Complaint and asserted
19 a Counterclaim against Plaintiff. Chersus denied the material allegations of the First Amended
20 Complaint and it asserted Counterclaims against Ocwen as follows.

21 ***(1) The Chersus Title Allegations***

22 33. Chersus alleged: (a) the First 100 Foreclosure Deed conveyed the Property to First 100;
23 (b) the HOA Sale was held per NRS Chapter 116 and the HOA Sale foreclosed the HOA Lien; (c) on
24 October 23, 2013, First 100, LLC sold the Property to Defendant Chersus and recorded the Chersus
25 Deed on January 13, 2014 (the “Chersus Title Allegations”).

26 ***(2) The Ocwen Foreclosure Allegations***

27 34. Chersus alleged: (a) on November 13, 2014, First 100 put Plaintiff and its agents on
28 actual notice that the HOA Lien had been foreclosed on and the Deed of Trust was extinguished; (b)

1 despite being its notice of the HOA Sale, Ocwen proceeded to try to acquire the Property at the
2 Trustee's Sale in December 2014; and (c) it recorded the Ocwen Deed on January 7, 2014 (the
3 "Ocwen Foreclosure Allegations").

4 35. Based on these allegations, Chersus asserted claims for (1) Wrongful foreclosure; (2)
5 Quiet title; (3) Declaratory relief; and (4) Conversion.

6 **f. Causes of Action in the First Amended Complaint Against the HOA.**

7 36. Plaintiff asserted the allegations set forth above supported causes of action against the
8 HOA for Injunctive Relief, Wrongful Foreclosure, Negligence, Negligence Per Se, Breach of
9 Contract, Misrepresentation, Unjust Enrichment, and Tortious Interference.

10 **g. Ocwen's Second Amended Complaint and Dismissal of ULS & Red Rock.**

11 37. Red Rock filed a Motion to Dismiss the First Amended Complaint. In response, Ocwen
12 filed its Second Amended Complaint on January 23, 2018.

13 38. As to Chersus and the HOA, the allegations and Causes of Action asserted in Ocwen's
14 Second Amended Complaint are essentially the same as those asserted in First Amended Complaint,
15 except for the deletion of certain "Constitutional Claims."

16 39. Chersus answered the Second Amended Complaint on March 19, 2018, and denied all the
17 material allegations of the Second Amended Complaint. It reasserted its Counterclaims and added
18 Causes of Actions for Unjust Enrichment and Slander of Title.

19 40. The HOA filed its Answer on April 5, 2018. The HOA denied all the material allegations
20 of the Second Amended Complaint.

21 41. On April 10, 2018 a Notice of Stipulation and Order was entered dismissing ULS without
22 prejudice.

23 **h. Material Facts Revealed During Discovery**

24 *(1) Deposition Testimony of Red Rock's NRCP 30(b)(6) witness, Sara Trevino*

25 42. . Red Rock's 30(b)(6) witness, Sara Trevino testified about the notices Red Rock mailed
26 in this case and her testimony: (1) authenticated mailing affidavits signed by Red Rock employees
27 that state how many notices were signed and how many were mailed; (2) identified which notices are
28 sent by certified mail and first-class mail, which notices are sent by first-class mail only, (3) when

1 specific notices are sent; (4) how skip-traces and title reports are used to identify addresses for the
2 homeowners and others holding vested interests in the Property, (5) how Red Rock maintains "return
3 receipts" it receives from certified mail; (6) how Red Rock maintains checklists for each type of
4 notice that its employees are to follow when mailing notices and how this information is included in
5 the employees' mailing affidavits; (7) how Red Rock uses a third-party vendor Walz to mail many of
6 the notices; (8) how she knows that Walz maintains records proving it sent notices and (9) how she
7 is able to access Walz's system and obtain proof that notices were mailed. Thus, the Court finds Red
8 Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell
9 in accordance with NRS Chapter 116.

10 43. Ms. Trevino testified: (a) about payoff demands made by Cooper Castle on behalf of
11 GMAC Mortgage, LLC, (b) that Red Rock provided Cooper Castle with an Accounting Ledger in
12 response to its payoff demands; (c) Cooper Castle could have calculated the amount of the
13 superpriority lien by using the Accounting Ledger; (d) Red Rock did not receive any
14 communications from Cooper Castle after it sent them the Accounting Ledger; and (e) Red Rock
15 never received payment of the HOA Lien or a partial payment of the HOA Lien.

16 44. Based on Ms. Trevino's testimony, the Court finds GMAC Mortgage, LLC and Ocwen
17 had notice of the HOA Sale, they were provided with an Accounting Ledger, they could have
18 calculated the amount of the superpriority lien. Thus, GMAC and Ocwen could have calculated and
19 paid the superpriority lien, the full HOA Lien, or any amount in between those two amounts.
20 However, neither GMAC nor Ocwen paid any portion of the HOA Lien.

21 *(2) Deposition Testimony of ULS's NRCP 30(b)(6) witness, Robert Atkinson*

22 45. ULS's NRCP 30(b)(6) witness, Robert Atkinson, testified about the notices ULS mailed
23 out in this case and he: (a) authenticated the Notice of Foreclosure sale sent in this case and he
24 explained how it was mailed; (b) described how ULS conducts its own thorough investigation of the
25 "land records;" including the Assessor's Records to make sure they have the best addresses for the
26 property-owners and other parties holding vested interests in the Property; (c) authenticated the
27 "bulk form certificate of mail," known as Postal Service Form 3877; which evidences the notices
28 were delivered to the post-office and handed to a post-office clerk; (d) explains how ULS completed

1 the form by filling in the addresses for the Notices and by putting slashes on any unused lines; (e)
2 explains how the Post-Office Clerk goes and confirms and matches each address to each address on
3 the bulk form; (f) explains how once everything passes, the Post-Office Clerk verifies the mailing
4 with a stamp and gives the original back to ULS. The bulk form shows the Notices of Foreclosure
5 Sale were sent to GMAC Mortgage, LLC and Cooper Castle Law Firm, LLP. Based on this
6 testimony the Court finds ULS sent the Notices of Foreclosure in compliance with NRS 116.31162
7 through 116.31168.

8 46. ULS did not receive any payments prior to the HOA Sale.

9 47. The HOA Sale occurred on a Saturday at Attorney Robert Atkinson's office.

10 48. Mr. Atkinson testified that he conducted HOA sales on Saturday mornings because his
11 office did not have a conference room with closed doors and he did not want "a bunch of randoms"
12 wandering around his law office. He also testified: (a) he conducted the auction; (b) he recalled the
13 auction was well attended; (c) it was reasonable to infer that there was active bidding based on the
14 \$3,500 sales price; (d) a "core number of NRS 116 type buyers" usually always showed up for HOA
15 sales that he conducted in his office; and (e) many buyers attended foreclosure sales he conducted
16 for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

17 49. Mr. Atkinson testified about the Purchase and Sale Agreement ("PSA") between the
18 HOA and First 100. Pursuant to the PSA, First 100 purchased "Past Proceeds of Income" ("PPI") for
19 24 delinquent properties from the HOA. The PSA was negotiated in an "arms-length" tri-partite
20 agreement between First 100, the HOA, and ULS. Thus, the PSA did not affect the relationship
21 between the HOA and the Harrisons.

22 50. The amount of \$1,208.28 was an amount assigned to PPI for the Property. This amount
23 was based on a calculation that First 100 made in connection with evaluating the value of the PPI
24 related to the Property as part of the overall transaction.

25 51. First 100 paid the amount of the PPI provided for in the PSA. Pursuant to the PSA, First
26 100 paid ULS's fees of \$1,200.00 and certain fees owed to Red Rock. First 100 paid \$3,500.00 to the
27 HOA at the HOA Sale.

1 52. Mr. Atkinson described how ULS worked with First 100 and homeowners' associations
2 on the drafting of purchase and sales agreements like the PSA in this case. Mr. Atkinson testified
3 that First 100 routinely used the same form of purchase agreement.

4 53. The PSA provided for the purchase of "Past Proceeds of Income" ("PPI"), and it is akin
5 to a factoring agreement. The PSA did not amount the sale of the HOA Lien. Nothing in the PSA
6 changed the fact that the HOA Lien belonged to the HOA. Pursuant to the PSA, First 100 purchased
7 the right to receive all future monetization events related to the PPI.

8 54. The PSA provided that the HOA would retain ULS for collection efforts, including any
9 efforts related to the foreclosure of the HOA Lien.

10 55. The PSA provided that if ULS foreclosed on the HOA Lien, the minimum bid at the
11 foreclosure sale would be \$99. The PSA prohibited the HOA for making a credit bid and it
12 prohibited the HOA from interfering with any collection efforts.

13 56. Mr. Atkinson testified that, based on his experience, HOAs did not want to end up being
14 the winning bidder for a property based on a credit bid. Based on his experience, Mr. Atkinson stated
15 the HOAs did not want to be responsible for paying assessments, cleaning up the property, being
16 subject to self-compliance fines, or being responsible for kicking out squatters.

17 57. Based on his experience, Mr. Atkinson testified that HOAs were also afraid to take
18 properties to auction given the legal uncertainties surrounding HOA foreclosure sales.

19 *(3) Deposition Testimony of Chersus's NRCP 30(b)(6) witness, Jag Mehta.*

20 58. Mr. Mehta testified Chersus spent approximately \$40,000 in repairs on the Property.

21 59. Plaintiff, Chersus, and the HOA filed competing Motions for Summary Judgment.

22 **II. CONCLUSIONS OF LAW**

23 **A. Summary Judgment Standard**

24 60. N.R.C.P. Rule 56(e) states that summary judgment is in order when:

25 *The pleadings, depositions, answers to interrogatories, and admissions on file,*
26 *together with the affidavits, if any, show that there is no genuine issue as to any*
27 *material fact and that the moving party is entitled to a judgment as a matter of law.*

1 61. A genuine issue of material fact exists only when the evidence is adequate to where a
2 reasonable jury" would return a verdict for the non-moving party. *Dermody v. Reno*, 113 Nev. 207,
3 210 (1997). The Court will accept as true only properly supported factual allegations and reasonable
4 inferences of the party opposing summary judgment. *Wayment v. Holmes*, 112 Nev. 232, 237 (1996).
5 "Conclusory allegations and general statements unsupported by evidence creating an issue of fact
6 will not be accepted as true." *Id.*

7 62. The Nevada Supreme Court has provided additional clarity on the standards governing
8 summary judgment motions. *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P. 3d 1026 (2005). In
9 *Wood*, the Court "put to rest any questions regarding the continued viability of the 'slightest doubt'
10 standard," when it held that the "substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant." *Id.* Summary judgment is
12 particularly appropriate where issues of law are controlling and dispositive of the case. *American*
13 *Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P. 2d 274 (1979).

14 **B. NRS 116.3116 Granted to the HOA a Superpriority Lien That Had Priority**
15 **Over the Deed of Trust in Favor of GMAC Mortgage, LLC and, as a Result GMAC**
16 **Mortgage, LLC's Deed of Trust Was Extinguished at the HOA Sale.**

17 63. NRS 116.3116 provides in part:

18 *Liens against units for assessments.*

19 *1. The association has a lien on a unit for any construction penalty that is imposed*
20 *against the unit's owner pursuant to NRS 116.310305, any assessment levied against*
21 *that unit or any fines imposed against the unit's owner from the time the construction*
22 *penalty, assessment or fine becomes due. Unless the declaration otherwise provides,*
23 *any penalties, fees, charges, late charges, fines and interest charged pursuant to*
24 *paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as*
25 *assessments under this section. If an assessment is payable in installments, the full*
26 *amount of the assessment is a lien from the time the first installment thereof becomes*
27 *due.*

28 ...

2. A lien under this section is prior to all other liens and encumbrances on a unit
except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in
a cooperative, liens and encumbrances which the association creates, assumes or takes
subject to;

1 (b) *A first security interest on the unit recorded before the date on which the*
2 *assessment sought to be enforced became delinquent or, in a cooperative, the first*
3 *security interest encumbering only the unit's owner's interest and perfected before the*
4 *date on which the assessment sought to be enforced became delinquent; and*

5 (c) *Liens for real estate taxes and other governmental assessments or charges against*
6 *the unit or cooperative.*

7 64. Subsection 3 of NRS 116.3116 provides the lien created thereunder has priority over all
8 security interests described in paragraph (b) of subsection 2 to the extent of:

9 (a) *any charges incurred by the association on a unit pursuant to NRS 116.310312;*

10 (b) *The unpaid amount of assessments, not to exceed an amount equal to assessments*
11 *for common expenses based on the periodic budget adopted by the association*
12 *pursuant to NRS 116.3115 which would have become due in the absence of*
13 *acceleration during the 9 months immediately preceding the date on which the notice*
14 *of default and election to sell is recorded pursuant to paragraph (b) of subsection 1*
15 *of NRS 116.31162; and*

16 (c) *The costs incurred by the association to enforce the lien in an amount not to*
17 *exceed the amounts set forth in subsection 5....*

18 65. By its clear terms, NRS 116.3116 (2) provides the superpriority lien for assessments
19 which have come due in the 9 months prior to the initiation of an action to enforce the lien are "prior
20 to all security interests described in paragraph (b)." The Deed of Trust held by GMAC Mortgage,
21 LLC falls squarely within the language of paragraph (b). The statutory language does not limit the
22 nature of this "priority" in any way.

23 66. In its decision of *SFR Invs. Pool I, LLC v. US. Bank, NA.*, 334 P.3d 408, 411-412, 130
24 Nev. Adv. Rep. 75 (2014), the Supreme Court held that the foreclosure of the HOA superpriority
25 lien extinguishes first trust deeds. The SFR Decision holds the 9-month HOA superpriority lien has
26 precedence over the mortgage lien, and that the proper foreclosure of the HOA superpriority lien
27 extinguishes a first trust deed.

28 67. In the case at bar, the HOA Sale resulted in the foreclosure of the HOA's superpriority
lien on the Property. Consequently, when First 100 purchased the Property at the HOA Sale, it
extinguished the Deed of Trust in favor of GMAC Mortgage, LLC.

68. When First 100 conveyed the Property to Defendant Chersus, the Property was not
subject to the Deed of Trust in favor of GMAC Mortgage, LLC.

1 **C. THE HOA COMPLIED WITH THE NOTICE REQUIREMENTS OF NRS**
2 **CHAPTER 116.**

3 ***1. The Recitals in The First 100 Foreclosure Deed Prove the HOA Complied with***
4 ***The Notice Requirements of NRS Chapter 116.***

5 69. The recitals in the First 100 Foreclosure Deed establish both the default by Mr. and Mrs.
6 Harrison and the HOA's compliance with each of the notice requirements of NRS 116.31162
7 through 116.31168 for the public auction held on May 25, 2013.

8 70. NRS 116.31166(1) provides:

9 The recitals in a deed made pursuant to NRS 116.31164 of:

- 10 (a) *Default, the mailing of notice of delinquent assessment, and the recording of the*
11 (b) *notice of default and election to sell;*
12 (c) *The elapsing of the 90 days; and*
 (c) *The giving of notice of sale,*
 Are conclusive proof of the matters recited.

13 71. In *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 334 P.3d 408, 411-12
14 (2014), the Nevada Supreme Court recognized the "conclusive" effect of an HOA foreclosure deed
15 when it stated:

16 *NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and*
17 *specifies the distribution order for the proceeds of sale. A trustee's deed reciting*
18 *compliance with the notice provisions of NRS 116.31162 through NRS 116.31168 "is*
19 *conclusive" as to the recitals "against the unit's former owner, his or her heirs and*
20 *assigns, and all other persons." NRS 116.31166(2). And, "[t]he sale of a unit pursuant*
 to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
 unit's owner without equity or right of redemption. NRS 116.31166(3).

21 72. However, the enactment of NRS 116.31166 did not eliminate the court's equitable
22 authority to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals.
23 *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev.
24 2016). Equitable relief may still be available in the face of conclusive recitals, at least in cases
25 involving fraud, unfairness, or oppression. *Id.*

26 73. In this case, Plaintiff has produced no evidence that the HOA's agent did not mail the
27 notices to the holder of the beneficial interest of the Deed of Trust. Plaintiff has produced no
28 evidence that the HOA's agent did not provide for the elapsing of the 90 days. Plaintiff has not

1 provided any other evidence that the recitals are not accurate. Further, as is set forth in Section II(D)
2 below, Plaintiff has produced no evidence of fraud, unfairness, or oppression.

3 74. Thus, the recitals in First 100's Deed of Foreclosure are deemed to be conclusive proof
4 that the HOA complied with the notice requirements of NRS Chapter 116.

5 **2. Per the "Mailbox Rule," GMAC Mortgage, LLC Presumptively Received All of the**
6 **Notices Required Per NRS 116.31162 through 116.31168.**

7 75. Per the "mailbox rule," if the HOA's agents properly and timely mailed the required
8 notices, a rebuttable presumption is raised that the beneficiary of the Deed of Trust received the
9 notices. *See Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197, 1202-1203 (9th Cir. 1999). For the
10 presumption to arise, the sender must establish the notice was sent. *Id.* The sender can establish the
11 notice was sent by providing evidence of its standard business practices such as the use of
12 computerized tracking and filing software and the use of procedures that ensure the number of
13 outgoing notices correspond with the number of notices to be sent. *Turner v. Dep't of Educ.*, 2011
14 U.S. Dist. LEXIS 46421 (D. Haw. 2011) (citing *Mahon*, 171 F. 3d at 1199-1202).

15 76. Ms. Trevino's testimony about Red Rock's mailing procedures establishes the notices
16 sent by Red Rock were sent. Further, Mr. Atkinson's testimony about ULS's mailing procedures
17 establish the notices sent by ULS were sent. Thus, the Court finds GMAC Mortgage, LLC
18 presumptively received all of the notices required per NRS 116.31162 through 116.31168.

19 **D. FIRST 100'S PAYMENT TO THE HOA PURSUANT TO THE PSA WAS NOT**
20 **RELATED TO THE HOA LIEN AND, THEREFORE, IT DID NOT DISCHARGE**
21 **THE SUPERPRIORITY LIEN.**

22 77. Ocwen contends that First 100's payment to the HOA, pursuant to the PSA, discharged
23 the superpriority portion of the HOA Lien prior to the HOA sale. However, the PSA did not involve
24 a sale of the HOA Lien. First 100 purchased the right to receive future monetization events related to
25 the PPI.

26 78. The PSA did not affect the relationship between the Harrisons and the HOA in any way
27 and First 100's payment to the HOA, pursuant to the PSA did not affect the HOA Lien in any way.
28 Specifically, it did not discharge to superpriority portion of the HOA Lien.

1 79. In *West Sunset 2050 Trust v. Nationstar Mortgage*, 420 P. 3d 1032, (June 28, 2018), the
2 Nevada Supreme Court recently considered a case almost identical to this case. In *West Sunset 2050*
3 *Trust*, the Toscano Homeowners Association (“Toscano”), pursuant to a similar purchase and sale
4 agreement, sold to First 100 its “interest in any and all [proceeds on past income] arising from or
5 relating to the [Property’s] Delinquent Assessment. *Id.* at 1034.

6 80. In *West Sunset 2050 Trust*, the NV Supreme Court rejected Nationstar’s argument that
7 the purchase and sale agreement deprived HOA of standing to foreclose. 420 P3d. at 1036. The
8 Court determined the purchase and sale agreement provided for the sale of proceeds on past income
9 *Id.* The Court analogized the purchase and sale agreement to a “factoring agreement” and determined
10 the “factoring agreement” did not change the fact that the property owner remained indebted to the
11 HOA; and the property owner did not become indebted to First 100. *Id.* at 1037.

12 81. The Court emphasized that the HOA retained the exclusive right to collect the HOA Lien,
13 and it was required, through its agent, to continue collection efforts on past-due assessments. *Id.*
14 Thus, the Court held that the “factoring agreement” did not affect the HOA’s right to foreclose on the
15 property and that the HOA sale was valid. *Id.*

16 82. Based on the facts of this case, and the Court’s holding in *West Sunset 2050 Trust*, it is
17 clear that First 100’s payment to the HOA, pursuant to the PSA, did not affect the HOA Lien in any
18 way; and it did not extinguish the superpriority portion of the HOA Lien.

19 **E. OCWEN’S CONTENTION THAT THE HOA SALE WAS COMMERICIALLY**
20 **UNREASONABLE IS WITHOUT MERIT BECAUSE THE HOA SALE WAS VALID**
21 **AND DEFENDANT FAILED TO PRODUCE ANY EVIDENCE THAT FRAUD,**
22 **UNFAIRNESS, OR OPPRESSION AFFECTED THE SALE.**

23 83. Plaintiff contends that the sale was commercially unreasonable because the sales price
24 paid by First 100 at the HOA Sale was grossly inadequate; and because there was evidence that
25 fraud, unfairness, or oppression affected the sale. *See Shadow Wood Homeowners Ass’n v. New York*
Cnty. Bancorp. Inc., 366 P.3d 1105, 1112 (Nev. 2016).

26 84. In *Shadow Wood*, the NV Supreme Court held that NRS 116.31166 did not preclude
27 courts from granting equitable relief from a defective foreclosure sale when appropriate. 366 P.3d at
28

1 1110-1111. In this regard, the Court held that a foreclosure sale could be set aside if there was a
2 grossly inadequate sales price, and a showing of fraud, unfairness, or oppression. *Id.*

3 85. In *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d
4 641, 643-44, the Nevada Supreme Court clarified that inadequacy of price alone is not a sufficient
5 ground for setting aside foreclosure sale. *Id.* The Court further held that the party seeking to set aside
6 the sale had the burden of proving that fraud, unfairness, or oppression affected the sale. *Id.*

7 86. The Court also rejected the application of the commercial reasonableness standard from
8 UCC Article 9. *Id.* at 646. Thus, Plaintiff's arguments that the sale was commercially unreasonable
9 based on UCC Article 9 must be rejected.

10 87. A district court cannot grant equitable relief when an adequate remedy at law exists. *Las*
11 *Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 278 (1982). The
12 failure to utilize legal remedies makes granting equitable remedies unlikely. *Bayview Loan*
13 *Servicing, LLC v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 41309 (D. Nev. 2017).

14 ***(1) The HOA Sale Was Valid and Equitable Relief Is Not Warranted.***

15 88. As stated above, based on the facts of this case, and the Nevada Supreme Court's holding
16 in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (2018), the Court has
17 determined that the HOA Sale was valid. Therefore, the Court does not have authority to grant
18 equitable relief to the Plaintiff in this case. *Las Vegas Valley Water Dist.*, 98 Nev. at 278.

19 89. In this regard, it must also be noted that GMAC Mortgage, LLC and Plaintiff were aware
20 of the HOA Sale and they could have paid, or at least tendered, the amount of the superpriority
21 portion of the HOA Lien. Their failure to exercise adequate remedies at law precludes the granting
22 of equitable relief in this case.

23 ***(2) Even If Equitable Arguments Were Available to Plaintiff, It Failed to Show***
24 ***Fraud, Unfairness, or Oppression Affected the HOA Sale.***

25 90. To support of its contention that the HOA Sale was Commercially Unreasonable,
26 Plaintiff offered the report of expert witness, R. Scott Dugan to show that the price paid at the HOA
27 Sale was grossly inadequate. Mr. Dugan opined that the value of the Property was \$148,000 as of the
28 date of the HOA Sale. Plaintiff submitted that the \$3,500.00 paid by First 100 was 2.6% of the value

1 of the Property. Chersus did not produce an expert report disputing Mr. Dugan's analysis. However,
2 it contended First 100 and Chersus paid far more than \$3,500.00 to acquire the Property.

3 91. Whether the price paid at the HOA Sale was grossly inadequate need not be resolved
4 because Plaintiff has failed to show that fraud, unfairness, or oppression affected the sale.

5 92. In support of its contention that there was evidence that fraud, unfairness, or oppression
6 affected the sale, Plaintiff argued:

7 a. The HOA Sale was not conducted during normal business hours. The HOA Sale
8 took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern
Ave., Suite 350, Las Vegas, NV 89123.

9 b. The HOA, ULS and First 100 colluded to ensure that First 100 would obtain this
10 Property at the HOA Sale. Their PSA set the minimum bid at \$99, and prohibited the
11 HOA from making a credit bid at the HOA Sale or otherwise interfering with First
100's efforts to collect on the account or acquire the Property.

12 c. The HOA relinquished all authority to control the HOA Sale and irrevocably made
13 ULS its collection agent and foreclosure trustee for First 100.

14 d. Even though the HOA Sale allegedly took place in the HOA's name, all actions
15 were conducted for the benefit of First 100 pursuant to its agreement with the HOA.

16 e. There is fraud, oppression and unfairness associated with the foreclosure sale
17 because the HOA put the public on constructive notice in its CC&Rs—including First
18 100, and other prospective bidders — that the HOA's foreclosure would not disturb the
19 first Deed of Trust. The CC&Rs applicable to this Property contain two relevant
provisions (the "Mortgagee Protection Clauses"), which represented to the world the
HOA's foreclosure would not extinguish the Deed of Trust.

20 93. These arguments do not show that fraud, unfairness, or oppression affected the sale.

21 94. The fact that the HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's
22 office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123 does not demonstrate the sale was
23 patently unfair, fraudulent, or oppressive. In fact, ULS's NRCP 30(b)(6) witness, Robert Atkinson
24 testified he conducted HOA Sales on Saturday because his office did not have a conference room
25 and he did not want potential bidders wandering around his office. He also testified that he
26 conducted the auction and he recalled the auction was well attended. He also testified it was
27 reasonable to infer there was active bidding based on the \$3,500 sales price. He testified a "core
28 number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his

1 office. He testified many buyers attended foreclosure sales he conducted for the HOA and they
2 purchased homes at the foreclosure sales he conducted for the HOA. Thus, Plaintiff has failed to
3 show that conducting the HOA Sale on Saturday affected the HOA Sale.

4 95. Similarly, Plaintiff failed to show the HOA, ULS and First 100 colluded to ensure that
5 First 100 would obtain the Property at the HOA Sale. Mr. Atkinson testified a “core number of NRS
6 116 type buyers” usually always showed up for HOA sales he conducted in his office. He testified
7 many buyers, other than First 100, attended foreclosure sales he conducted for the HOA and
8 purchased homes at the foreclosure sales he conducted for the HOA.

9 96. The Court’s holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d
10 1032, 1037 (2018), is also contrary to the Plaintiff’s contention that the HOA, ULS, and First 100
11 unlawfully colluded. The Court analogized First 100’s purchase and sale agreement to a “factoring
12 agreement” and held factoring agreements serve the valid purpose of providing HOAs with
13 immediate access to cash, and help them meet their perpetual upkeep obligations. The Court added it
14 was disinclined to interfere with the HOA’s use of factoring agreements absent a theory as to how
15 factoring agreements result in harm.

16 97. In this case, the PSA signed by the HOA, ULS, and First 100 was akin to a “factoring
17 agreement” and it served the valid purpose of providing the HOA with access to cash. Plaintiff has
18 failed to provide any evidence that the HOA, ULS, and First 100 unlawfully colluded.

19 98. Similarly, Plaintiff’s other contentions related to the PSA do not show that fraud,
20 unfairness, or oppression affected the sale. First, contrary to Plaintiff’s complaints regarding the
21 \$99.00 minimum bid, Mr. Atkinson testified that he was not aware of any statutory requirement in
22 NRS Chapter 116 to establish a minimum bid; and the minimum bid was set at \$99.00 in the valid
23 PSA to encourage bidding. Next, contrary to Plaintiff’s complaints that the HOA was prohibited
24 from making a credit bid, Mr. Atkinson testified, in his experience, HOAs did not want to acquire a
25 property via a credit bid because they did not want to be responsible for paying assessments,
26 cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out
27 squatters. Finally, Plaintiff’s complaints that all actions were conducted for the benefit of First 100
28 pursuant to the PSA did not improperly affect the sale. In *West Sunset 2050 Trust*, the Court

1 recognized and did not object that the agreement required the HOA's agent to remit payments to
2 First 100. Again, Plaintiff's references to the PSA fail to show that fraud, unfairness, or oppression
3 affected the sale.

4 99. Plaintiff also argues there was fraud, oppression and unfairness associated with the
5 foreclosure sale because the HOA put the public on constructive notice in its CC&Rs, that the
6 HOA's foreclosure would not disturb the first Deed of Trust. In support of its argument, Plaintiff
7 cited to the United State District Court's holding in *Zzyzx 2 v. Dizon*, No. 2:13-CV-1307, 2016 U.S.
8 Dist. LEXIS 39467, 2016 WL 1181666 (D. Nev. 2016).

9 100. In *United States Bank N.A. v. Vistas Homeowners Ass'n*, 2018 Nev. Unpub. LEXIS
10 1146 (December 14, 2018) the Nevada Supreme Court rejected the appellant's argument that the
11 CC&R's mortgagee protection clause was evidence of unfairness. In opining that it was not
12 persuaded that evidence regarding the mortgage protection clause constituted unfairness, the Court
13 noted the appellant had not provided any evidence that potential bidders were misled by the CC&R's
14 protective covenant and that the bidding was chilled. *Id.* at *1. The court also noted that it must
15 presume that any bidders at the HOA Sale were also aware of NRS 116.1104, and therefore, they
16 were not misled. *Id.* at *2.

17 101. In *Vistas Homeowners*, the Court distinguished *Zzyzx 2* because, in *Zzyzx 2*, the HOA
18 sent a letter to the deed of trust beneficiary that it did not need to protect the Deed of Trust. *Id.* at fn.
19 2. The HOA in *Vistas Homeowners* did not send such a letter. *Id.*

20 102. In *Vistas Homeowners*, the Court also pointed out that in *SFR Inv. Pool 1, LLC v. U.S.*
21 *Bank, N.A.*, 334 P.3d 408, (2014), it had held that nothing in NRS 116.3116 expressly provides for
22 the waiver of the HOA's rights under NRS Chapter 116. *Id.* at *2. The Court determined that the
23 protective covenant in the *Vistas Homeowners* CC&R was not distinguishable from the covenant at
24 issue in *SFR*. *Id.*

25 103. Like the appellant in *Vistas Homeowners*, Plaintiff has failed to produce any evidence
26 showing the mortgagee protection clause in this case created unfairness. Further, Plaintiff failed to
27 produce any evidence that potential bidders were misled by the CC&R's protective covenant and
28 that bidding was chilled. Further, the Nevada Supreme Court's holding in *SFR* also applies in this

1 case and Plaintiff has failed to produce any evidence that mortgagee protection clause in this case is
2 distinguishable from the clauses in *SFR* or *Vistas Homeowners*.

3 **F. PLAINTIFF'S CONTENTIONS THAT NEITHER FIRST 100 NOR CHERSUS**
4 **WERE BONA FIDE PURCHASERS ARE IRRELEVANT.**

5 104. Plaintiff argues that the HOA Sale was not valid because neither First 100 nor Chersus
6 is a bona fide purchaser because they purchased the property with notice of Ocwen's interest in the
7 property.

8 105. Defendant Chersus disputes Plaintiff's contention it was not a bona fide purchaser.

9 106. Again, however, the Nevada Supreme Court recently held in *West Sunset 2050 Trust*,
10 that since the underlying HOA sale was valid, the Court did not need to resolve a dispute as to
11 whether First 100 and Chersus were bona fide purchasers. 420 P 3d. at 1037.

12 107. Again, this Court holds the HOA Sale was a valid sale and Plaintiff is not entitled to any
13 equitable relief. Thus, Plaintiff's arguments about whether First 100, LLC or Defendant Chersus
14 were bona fide purchasers are irrelevant.

15 **G. CHERSUS IS ENTITLED TO JUDGMENT ON ITS COUNTERCLAIMS AS TO**
16 **ITS FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, AS A**
MATTER OF LAW.

17 108. Chersus has proven that the undisputed facts and circumstances surrounding the HOA
18 Sale. Chersus has also demonstrated it is entitled to judgment on its Counterclaims as to its First,
19 Second, Third, Fourth, and Fifth Causes of Action, as a matter of law. At the MSJ Hearing, Chersus
20 agreed to voluntarily dismiss its Sixth Cause of Action.

21 ***1. Wrongful Foreclosure***

22 109. In support of its claim for wrongful foreclosure, Chersus established that at the time
23 GMAC Mortgage, LLC exercised the power of sale and foreclosed, that no breach of condition or
24 failure of performance existed on Chersus's part which would have authorized the foreclosure or
25 exercise of the power of sale. There is no dispute that when GMAC Mortgage, LLC exercised the
26 power of sale and foreclosed, its Deed of Trust had been extinguished by the foreclosure sale. There
27 is no dispute that GMAC Mortgage, LLC and Plaintiff knew that after the HOA Sale: (1) GMAC
28 Mortgage, LLC had no interest in the Property; (2) GMAC Mortgage, LLC had no authority

1 whatsoever to authorize the foreclosure or exercise the power of sale that had been extinguished by
2 the HOA Foreclosure sale; (3) GMAC Mortgage, LLC had no authority to convey the Property to
3 Plaintiff; and (4) Plaintiff had no right or authority to take possession of the Property.

4 110. Thus, the authorization of the foreclosure sale, the exercise of the power of sale, the sale
5 to Plaintiff, and Plaintiff's taking possession of the Property was clearly wrongful and Chersus is
6 entitled to summary judgment on its wrongful foreclosure claim as a matter of law.

7 111. There may be genuine issues of material fact regarding the amount of damages that
8 should be awarded to Defendant Chersus for Wrongful Foreclosure. Accordingly, the Court shall
9 conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant
10 Chersus based on Defendant Chersus's claims for Trespass and Conversion.

11 ***2. Quiet Title***

12 112. Chersus has shown the undisputed facts and circumstances surrounding the HOA sale,
13 prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of
14 the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

15 113. Chersus has shown that Ocwen had actual and constructive notice of First 100's
16 superior claim to the Property.

17 114. Chersus has shown that the Deed of Trust, in which Ocwen purportedly holds an
18 interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property
19 when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

20 115. Thus, this Court holds that Chersus is entitled to an order quieting title to the Property in
21 favor of Chersus. The Court will enter a separate order quieting title in favor of Chersus that
22 incorporates these Findings of Fact and Conclusions of Law by reference.

23 116. Chersus further claims that it is entitled to recover the attorney's fees and costs it
24 incurred in this matter. However, Chersus's counsel has not yet submitted a memorandum of costs or
25 an Application for Attorney's Fees that addresses the *Brunzell v. Golden Gate Bank* (the "Brunzell
26 Factors"). See *Miller v. Wilfong*, 121 Nev. 619, 623 (2005). The Court will consider Chersus's
27 Memorandum of Costs and Application for Attorney's Fees separately from Chersus's Motion for
28 Summary Judgment.

1 **3. Declaratory Relief**

2 117. In its Third Cause of Action, Chersus asserts a dispute has arisen with Ocwen that is
3 ripe for adjudication, specifically, concerning the ownership of the Property and interpretation of
4 NRS of 116.3116 et. seq.

5 118. Chersus contends that per NRS 30.030 and 30.040, it is entitled to declaratory relief
6 concerning the proper interpretation and enforcement of the NRS 116.3116 et. seq.

7 119. Chersus has shown the undisputed facts and circumstances surrounding the HOA Sale
8 prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of
9 the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

10 120. Chersus has shown that Ocwen had actual and constructive notice of First 100's
11 superior claim to the Property.

12 121. Chersus has shown the Deed of Trust, in which Ocwen purportedly holds an interest,
13 was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it
14 purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

15 122. Thus, this Court holds that Chersus is entitled to an order declaring it is the lawful
16 owner of the Property, it holds fee simple title to the Property, and the Property is not subject to the
17 Deed of Trust. The Court will enter a separate order to this effect that incorporates these Findings of
18 Fact and Conclusions of Law by reference.

19 123. Chersus further claims that it is entitled to recover the attorney's fees and costs it
20 incurred in this matter. As stated above, the Court will consider Chersus's Memorandum of Costs
21 and Application for Attorney's Fees separately from this Motion for Summary Judgment.

22 **4. Trespass and Conversion**

23 124. Plaintiff wrongfully deprived Chersus of its right to own and possess the Property. The
24 Property includes the land and the appurtenant structures (the "Real Property"); and any
25 improvements that may be considered personal property (the "Personal Property").

26 125. Defendant Chersus admitted that it incorrectly partially labeled this Cause of Action as a
27 Cause of Action for "Conversion," and that it should have labeled the Cause of Action as one for
28 Trespass and Conversion.

1 126. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's
2 MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the
3 MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of
4 Action to apply to claims for Trespass and Conversion.

5 127. In support of its request, Defendant Chersus noted the allegations supporting the Cause
6 of Action refer to Chersus's "Property" and the allegations do not distinguish between Real Property
7 and Personal Property. Defendant Chersus also noted whether Plaintiff's actions amount to
8 Conversion or Trespass turns on the character of the property over which Plaintiff wrongfully
9 exercised control. *See e.g. Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008) (citing
10 NRS 40.170). Thus, Defendant Chersus contended that the Cause of Action properly alleged facts
11 that support claims based on Trespass and Conversion.

12 128. Defendant Chersus contends that it is undisputed that Plaintiff wrongfully exercised
13 control over its Real Property and Personal Property. Defendant Chersus further contends that when
14 the complaint was drafted, the nature of its interest in its Property was not clear. However, as a result
15 of the discovery completed in this case, it has long been clear that Chersus's damages include loss of
16 rental income; which would be based on a claim for Trespass. It has also long been clear that
17 Chersus's damages include loss of the use/value of its improvements; which likely include personal
18 property. Chersus claims for damages related to personal property would be based on a claim for
19 Conversion.

20 129. Chersus also stated in its Reply Brief, and at the MSJ Hearing, that it understood that the
21 measure of compensatory damages for Trespass and Conversion are similar to the measure of
22 damages for quasi-contract/unjust enrichment. However, Chersus pointed out that punitive damages
23 may be available for claims based on Trespass and Conversion.

24 130. Based on the contentions in its Reply Brief, and at the MSJ Hearing, the Court construes
25 Chersus's Fourth Cause of Action to be based on claims for Trespass and Conversion.

26 131. There may be genuine issues of material fact regarding the amount of damages that
27 could be awarded to Defendant Chersus for its claims for Trespass and Conversion. Accordingly, the
28

1 Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to
2 Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

3 **5. Unjust Enrichment**

4 132. In support of its claim for Unjust Enrichment, Defendant Chersus pointed out that the
5 appraisal performed by Plaintiff's expert appraiser Scott Dugan proves that Plaintiff is the record
6 owner of the Property pursuant to a Deed recorded January 13, 2014. In addition, the appraisal
7 indisputably shows Mr. Dugan estimated the monthly market rent to be \$1,050.00.

8 133. In this case, there was no contract between Plaintiff and Defendant Chersus. It is well
9 established that a court will imply a quasi-contract to grant unjust enrichment where there is no legal
10 contract but the person sought to be charged is in possession of property which in good conscience
11 and justice should not be retained. *Lease Partners Corp. v. Robert L. Brooks Trust Dated Nov. 12,*
12 *1975*, 113 Nev. 747, 756 (1997). Further, in *Asphalt Prods. Corp. v. All Star Ready Mix*, 111 Nev.
13 799 (1995), the Nevada Supreme Court determined that the seller prevailed on its claim for unjust
14 enrichment. As a result, the court compelled the buyer to pay the reasonable rental value for use of
15 the tractor after the buyer failed to obtain financing according to an unenforceable sales agreement.

16 134. Accordingly, this Court imposes a quasi-contract upon Plaintiff and it compels Plaintiff
17 to pay Defendant Chersus the reasonable rental value of the property as established by Plaintiff's
18 expert's appraisal.

19 135. In addition to payment for the reasonable rental value of the property, Plaintiff is liable
20 to Defendant Chersus because Plaintiff was unjustly enriched by any improvements that Defendant
21 Chersus made to the Property.

22 136. There appear to be genuine issues of material dispute regarding the amount of any
23 improvements made by Defendant Chersus. Accordingly, the Court shall conduct a separate
24 evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus for
25 improvements that Chersus made to the Property.

1 **H. THE HOA IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

2 137. The Findings of Fact set forth above, and the Conclusions of Law vis-à-vis Plaintiff and
3 Defendant Chersus, also demonstrate the HOA is entitled to judgment as a matter of law.

4 ***1. Injunctive Relief***

5 138. Ocwen asserts a cause of action for a preliminary and permanent injunction against the
6 HOA seeking an order prohibiting Defendant Chersus from selling, transferring or encumbering the
7 Property.

8 139. The HOA has never claimed an ownership interest in the Property and the allegations in
9 this cause of action are not directed at the HOA.

10 140. Moreover, a request for injunctive relief by itself does not state a cause of action. *Jensen*
11 *v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Ca. 2010). Accordingly, the Court
12 dismisses with prejudice Ocwen's Cause of Action for Injunctive Relief pursuant to NRCP 12(b)(5)
13 for failure to state a cause of action.

14 ***2. Wrongful Foreclosure***

15 141. Ocwen alleges the HOA wrongfully foreclosed based on the following contentions: (a)
16 the HOA did not comply with mailing and notice requirements; (2) the HOA foreclosure sale
17 "violated applicable law;" and (3) the HOA foreclosure sale was not commercially reasonable.

18 142. As is stated in the Findings of Fact and in the Conclusions of Law supporting the
19 Court's Order granting summary judgment in favor of Chersus, each of Ocwen's contentions fail as
20 a matter of law. The Court again finds (1) that the HOA Sale was properly noticed pursuant to NRS
21 Chapter 116, (2) that the HOA Sale was properly conducted pursuant to NRS Chapter 116, (3) that
22 no other interest party at the time of the HOA Sale tendered the superpriority amount of the HOA's
23 lien before the HOA Sale, (4) that the HOA was authorized to foreclose at the time of the HOA Sale.
24 Thus, the HOA is entitled to summary judgment on Ocwen's cause of action for wrongful
25 foreclosure.

26 ***3. Negligence and Negligence Per Se***

27 143. As a preliminary matter, the Court notes that "negligence per se" is not an independent
28 cause of action separate from the negligence claim but a legal theory affecting the standards of the

1 negligence claim. *US Bank, N.A. v. SFR Investments Pool I, LLC*, 3:15-CV-00241-RCJ-WGC, 2017
2 WL 2991359, at *1 (D. Nev. July 12, 2017). Accordingly, the Court addresses Ocwen's negligence
3 and negligence per se causes of action as one negligence claim.

4 144. To prevail on a claim for negligence, a plaintiff adduce evidence that shows: (1) the
5 defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach was
6 the legal cause of the plaintiff's injuries; and (4) the plaintiff suffered damages. *Sadler v. PacifiCare*
7 *of Nev., Inc.*, 340 P.3d 1264, 1267 (Nev. 2014).

8 145. With regard to its cause of action for negligence, Ocwen alleged: (a) the HOA owed a
9 duty to Plaintiff to conduct the HOA Sale properly and in a manner that allowed them an opportunity
10 to cure the super-priority lien; (b) the HOA breached its duty; (c) the breach was a proximate cause
11 of damages; and (d) Ocwen suffered damages.

12 146. In its Motion for Summary Judgment, the HOA argued: (1) it did not owe a duty to
13 Ocwen; (2) Ocwen produced no evidence that HOA breached any purported duty to Ocwen; and (3)
14 any negligence claim Ocwen may have was barred by the economic loss doctrine. Ocwen disputed
15 that its claim was barred by the economic loss doctrine.

16 147. As is stated in the Findings of Fact and in the Conclusions of Law that support the
17 Court's Order granting summary judgment in favor of Chersus, the Court determined that the HOA
18 Sale was properly noticed and conducted pursuant to NRS 116. Assuming, *arguendo*, that the HOA
19 did owe a duty to Ocwen, there is no evidence that the HOA breached its duty, or engaged in any
20 other type of negligent action. Thus, the Court grants the HOA's motion for summary judgment as to
21 Ocwen's causes of action for negligence and negligence per se.

22 ***4. Breach of Contract***

23 148. Ocwen alleged it was an intended beneficiary of the HOA's CC&Rs and the HOA
24 breached the CC&Rs by the circumstances under which they conducted the HOA Sale.

25 149. In its Motion for Summary Judgment, the HOA contended it did not breach the CC&Rs
26 based on the Nevada Supreme Court's decision in *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 130
27 Nev. 742, 757-58, 334 P.3d 408, 419 (2014); where the Court recognized that NRS 116.1104
28 overrules mortgage protection clauses contained in CC&Rs. *See also* NRS 116.1104 (stating that

1 NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as
2 provided by the statute).”

3 150. As is stated in the Findings of Fact and in the Conclusions of Law that support the
4 Court’s Order granting summary judgment in favor of Chersus, the Court has determined that the
5 Nevada Supreme Court’s holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-
6 58, 334 P.3d 408, 419 (2014), applies to this case, and as a result, the provisions of NRS Chapter
7 116 cannot be varied or waived by the CC&Rs. Accordingly, the Court grants the HOA’s motion for
8 summary judgment as to Ocwen’s claim for breach of contract.

9 **5. Negligent Misrepresentation**

10 151. As to Negligent Misrepresentation, Ocwen alleged: (1) the HOA should have known
11 that Ocwen would rely on the representations contained in the Mortgagee Protection Clause in the
12 CC&Rs; (2) it justifiably relied on the representations contained in the Mortgagee Protection Clause
13 in giving consideration for the Deed of Trust; (3) the HOA’s representations about the Mortgagee
14 Protection Clause were false; (4) the HOA knew, or should have known the representations in the
15 CC&RS, including the Mortgagee Protection Clause, were false; (5) the HOA had a pecuniary
16 interest in having Plaintiff rely on the CC&Rs, including the Mortgagee Protection Clause; and (6)
17 the HOA failed to exercise reasonable care or competence in communicating the information within
18 the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

19 152. In its Motion for Summary Judgment, the HOA argued Ocwen’s misrepresentation
20 claim was barred by the economic loss doctrine. The HOA also argued the claim failed as a matter of
21 law because NRS 116.1104 clearly and unambiguously states that NRS Chapter 116 provisions
22 cannot be varied by agreement. Thus, Ocwen did not, and could not have, justifiably relied on any
23 misrepresentations related to the Mortgagee Protection Clause. Ocwen disputed that its claim was
24 barred by the economic loss doctrine. Ocwen also argued that based on *ZYZZX2 v. Dizon, supra*, it
25 had set forth a viable claim for misrepresentation.

26 153. As is stated in the Findings of Fact and in the Conclusions of Law that support the
27 Court’s Order granting summary judgment in favor of Chersus, the Court has determined that the
28 Nevada Supreme Court’s holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-

1 58, 334 P.3d 408, 419 (2014), applies to this case. As a result, the Court holds the provisions of NRS
2 Chapter 116 cannot be varied or waived by the CC&Rs. Thus, Ocwen did not, and could not have,
3 justifiably relied on any misrepresentations related to the Mortgagee Protection Clause.
4 Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for
5 misrepresentation.

6 ***6. Unjust Enrichment***

7 154. As to its Cause of Action for Unjust Enrichment, Plaintiff alleged: (a) it has been
8 deprived of the benefit of its secured deed of trust by the actions of the HOA; (b) the HOA benefitted
9 from the unlawful HOA Sale, and (c) the HOA benefitted from Plaintiff's payment of property taxes,
10 insurance premiums, or homeowner's association assessments.

11 155. The HOA contended its Motion for Summary Judgment should be granted because
12 Ocwen did not pay any money to it; and it did not unjustly retain money owed to Ocwen.

13 156. Based on the HOA's and Ocwen's briefing on the HOA's motion for summary
14 judgment, and the argument at the MSJ Hearing, the Court holds that the HOA did not benefit from
15 the Ocwen's payment of taxes, insurance premiums, or homeowner's association assessments. First,
16 any property taxes paid by Ocwen were not paid to the HOA and the HOA did not benefit from
17 Ocwen's payment of property taxes because the HOA was not the property owner. Second, at the
18 hearing, the Court asked Ocwen's counsel to explain how the payment of insurance premiums
19 benefitted the HOA. Ocwen's counsel stated the payment of insurance premiums benefitted the HOA
20 because the HOA owned the Property. However, it is undisputed that the HOA did not own the
21 Property.

22 157. Finally, based on its purported purchase of the Property at the Deed of Trust
23 Foreclosure, Ocwen obtained possession of the Property, and it was identified as the record owner of
24 the Property. While it was the record owner of the Property, and while it held possession of the
25 Property, it was in Ocwen's interest to pay the property taxes, insurance premiums and homeowner's
26 association assessments. Consequently, the HOA was not unjustly enriched by Ocwen's payment of
27 property taxes, insurance premiums and homeowner's association assessments. Thus, the HOA's
28 motion for summary judgment as to Ocwen's unjust enrichment cause of action must be granted.

1 158. If any Conclusion of Law set forth herein is determined to properly constitute a Finding
2 of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

3 ***7. Tortious Interference with Contractual Relations***

4 159. To prevail on a claim for tortious inference with contractual relations, Ocwen must
5 demonstrate that: “(1) a valid and existing contract; (2) the [HOA’s] knowledge of the contract; (3)
6 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of
7 the contract; and (5) resulting damage.” J.J. Indus., LLC v. Bennett, 71 P.3d 1264, 1267 (Nev. 2003).

8 160. Ocwen argues that the HOA's decision to foreclose on the Property was designed to
9 disrupt the contractual relationship between [Ocwen] and the borrower by extinguishing the senior
10 deed of trust.

11 161. The Court finds that Ocwen cannot demonstrate any motive by the HOA to interfere.
12 The borrower breached the contract with Ocwen well before the HOA Sale. Thus, the HOA did not
13 induce the borrower to breach. There is also no actual disruption because the borrower had already
14 breached the contract.

15 162. The Court further finds that the HOA Sale in no way prevented Ocwen from taking
16 legal action against the borrower for her breach of the note. Ocwen could have pursued its own
17 foreclosure before the HOA Sale and the HOA Sale did not preclude Ocwen from taking other legal
18 action against the borrower for breaching her contract with Ocwen.

19 163. The Court finds that HOA Sale did not cause Ocwen any harm. Rather, Ocwen caused
20 any purported harm by failing to tender the superpriority portion of the lien or to take any other
21 affirmative action to protect its interest. If the deed of trust was extinguished by the foreclosure sale,
22 then any harm stems entirely from the inaction of Ocwen and its predecessors, not the HOA.

23 164. The Court, therefore, grant summary judgment in favor of the HOA on Ocwen’s tortious
24 interference claim.

25 **ORDER**

26 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
27 HEREBY ORDERS AS FOLLOWS:

28 1. Ocwen’s Motion for Summary Judgment is DENIED;

1 2. The HOA's Motion for Summary Judgment is GRANTED;

2 3. Chersus's Oral Motion, made at the MSJ Hearing, to Dismiss Its Counterclaim for
3 Slander of Title with Prejudice is GRANTED;

4 4. Chersus's Motion for Summary Judgment is GRANTED as follows:

5 A. An Order shall be entered granting Judgment in favor of Chersus and dismissing
6 Ocwen's Second Amended Complaint against Chersus.

7 B. An Order shall be entered granting Judgment in favor of Chersus as to its
8 Counterclaims for Quiet Title and Declaratory Relief. The Order granting Judgment in favor of
9 Chersus shall provide that: (1) Chersus is the undisputed owner of the Property, (2) Chersus is the
10 holder of "fee simple" title to the Property; (3) the Property is not subject to the Deed of Trust; and
11 (4) the Deed of Trust was extinguished by the HOA Sale.

12 C. An Order shall be entered granting partial summary judgment in favor of
13 Chersus, as to liability only, with respect to Chersus's Counterclaims for Wrongful Foreclosure,
14 Trespass and Conversion, and Unjust Enrichment.

15 D. Within 30 days of the Notice of Entry of this Order, Chersus shall file an
16 Application for a Prove-Up Hearing as to the amount and types of damages to be awarded to
17 Chersus with respect to its Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and
18 Unjust Enrichment.

19 E. Within 45 days of the Notice of Entry of this Order, Chersus shall file its
20 Memorandum of Costs, and Motion for Attorney's Fees.

21 5. A certified copy of this Order may be recorded in the Official Records as proof and
22 confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 against the Property under any of the Deed of Trust has been extinguished.

2 IT IS SO ORDERED.

3 DATED this 2 day of ^{MAY} March, 2019

4 
DISTRICT JUDGE

5
6 Submitted by:

7
8 THE LAW OFFICE OF VERNON NELSON

9
10 By: /s/ Vernon Nelson
11 VERNON NELSON, ESQ.
12 Nevada Bar No.: 6434
13 9480 S. Eastern Avenue, Suite 252
14 Las Vegas, NV 89123
15 Tel: 702-476-2500
16 Fax: 702-476-2788
17 E-Mail: vnelson@nelsonlawfirmnv.com
18 Attorney for Defendant Chersus Holdings, LLC
19
20
21
22
23
24
25
26
27
28

A-14-696357C

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC v. CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On ~~March 19~~ ^{May 2}, 2019, I served the following document(s):

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
Paralegal .	bknotices@nv-lawfirm.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Thomas N. Beckom .	tbeckom@mccarthyholthus.com

☒ **By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:13 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL- EX I

Paterno- Separately, I disagree with Dana's comment that the Order should state who the notices were sent to. That is not consistent with our argument that the recitals establish that these requirements were met and it is not consistent with Judge Early's ruling.

Vernon

1. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter 116.

From: Vernon Nelson <vnelson@nelsonlawfirmllv.com>
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani <pjurani@wrightlegal.net>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Paterno-

Sorry for the delay. I have attached the transcript.

With respect to the issue about Trespass being raised at the MSJ, please refer to pp. 43-44 of the transcript. At lines 4-5 is where I repeated that the brief argued that the Conversion claim should have been labeled as Trespass and Conversion...however, there was a lot of back and forth and Judge Early and I were talking over each other. I had started talking about trespass, and she cut me off and started distinguishing conversion.

1. Trespass and Conversion.

2. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of Action to apply to claims for Trespass and Conversion.

With respect to

Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property

At pp. 54-55, the Judge is asking Dana to explain the unjust enrichment claim. On page 55 at lines 13-24 he explains how the HOA benefited and he includes the payment of insurance premiums.

From: Paterno Jurani <pjurani@wrightlegal.net>
Sent: Tuesday, March 26, 2019 1:50 PM
To: Vernon Nelson <vnelson@nelsonlawfirmnv.com>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Vernon, Ashlie,

Attached is the order with Dana's changes and comments. There are a couple of paragraphs that reference his comments at the hearing. Could you please provide us with the transcript and identify where the comments were made. Alternatively, please identify the time stamp as we have video of the hearing. Thanks.

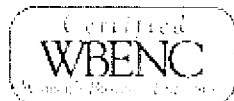
Paterno C. Jurani, Esq.

Attorney
Licensed in Nevada and California



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Regional Counsel for California, Nevada,
Arizona, Washington, Oregon, Utah and
New Mexico**



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From: Vernon Nelson [<mailto:vnelson@nelsonlawfirmnv.com>]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi All- Hope you are well. I apologize for the delay in getting this out. We had some turnover and Steve Burke, Coreene Drose, and Julie Hall are no longer with the firm. Jennifer Martinez is our new Legal Assistant. Pls cc Jennifer and Michelle on all communications.

I have attached a draft of proposed Findings of Fact and Conclusions of Law.

Please review and let me know if you have any comments/changes. If you do have changes, please use the track changes feature in Word. Please do not send a list of changes for our staff to type into the document. Unfortunately, we stretched a little thin to do that work.

Kind regards,

Vernon

EXHIBIT 2

EXHIBIT 2

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL-EX II

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Paterno C. Jurani, Esq.

Attorney
Licensed in Nevada and California



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Regional Counsel for California, Nevada,
Arizona, Washington, Oregon, Utah and
New Mexico**



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immediately at (949) 477-5052 and arrangements will be made
for the return of this material. Thank You.

From: Vernon Nelson [<mailto:vnelson@nelsonlawfirmllv.com>]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

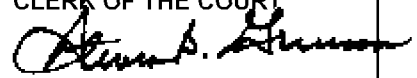
Hi All- Hope you are well. I apologize for the delay in getting this out. We had some turnover and Steve Burke, Coreene Drose, and Julie Hall are no longer with the firm. Jennifer Martinez is our new Legal Assistant. Pls cc Jennifer and Michelle on a communications.

I have attached a draft of proposed Findings of Fact and Conclusions of Law.

Please review and let me know if you have any comments/changes. If you do have changes, please use the track changes feature in Word. Please do not send a list of changes for our staff to type into the document. Unfortunately, we stretched a little too thin to do that work.

Kind regards,

Vernon



1 **NEOJ**
2 VERNON A. NELSON, JR., ESQ.
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10 *Attorney for Defendant Chersus Holdings, LLC*

11
12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 OCWEN LOAN SERVICING, LLC, a foreign
15 Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

16 Plaintiff,

17 v.

NOTICE OF ENTRY OF ORDER

18 CHERSUS HOLDINGS, LLC, a Domestic
19 Limited Liability Company; First 100, LLC, a
20 Domestic Limited Liability Company;
21 SOUTHERN TERRACE HOMEOWNERS
22 ASSOCIATION, a Domestic Non-Profit
23 Corporation; RED ROCK FINANCIAL
24 SERVICES, LLC, A Foreign Limited Liability
25 Company; UNITED LEGAL SERVICES,
26 INC., a Domestic Corporation; DOES I
27 through X; and ROE CORPORATIONS XI
28 through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 2nd day of May, 2019, a Findings of Fact, Conclusions of Law and Order was entered on the Court's docket. A copy of said Order is attached hereto.

DATED this 7th day of May, 2019

THE LAW OFFICE OF VERNON NELSON

By: /s/ Vernon A. Nelson
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Attorney for Defendant Chersus Holdings, LLC

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC v. CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On May 7, 2019, I served the following document(s):

NOTICE OF ENTRY OF ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
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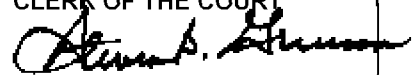
☒ **By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1



1 **FFCO**
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DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; First 100, LLC, a
Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, A Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

Defendant,

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

2 Plaintiff/Counter-Defendant, Ocwen Loan Servicing LLC, ("Plaintiff" or "Ocwen"),
3 Defendant/Counter-Claimant, Chersus Holdings, LLC ("Chersus" or "Defendant Chersus"), and
4 Defendant Southern Terrace Homeowner's (hereinafter "the HOA") filed competing Motions for
5 Summary Judgment (the "Competing MSJ Motions"). The Court scheduled a hearing on January 22,
6 2019 to consider the Competing MSJ Motions, and the parties' respective oppositions to the
7 Competing MSJ Motions (the "MSJ Hearing"). Ocwen appeared through its counsel of record, Dana
8 Nitz, Esq. of the law firm of Wright, Finlay, & Zak, LLP. Defendant Chersus appeared through its
9 counsel of record, Vernon Nelson of the Law Offices of Vernon Nelson, PLLC. The HOA appeared
10 through its counsel of record, Ashlie Surur, Esq. of the law firm of Hall, Jaffe & Clayton, LLP.
11 Having duly considered all arguments and evidence presented by the parties including the arguments
12 made by counsel at the MSJ Hearing, and finding good cause therefore, the Court makes the
13 following Findings of Fact and Conclusions of Law:

14 **I. FINDINGS OF FACT**

15 **A. FACTUAL BACKGROUND**

16 ***1. Prior to Litigation***

17 **a. Harrison Loan Documents.**

18 1. On or about March 13, 2008, Joseph F. Harrison and Bonnie L. Harrison (hereinafter the
19 "Harrisons") purchased the property located at 5946 Lingerin Breeze St, Las Vegas, NV 89148
20 (APN 163-31-611-022) (hereinafter the "Property").

21 2. The Deed of Trust executed by the Harrisons (hereinafter the "Deed of Trust") identified
22 Direct Equity Mortgage, LLC as the Lender and Mortgage Electronic Registration Systems, Inc.
23 ("MERS") as beneficiary acting solely as a nominee for Lender and Lender's successors and assigns,
24 Nevada Title Company as Trustee, and secured a loan in the amount of \$234,739.00 (hereinafter the
25 "Harrison Loan").

26 3. On July 23, 2012, an Assignment of Deed of Trust was recorded, reflecting that MERS
27 assigned the Deed of Trust to GMAC Mortgage, LLC.
28

b. HOA Lien Documents.

4. The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Southern Terrace (the "CC&Rs"), which were recorded on August 9, 2001.

5. On December 8, 2011, a Lien for Delinquent Assessments (the "HOA Lien") was recorded against the Property by Red Rock Financial Services ("Red Rock") on behalf of the HOA. The HOA Lien was recorded as Instrument Number 201112080002960. The HOA Lien provides that Red Rock was officially assigned as agent by the HOA, in accordance with NRS 116, as outlined in the HOA's CC&Rs, and that Red Rock notified Mr. and Mrs. Harrison that the HOA imposed the HOA Lien on the Property.

6. On February 2, 2012, a Notice of Default and Election to Sell Pursuant to the HOA Lien was recorded against the Property by Red Rock, on behalf of the HOA, as Instrument Number 201202020000465. The Notice of Default and Election to Sell shows Red Rock notified Mr. and Mrs. Harrison that it had recorded a Notice that made it known that their obligation under the CC&Rs had been breached; and therefore, the HOA was declaring any and all amounts secured, due and payable, and electing the Property to be sold to satisfy the HOA Lien.

7. On May 2, 2013, a Notice of Foreclosure Sale was recorded against the Property by a new Trustee, United Legal Services, Inc. ("ULS"), as Instrument Number 01305020000105. The Notice of Foreclosure Sale shows that Mr. and Mrs. Harrison were notified and warned: (a) the sale of their property was imminent; (b) they had to pay the specified amount or risk losing their home; (c) if they continued to be in Default under the HOA Lien their home could be sold at auction, and (d) the auction was scheduled to be held on May 25, 2013 at 9:00AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123.

8. On or around May 28, 2013, a Foreclosure Deed upon Sale (the "First 100 Foreclosure Deed") was executed conveying Property to First 100, LLC ("First 100") pursuant to a sale (the "HOA Foreclosure" or the "HOA Sale") held under NRS Chapter 116 foreclosing on the HOA Lien. First 100 subsequently recorded the First 100 Foreclosure Deed on May 29, 2013 as Instrument number 201305290002514.

1 9. The first page of the First 100 Foreclosure Deed includes the following recitals:

2 *This conveyance is made pursuant to the powers conferred upon Agent by NRS*
3 *Chapter 116, the foreclosing Association's governing documents (CC&R's), and the*
4 *notice of the Lien for Delinquent Assessments, recorded on December 8, 2011 as*
5 *instrument 201112080002960 in the Official Records of the Recorder of Clark County,*
6 *Nevada. Default occurred as set forth in the Notice of Default and Election to Sell,*
7 *recorded on February 2, 2012 as instrument 201202020000465 in the Official Records*
8 *of the Recorder of Clark County, Nevada. All requirements of law have been complied*
9 *with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of*
10 *the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing,*
11 *posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with*
12 *the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164,*
13 *sold the property at public auction on May 25, 2013.*

14 **c. Subsequent Transfers of the Property.**

15 10. On August 24, 2012, a Substitution of Trustee was recorded, reflecting that Cooper
16 Castle Law Firm ("Cooper Castle") was substituted as Trustee under the Deed of Trust.

17 11. On March 6, 2013, a Notice of Breach and Default and of Election to Cause Sale of Real
18 Property Under Deed of Trust was recorded by Cooper Castle.

19 12. On October 23, 2013, First 100 sold the Subject Property to Defendant Chersus which
20 recorded its deed on January 13, 2014 as instrument number 201401130001734.

21 13. On or around December 20, 2013, GMAC Mortgage, LLC purported to foreclose on the
22 Property pursuant to its Deed of Trust. Plaintiff purportedly purchased the Property at the resulting
23 foreclosure sale (the "Deed of Trust Foreclosure" or the "Trustee Sale").

24 14. Plaintiff recorded its Trustee's Deed Upon Sale on January 7, 2014 (the "Ocwen Deed")
25 as instrument Number 201401070000775.

26 **2. The Litigation**

27 **a. Litigation Related to Ocwen's Initial Complaint**

28 15. Ocwen filed its initial Complaint commencing this action on February 19, 2014. Chersus
was the sole Defendant in the Complaint. In its Complaint, Ocwen alleged it is the owner of the
Property. Ocwen alleged it obtained its ownership interest in the Property via the Deed of Trust
Foreclosure. Ocwen alleged that any interest First 100 may have obtained in the Property was
subject to the Deed of Trust and that the Deed of Trust Foreclosure extinguished First 100's interest

1 in the Property; and any interest Chersus may have acquired in the Property. Ocwen asserted claims
2 for quiet title, and declaratory relief.

3 16. Chersus filed its Answer and Counterclaim on March 28, 2014. Chersus denied the
4 material allegations in the Complaint. In its Counterclaim, Chersus alleged that on November 13,
5 2014, First 100 put GMAC and Ocwen on actual notice that the HOA Lien had been foreclosed upon
6 and the Deed of Trust had been extinguished. Chersus alleged Ocwen was on constructive and actual
7 notice of the HOA Foreclosure. Yet, despite such notice Plaintiff wrongfully proceeded to acquire
8 the Property vial the Deed of Trust Foreclosure. Chersus asserted claims for wrongful foreclosure,
9 quiet title, declaratory relief, and conversion.

10 17. Plaintiff filed a Motion for Summary Judgment in April 2014. Defendant filed its
11 Opposition and a Countermotion for Summary Judgment (the "First MSJ Motions").

12 **b. The SFR Decision.**

13 18. During the pendency of the First MSJ Motions, the NV Supreme Court decided *SFR*
14 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) (the "SFR
15 Decision").

16 **c. Plaintiff Files Amended Complaint.**

17 19. Due to the SFR Decision, Plaintiff moved for leave to amend its complaint.

18 20. The Court granted Plaintiff's motion and it First Amended Complaint on June 24, 2016.
19 In its First Amended Complaint, Plaintiff restated its allegations against First 100; and it added
20 several defendants including, the HOA, Red Rock Financial Services LLC, ("Red Rock") and United
21 Legal Services, Inc. ("United").

22 **d. Allegations Included In First Amended Complaint Against Chersus**

23 ***(1) The Deed of Trust Priority Allegations.***

24 21. Plaintiff alleged: (a) any interest First 100 may have obtained in the Property was subject
25 to the Deed of Trust; (b) the Deed of Trust Foreclosure extinguished any interest that First 100 or
26 Chersus had in the Property; and (c) the HOA sale was invalid if it extinguished the Deed of Trust
27 (the "Deed of Trust Priority Allegations").
28

1 ***(2) The Defective Notice Allegations***

2 22. Plaintiff also alleged: (a) an HOA sale conducted pursuant to chapter NRS 116 must
3 comply with NRS 116.31162 through NRS 116.31168; (b) a lender/holder of a beneficial interest in
4 a senior deed of trust has a right to cure a delinquent HOA Lien to protect its interest; (c) Red Rock
5 and ULS did not comply with all mailing and noticing requirements of NRS 116.31162-NRS
6 116.31168; (d) a recorded notice of default must describe the deficiency in payment; (e) the HOA
7 Sale occurred without adequate notice to Plaintiff; (f) the HOA Sale occurred without notice to
8 Plaintiff as to what portion of the HOA Lien, if any, that HOA and HOA trustee claimed constituted
9 a superpriority lien; (g) the HOA Sale occurred without notice to Plaintiff whether the HOA was
10 foreclosing on the superpriority portion of the lien, if any, or under the “non-superpriority” portion
11 of the HOA Lien; (h) the HOA Sale occurred without notice to Plaintiff of the right to cure the
12 delinquent assessment and the superpriority lien, if any; (i) the HOA sale was an invalid sale and
13 cannot extinguish Plaintiff’s secured interest because of the defective notices; (j) the HOA
14 foreclosure notices included improper fees and costs in the amount required to cure, thus invalidating
15 the HOA Lien (the “Defective Notice Allegations”).

16 ***(3) The Statutory Allegations***

17 23. Plaintiff also alleged: (a) per NRS Chapter 116, a lien under NRS 116.3116 (1) can only
18 include costs and fees that are specifically enumerated in the statute; (b) a HOA may only collect as
19 part of the superpriority lien nuisance abatement charges and nine months of common assessments
20 (unless Fannie Mae and Freddie Mac regulations require a shorter period of not less than six
21 months); (c) the attorney’s fees and costs of collecting an HOA Lien cannot be included in the lien
22 or superpriority lien; (d) upon information and belief the HOA Lien is unlawful and void under NRS
23 116.3102 et seq. (the “Statutory Allegations”).

24 ***(4) The Constitutional Allegations***

25 24. Plaintiff alleged that the HOA Sale and NRS Chapter 116 were unconstitutional (the
26 “Constitutional Allegations”).
27
28

1 ***(5) The CC&R Allegations***

2 25. Plaintiff alleged: (a) the CC&Rs for the HOA provided the HOA Lien was subordinate to
3 the Plaintiff's Deed of Trust; (b) the CC&Rs had a mortgagee protection clause; (c) due to the
4 mortgagee protection clause, and the lack of notice, Plaintiff did not know it had to attend the HOA
5 Sale to protect its Deed of Trust (the "CC&R Allegations").

6 ***(6) The Commercially Unreasonable Allegations***

7 26. Plaintiff alleged the HOA Sale was required to be performed in a commercially
8 reasonable manner and Defendants failed to do so. Thus, the HOA sale was invalid. Plaintiff alleged
9 the HOA Sale was not commercially reasonable because: (a) the fair market value of the Property, at
10 the time of the sale, greatly exceeded the purchase price; and (b) notice of the correct superpriority
11 amount was not provided. Plaintiff also referenced the mortgagee protection clause and alleged that
12 potential bidders were aware of the mortgagee protection clause.

13 27. Based on this alleged knowledge of potential bidders, Plaintiff alleged on the sale was
14 commercially unreasonable because: (a) proper notice that the HOA intended to foreclose on the
15 superpriority portion of the dues owing was not given; causing prospective bidders to not appear for
16 the HOA Sale; (b) proper notice was not given prospective bidders did not appear for the sale; (c)
17 Defendants knew Plaintiff would rely on the mortgagee protection clause and Plaintiff would not
18 know the HOA was foreclosing on superpriority amounts, due to the lack of notice, which resulted in
19 Plaintiff being absent; thereby allowing First 100 to acquire the property for a fraction of market
20 value. (d) Defendants knew (I) prospective bidders would be less likely to attend the HOA Sale due
21 to the mortgagee protection clause, (II) there would be an absence of prospective bidders. Plaintiff
22 made various allegations that the HOA Sale and NRS Chapter 116 were unconstitutional (the
23 "Commercially Unreasonable Allegations").

24 ***(7) The HOA's Duties Allegations***

25 28. Plaintiff alleged the circumstances of the HOA sale breached the HOA's and HOA's
26 trustee's obligations of good faith under NRS 116.1113 and their duty to act in a commercially
27 reasonable manner (the "HOA's Duties Allegations").

28 ***(8) The BFP Allegations***

1 29. Plaintiff alleged: (a) First 100 and Chersus are “professional foreclosure sale purchasers;”
2 (b) First 100 and Chersus had actual, constructive or inquiry notice of Plaintiff’s Deed of Trust; and
3 (c) because of their “notice” of the Deed of Trust, and their status as “professional foreclosure sale
4 purchasers,” First 100 or Chersus cannot be deemed bona fide purchasers for value (the “BFP
5 Allegations”).

6 ***(9) Plaintiff’s Damages Allegations***

7 30. Plaintiff alleged that if its Deed of Trust was not reaffirmed or restored, it was entitled to
8 damages from the HOA in the amount of the fair market value of the Property, or the unpaid balance
9 of due under Deed of Trust and underlying note, at the time of the HOA Sale, whichever is greater
10 (“Plaintiff’s Damages Allegations”).

11 31. Based on the allegations above, Plaintiff asserted claims for (a) Quiet Title and
12 Declaratory relief; (b) Preliminary and permanent injunctions; (c) Wrongful foreclosure against the
13 HOA, Red Rock, and ULS; (d) Negligence versus the HOA, Red Rock and ULS; (e) Negligence per
14 se versus the HOA, Red Rock, and ULS; (f) Breach of contract versus the HOA, Red Rock and ULS;
15 (g) Misrepresentation versus the HOA; (h) Unjust enrichment versus the HOA; (i) Tortious
16 interference with contract.

17 **e. Chersus’s Counterclaims**

18 32. On July 29, 2016, Chersus filed its Answer to the First Amended Complaint and asserted
19 a Counterclaim against Plaintiff. Chersus denied the material allegations of the First Amended
20 Complaint and it asserted Counterclaims against Ocwen as follows.

21 ***(1) The Chersus Title Allegations***

22 33. Chersus alleged: (a) the First 100 Foreclosure Deed conveyed the Property to First 100;
23 (b) the HOA Sale was held per NRS Chapter 116 and the HOA Sale foreclosed the HOA Lien; (c) on
24 October 23, 2013, First 100, LLC sold the Property to Defendant Chersus and recorded the Chersus
25 Deed on January 13, 2014 (the “Chersus Title Allegations”).

26 ***(2) The Ocwen Foreclosure Allegations***

27 34. Chersus alleged: (a) on November 13, 2014, First 100 put Plaintiff and its agents on
28 actual notice that the HOA Lien had been foreclosed on and the Deed of Trust was extinguished; (b)

1 despite being its notice of the HOA Sale, Ocwen proceeded to try to acquire the Property at the
2 Trustee's Sale in December 2014; and (c) it recorded the Ocwen Deed on January 7, 2014 (the
3 "Ocwen Foreclosure Allegations").

4 35. Based on these allegations, Chersus asserted claims for (1) Wrongful foreclosure; (2)
5 Quiet title; (3) Declaratory relief; and (4) Conversion.

6 **f. Causes of Action in the First Amended Complaint Against the HOA.**

7 36. Plaintiff asserted the allegations set forth above supported causes of action against the
8 HOA for Injunctive Relief, Wrongful Foreclosure, Negligence, Negligence Per Se, Breach of
9 Contract, Misrepresentation, Unjust Enrichment, and Tortious Interference.

10 **g. Ocwen's Second Amended Complaint and Dismissal of ULS & Red Rock.**

11 37. Red Rock filed a Motion to Dismiss the First Amended Complaint. In response, Ocwen
12 filed its Second Amended Complaint on January 23, 2018.

13 38. As to Chersus and the HOA, the allegations and Causes of Action asserted in Ocwen's
14 Second Amended Complaint are essentially the same as those asserted in First Amended Complaint,
15 except for the deletion of certain "Constitutional Claims."

16 39. Chersus answered the Second Amended Complaint on March 19, 2018, and denied all the
17 material allegations of the Second Amended Complaint. It reasserted its Counterclaims and added
18 Causes of Actions for Unjust Enrichment and Slander of Title.

19 40. The HOA filed its Answer on April 5, 2018. The HOA denied all the material allegations
20 of the Second Amended Complaint.

21 41. On April 10, 2018 a Notice of Stipulation and Order was entered dismissing ULS without
22 prejudice.

23 **h. Material Facts Revealed During Discovery**

24 *(1) Deposition Testimony of Red Rock's NRCP 30(b)(6) witness, Sara Trevino*

25 42. . Red Rock's 30(b)(6) witness, Sara Trevino testified about the notices Red Rock mailed
26 in this case and her testimony: (1) authenticated mailing affidavits signed by Red Rock employees
27 that state how many notices were signed and how many were mailed; (2) identified which notices are
28 sent by certified mail and first-class mail, which notices are sent by first-class mail only, (3) when

1 specific notices are sent; (4) how skip-traces and title reports are used to identify addresses for the
2 homeowners and others holding vested interests in the Property, (5) how Red Rock maintains "return
3 receipts" it receives from certified mail; (6) how Red Rock maintains checklists for each type of
4 notice that its employees are to follow when mailing notices and how this information is included in
5 the employees' mailing affidavits; (7) how Red Rock uses a third-party vendor Walz to mail many of
6 the notices; (8) how she knows that Walz maintains records proving it sent notices and (9) how she
7 is able to access Walz's system and obtain proof that notices were mailed. Thus, the Court finds Red
8 Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell
9 in accordance with NRS Chapter 116.

10 43. Ms. Trevino testified: (a) about payoff demands made by Cooper Castle on behalf of
11 GMAC Mortgage, LLC, (b) that Red Rock provided Cooper Castle with an Accounting Ledger in
12 response to its payoff demands; (c) Cooper Castle could have calculated the amount of the
13 superpriority lien by using the Accounting Ledger; (d) Red Rock did not receive any
14 communications from Cooper Castle after it sent them the Accounting Ledger; and (e) Red Rock
15 never received payment of the HOA Lien or a partial payment of the HOA Lien.

16 44. Based on Ms. Trevino's testimony, the Court finds GMAC Mortgage, LLC and Ocwen
17 had notice of the HOA Sale, they were provided with an Accounting Ledger, they could have
18 calculated the amount of the superpriority lien. Thus, GMAC and Ocwen could have calculated and
19 paid the superpriority lien, the full HOA Lien, or any amount in between those two amounts.
20 However, neither GMAC nor Ocwen paid any portion of the HOA Lien.

21 *(2) Deposition Testimony of ULS's NRCP 30(b)(6) witness, Robert Atkinson*

22 45. ULS's NRCP 30(b)(6) witness, Robert Atkinson, testified about the notices ULS mailed
23 out in this case and he: (a) authenticated the Notice of Foreclosure sale sent in this case and he
24 explained how it was mailed; (b) described how ULS conducts its own thorough investigation of the
25 "land records;" including the Assessor's Records to make sure they have the best addresses for the
26 property-owners and other parties holding vested interests in the Property; (c) authenticated the
27 "bulk form certificate of mail," known as Postal Service Form 3877; which evidences the notices
28 were delivered to the post-office and handed to a post-office clerk; (d) explains how ULS completed

1 the form by filling in the addresses for the Notices and by putting slashes on any unused lines; (e)
2 explains how the Post-Office Clerk goes and confirms and matches each address to each address on
3 the bulk form; (f) explains how once everything passes, the Post-Office Clerk verifies the mailing
4 with a stamp and gives the original back to ULS. The bulk form shows the Notices of Foreclosure
5 Sale were sent to GMAC Mortgage, LLC and Cooper Castle Law Firm, LLP. Based on this
6 testimony the Court finds ULS sent the Notices of Foreclosure in compliance with NRS 116.31162
7 through 116.31168.

8 46. ULS did not receive any payments prior to the HOA Sale.

9 47. The HOA Sale occurred on a Saturday at Attorney Robert Atkinson's office.

10 48. Mr. Atkinson testified that he conducted HOA sales on Saturday mornings because his
11 office did not have a conference room with closed doors and he did not want "a bunch of randoms"
12 wandering around his law office. He also testified: (a) he conducted the auction; (b) he recalled the
13 auction was well attended; (c) it was reasonable to infer that there was active bidding based on the
14 \$3,500 sales price; (d) a "core number of NRS 116 type buyers" usually always showed up for HOA
15 sales that he conducted in his office; and (e) many buyers attended foreclosure sales he conducted
16 for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

17 49. Mr. Atkinson testified about the Purchase and Sale Agreement ("PSA") between the
18 HOA and First 100. Pursuant to the PSA, First 100 purchased "Past Proceeds of Income" ("PPI") for
19 24 delinquent properties from the HOA. The PSA was negotiated in an "arms-length" tri-partite
20 agreement between First 100, the HOA, and ULS. Thus, the PSA did not affect the relationship
21 between the HOA and the Harrisons.

22 50. The amount of \$1,208.28 was an amount assigned to PPI for the Property. This amount
23 was based on a calculation that First 100 made in connection with evaluating the value of the PPI
24 related to the Property as part of the overall transaction.

25 51. First 100 paid the amount of the PPI provided for in the PSA. Pursuant to the PSA, First
26 100 paid ULS's fees of \$1,200.00 and certain fees owed to Red Rock. First 100 paid \$3,500.00 to the
27 HOA at the HOA Sale.

1 52. Mr. Atkinson described how ULS worked with First 100 and homeowners' associations
2 on the drafting of purchase and sales agreements like the PSA in this case. Mr. Atkinson testified
3 that First 100 routinely used the same form of purchase agreement.

4 53. The PSA provided for the purchase of "Past Proceeds of Income" ("PPI"), and it is akin
5 to a factoring agreement. The PSA did not amount the sale of the HOA Lien. Nothing in the PSA
6 changed the fact that the HOA Lien belonged to the HOA. Pursuant to the PSA, First 100 purchased
7 the right to receive all future monetization events related to the PPI.

8 54. The PSA provided that the HOA would retain ULS for collection efforts, including any
9 efforts related to the foreclosure of the HOA Lien.

10 55. The PSA provided that if ULS foreclosed on the HOA Lien, the minimum bid at the
11 foreclosure sale would be \$99. The PSA prohibited the HOA for making a credit bid and it
12 prohibited the HOA from interfering with any collection efforts.

13 56. Mr. Atkinson testified that, based on his experience, HOAs did not want to end up being
14 the winning bidder for a property based on a credit bid. Based on his experience, Mr. Atkinson stated
15 the HOAs did not want to be responsible for paying assessments, cleaning up the property, being
16 subject to self-compliance fines, or being responsible for kicking out squatters.

17 57. Based on his experience, Mr. Atkinson testified that HOAs were also afraid to take
18 properties to auction given the legal uncertainties surrounding HOA foreclosure sales.

19 *(3) Deposition Testimony of Chersus's NRCP 30(b)(6) witness, Jag Mehta.*

20 58. Mr. Mehta testified Chersus spent approximately \$40,000 in repairs on the Property.

21 59. Plaintiff, Chersus, and the HOA filed competing Motions for Summary Judgment.

22 **II. CONCLUSIONS OF LAW**

23 **A. Summary Judgment Standard**

24 60. N.R.C.P. Rule 56(e) states that summary judgment is in order when:

25 *The pleadings, depositions, answers to interrogatories, and admissions on file,*
26 *together with the affidavits, if any, show that there is no genuine issue as to any*
27 *material fact and that the moving party is entitled to a judgment as a matter of law.*

1 61. A genuine issue of material fact exists only when the evidence is adequate to where a
2 reasonable jury" would return a verdict for the non-moving party. *Dermody v. Reno*, 113 Nev. 207,
3 210 (1997). The Court will accept as true only properly supported factual allegations and reasonable
4 inferences of the party opposing summary judgment. *Wayment v. Holmes*, 112 Nev. 232, 237 (1996).
5 "Conclusory allegations and general statements unsupported by evidence creating an issue of fact
6 will not be accepted as true." *Id.*

7 62. The Nevada Supreme Court has provided additional clarity on the standards governing
8 summary judgment motions. *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P. 3d 1026 (2005). In
9 *Wood*, the Court "put to rest any questions regarding the continued viability of the 'slightest doubt'
10 standard," when it held that the "substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant." *Id.* Summary judgment is
12 particularly appropriate where issues of law are controlling and dispositive of the case. *American*
13 *Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P. 2d 274 (1979).

14 **B. NRS 116.3116 Granted to the HOA a Superpriority Lien That Had Priority**
15 **Over the Deed of Trust in Favor of GMAC Mortgage, LLC and, as a Result GMAC**
16 **Mortgage, LLC's Deed of Trust Was Extinguished at the HOA Sale.**

17 63. NRS 116.3116 provides in part:

18 *Liens against units for assessments.*

19 1. The association has a lien on a unit for any construction penalty that is imposed
20 against the unit's owner pursuant to NRS 116.310305, any assessment levied against
21 that unit or any fines imposed against the unit's owner from the time the construction
22 penalty, assessment or fine becomes due. Unless the declaration otherwise provides,
any penalties, fees, charges, late charges, fines and interest charged pursuant to
paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as
assessments under this section. If an assessment is payable in installments, the full
amount of the assessment is a lien from the time the first installment thereof becomes
due.

23 ...

24 2. A lien under this section is prior to all other liens and encumbrances on a unit
except:

25 (a) Liens and encumbrances recorded before the recordation of the declaration and, in
26 a cooperative, liens and encumbrances which the association creates, assumes or takes
27 subject to;

1 (b) *A first security interest on the unit recorded before the date on which the*
2 *assessment sought to be enforced became delinquent or, in a cooperative, the first*
3 *security interest encumbering only the unit's owner's interest and perfected before the*
4 *date on which the assessment sought to be enforced became delinquent; and*

5 (c) *Liens for real estate taxes and other governmental assessments or charges against*
6 *the unit or cooperative.*

7 64. Subsection 3 of NRS 116.3116 provides the lien created thereunder has priority over all
8 security interests described in paragraph (b) of subsection 2 to the extent of:

9 (a) *any charges incurred by the association on a unit pursuant to NRS 116.310312;*

10 (b) *The unpaid amount of assessments, not to exceed an amount equal to assessments*
11 *for common expenses based on the periodic budget adopted by the association*
12 *pursuant to NRS 116.3115 which would have become due in the absence of*
13 *acceleration during the 9 months immediately preceding the date on which the notice*
14 *of default and election to sell is recorded pursuant to paragraph (b) of subsection 1*
15 *of NRS 116.31162; and*

16 (c) *The costs incurred by the association to enforce the lien in an amount not to*
17 *exceed the amounts set forth in subsection 5....*

18 65. By its clear terms, NRS 116.3116 (2) provides the superpriority lien for assessments
19 which have come due in the 9 months prior to the initiation of an action to enforce the lien are "prior
20 to all security interests described in paragraph (b)." The Deed of Trust held by GMAC Mortgage,
21 LLC falls squarely within the language of paragraph (b). The statutory language does not limit the
22 nature of this "priority" in any way.

23 66. In its decision of *SFR Invs. Pool I, LLC v. US. Bank, NA.*, 334 P.3d 408, 411-412, 130
24 Nev. Adv. Rep. 75 (2014), the Supreme Court held that the foreclosure of the HOA superpriority
25 lien extinguishes first trust deeds. The SFR Decision holds the 9-month HOA superpriority lien has
26 precedence over the mortgage lien, and that the proper foreclosure of the HOA superpriority lien
27 extinguishes a first trust deed.

28 67. In the case at bar, the HOA Sale resulted in the foreclosure of the HOA's superpriority
lien on the Property. Consequently, when First 100 purchased the Property at the HOA Sale, it
extinguished the Deed of Trust in favor of GMAC Mortgage, LLC.

68. When First 100 conveyed the Property to Defendant Chersus, the Property was not
subject to the Deed of Trust in favor of GMAC Mortgage, LLC.

1 **C. THE HOA COMPLIED WITH THE NOTICE REQUIREMENTS OF NRS**
2 **CHAPTER 116.**

3 ***1. The Recitals in The First 100 Foreclosure Deed Prove the HOA Complied with***
4 ***The Notice Requirements of NRS Chapter 116.***

5 69. The recitals in the First 100 Foreclosure Deed establish both the default by Mr. and Mrs.
6 Harrison and the HOA's compliance with each of the notice requirements of NRS 116.31162
7 through 116.31168 for the public auction held on May 25, 2013.

8 70. NRS 116.31166(1) provides:

9 The recitals in a deed made pursuant to NRS 116.31164 of:

- 10 (a) *Default, the mailing of notice of delinquent assessment, and the recording of the*
11 *notice of default and election to sell;*
12 (b) *The elapsing of the 90 days; and*
13 (c) *The giving of notice of sale,*
14 *Are conclusive proof of the matters recited.*

15 71. In *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 334 P.3d 408, 411-12
16 (2014), the Nevada Supreme Court recognized the "conclusive" effect of an HOA foreclosure deed
17 when it stated:

18 *NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and*
19 *specifies the distribution order for the proceeds of sale. A trustee's deed reciting*
20 *compliance with the notice provisions of NRS 116.31162 through NRS 116.31168 "is*
21 *conclusive" as to the recitals "against the unit's former owner, his or her heirs and*
22 *assigns, and all other persons." NRS 116.31166(2). And, "[t]he sale of a unit pursuant*
23 *to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the*
24 *unit's owner without equity or right of redemption. NRS 116.31166(3).*

25 72. However, the enactment of NRS 116.31166 did not eliminate the court's equitable
26 authority to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals.
27 *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev.
28 2016). Equitable relief may still be available in the face of conclusive recitals, at least in cases
 involving fraud, unfairness, or oppression. *Id.*

 73. In this case, Plaintiff has produced no evidence that the HOA's agent did not mail the
 notices to the holder of the beneficial interest of the Deed of Trust. Plaintiff has produced no
 evidence that the HOA's agent did not provide for the elapsing of the 90 days. Plaintiff has not

1 provided any other evidence that the recitals are not accurate. Further, as is set forth in Section II(D)
2 below, Plaintiff has produced no evidence of fraud, unfairness, or oppression.

3 74. Thus, the recitals in First 100's Deed of Foreclosure are deemed to be conclusive proof
4 that the HOA complied with the notice requirements of NRS Chapter 116.

5 **2. Per the "Mailbox Rule," GMAC Mortgage, LLC Presumptively Received All of the**
6 **Notices Required Per NRS 116.31162 through 116.31168.**

7 75. Per the "mailbox rule," if the HOA's agents properly and timely mailed the required
8 notices, a rebuttable presumption is raised that the beneficiary of the Deed of Trust received the
9 notices. *See Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197, 1202-1203 (9th Cir. 1999). For the
10 presumption to arise, the sender must establish the notice was sent. *Id.* The sender can establish the
11 notice was sent by providing evidence of its standard business practices such as the use of
12 computerized tracking and filing software and the use of procedures that ensure the number of
13 outgoing notices correspond with the number of notices to be sent. *Turner v. Dep't of Educ.*, 2011
14 U.S. Dist. LEXIS 46421 (D. Haw. 2011) (citing *Mahon*, 171 F. 3d at 1199-1202).

15 76. Ms. Trevino's testimony about Red Rock's mailing procedures establishes the notices
16 sent by Red Rock were sent. Further, Mr. Atkinson's testimony about ULS's mailing procedures
17 establish the notices sent by ULS were sent. Thus, the Court finds GMAC Mortgage, LLC
18 presumptively received all of the notices required per NRS 116.31162 through 116.31168.

19 **D. FIRST 100'S PAYMENT TO THE HOA PURSUANT TO THE PSA WAS NOT**
20 **RELATED TO THE HOA LIEN AND, THEREFORE, IT DID NOT DISCHARGE**
21 **THE SUPERPRIORITY LIEN.**

22 77. Ocwen contends that First 100's payment to the HOA, pursuant to the PSA, discharged
23 the superpriority portion of the HOA Lien prior to the HOA sale. However, the PSA did not involve
24 a sale of the HOA Lien. First 100 purchased the right to receive future monetization events related to
25 the PPI.

26 78. The PSA did not affect the relationship between the Harrisons and the HOA in any way
27 and First 100's payment to the HOA, pursuant to the PSA did not affect the HOA Lien in any way.
28 Specifically, it did not discharge to superpriority portion of the HOA Lien.

1 79. In *West Sunset 2050 Trust v. Nationstar Mortgage*, 420 P. 3d 1032, (June 28, 2018), the
2 Nevada Supreme Court recently considered a case almost identical to this case. In *West Sunset 2050*
3 *Trust*, the Toscano Homeowners Association (“Toscano”), pursuant to a similar purchase and sale
4 agreement, sold to First 100 its “interest in any and all [proceeds on past income] arising from or
5 relating to the [Property’s] Delinquent Assessment. *Id.* at 1034.

6 80. In *West Sunset 2050 Trust*, the NV Supreme Court rejected Nationstar’s argument that
7 the purchase and sale agreement deprived HOA of standing to foreclose. 420 P3d. at 1036. The
8 Court determined the purchase and sale agreement provided for the sale of proceeds on past income
9 *Id.* The Court analogized the purchase and sale agreement to a “factoring agreement” and determined
10 the “factoring agreement” did not change the fact that the property owner remained indebted to the
11 HOA; and the property owner did not become indebted to First 100. *Id.* at 1037.

12 81. The Court emphasized that the HOA retained the exclusive right to collect the HOA Lien,
13 and it was required, through its agent, to continue collection efforts on past-due assessments. *Id.*
14 Thus, the Court held that the “factoring agreement” did not affect the HOA’s right to foreclose on the
15 property and that the HOA sale was valid. *Id.*

16 82. Based on the facts of this case, and the Court’s holding in *West Sunset 2050 Trust*, it is
17 clear that First 100’s payment to the HOA, pursuant to the PSA, did not affect the HOA Lien in any
18 way; and it did not extinguish the superpriority portion of the HOA Lien.

19 **E. OCWEN’S CONTENTION THAT THE HOA SALE WAS COMMERICIALLY**
20 **UNREASONABLE IS WITHOUT MERIT BECAUSE THE HOA SALE WAS VALID**
21 **AND DEFENDANT FAILED TO PRODUCE ANY EVIDENCE THAT FRAUD,**
22 **UNFAIRNESS, OR OPPRESSION AFFECTED THE SALE.**

23 83. Plaintiff contends that the sale was commercially unreasonable because the sales price
24 paid by First 100 at the HOA Sale was grossly inadequate; and because there was evidence that
25 fraud, unfairness, or oppression affected the sale. *See Shadow Wood Homeowners Ass’n v. New York*
Cmty. Bancorp. Inc., 366 P.3d 1105, 1112 (Nev. 2016).

26 84. In *Shadow Wood*, the NV Supreme Court held that NRS 116.31166 did not preclude
27 courts from granting equitable relief from a defective foreclosure sale when appropriate. 366 P.3d at
28

1 1110-1111. In this regard, the Court held that a foreclosure sale could be set aside if there was a
2 grossly inadequate sales price, and a showing of fraud, unfairness, or oppression. *Id.*

3 85. In *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d
4 641, 643-44, the Nevada Supreme Court clarified that inadequacy of price alone is not a sufficient
5 ground for setting aside foreclosure sale. *Id.* The Court further held that the party seeking to set aside
6 the sale had the burden of proving that fraud, unfairness, or oppression affected the sale. *Id.*

7 86. The Court also rejected the application of the commercial reasonableness standard from
8 UCC Article 9. *Id.* at 646. Thus, Plaintiff's arguments that the sale was commercially unreasonable
9 based on UCC Article 9 must be rejected.

10 87. A district court cannot grant equitable relief when an adequate remedy at law exists. *Las*
11 *Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 278 (1982). The
12 failure to utilize legal remedies makes granting equitable remedies unlikely. *Bayview Loan*
13 *Servicing, LLC v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 41309 (D. Nev. 2017).

14 ***(1) The HOA Sale Was Valid and Equitable Relief Is Not Warranted.***

15 88. As stated above, based on the facts of this case, and the Nevada Supreme Court's holding
16 in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (2018), the Court has
17 determined that the HOA Sale was valid. Therefore, the Court does not have authority to grant
18 equitable relief to the Plaintiff in this case. *Las Vegas Valley Water Dist.*, 98 Nev. at 278.

19 89. In this regard, it must also be noted that GMAC Mortgage, LLC and Plaintiff were aware
20 of the HOA Sale and they could have paid, or at least tendered, the amount of the superpriority
21 portion of the HOA Lien. Their failure to exercise adequate remedies at law precludes the granting
22 of equitable relief in this case.

23 ***(2) Even If Equitable Arguments Were Available to Plaintiff, It Failed to Show***
24 ***Fraud, Unfairness, or Oppression Affected the HOA Sale.***

25 90. To support of its contention that the HOA Sale was Commercially Unreasonable,
26 Plaintiff offered the report of expert witness, R. Scott Dugan to show that the price paid at the HOA
27 Sale was grossly inadequate. Mr. Dugan opined that the value of the Property was \$148,000 as of the
28 date of the HOA Sale. Plaintiff submitted that the \$3,500.00 paid by First 100 was 2.6% of the value

1 of the Property. Chersus did not produce an expert report disputing Mr. Dugan's analysis. However,
2 it contended First 100 and Chersus paid far more than \$3,500.00 to acquire the Property.

3 91. Whether the price paid at the HOA Sale was grossly inadequate need not be resolved
4 because Plaintiff has failed to show that fraud, unfairness, or oppression affected the sale.

5 92. In support of its contention that there was evidence that fraud, unfairness, or oppression
6 affected the sale, Plaintiff argued:

7 a. The HOA Sale was not conducted during normal business hours. The HOA Sale
8 took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern
Ave., Suite 350, Las Vegas, NV 89123.

9 b. The HOA, ULS and First 100 colluded to ensure that First 100 would obtain this
10 Property at the HOA Sale. Their PSA set the minimum bid at \$99, and prohibited the
11 HOA from making a credit bid at the HOA Sale or otherwise interfering with First
100's efforts to collect on the account or acquire the Property.

12 c. The HOA relinquished all authority to control the HOA Sale and irrevocably made
13 ULS its collection agent and foreclosure trustee for First 100.

14 d. Even though the HOA Sale allegedly took place in the HOA's name, all actions
15 were conducted for the benefit of First 100 pursuant to its agreement with the HOA.

16 e. There is fraud, oppression and unfairness associated with the foreclosure sale
17 because the HOA put the public on constructive notice in its CC&Rs—including First
18 100, and other prospective bidders — that the HOA's foreclosure would not disturb the
19 first Deed of Trust. The CC&Rs applicable to this Property contain two relevant
provisions (the "Mortgagee Protection Clauses"), which represented to the world the
HOA's foreclosure would not extinguish the Deed of Trust.

20 93. These arguments do not show that fraud, unfairness, or oppression affected the sale.

21 94. The fact that the HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's
22 office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123 does not demonstrate the sale was
23 patently unfair, fraudulent, or oppressive. In fact, ULS's NRCP 30(b)(6) witness, Robert Atkinson
24 testified he conducted HOA Sales on Saturday because his office did not have a conference room
25 and he did not want potential bidders wandering around his office. He also testified that he
26 conducted the auction and he recalled the auction was well attended. He also testified it was
27 reasonable to infer there was active bidding based on the \$3,500 sales price. He testified a "core
28 number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his

1 office. He testified many buyers attended foreclosure sales he conducted for the HOA and they
2 purchased homes at the foreclosure sales he conducted for the HOA. Thus, Plaintiff has failed to
3 show that conducting the HOA Sale on Saturday affected the HOA Sale.

4 95. Similarly, Plaintiff failed to show the HOA, ULS and First 100 colluded to ensure that
5 First 100 would obtain the Property at the HOA Sale. Mr. Atkinson testified a “core number of NRS
6 116 type buyers” usually always showed up for HOA sales he conducted in his office. He testified
7 many buyers, other than First 100, attended foreclosure sales he conducted for the HOA and
8 purchased homes at the foreclosure sales he conducted for the HOA.

9 96. The Court’s holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d
10 1032, 1037 (2018), is also contrary to the Plaintiff’s contention that the HOA, ULS, and First 100
11 unlawfully colluded. The Court analogized First 100’s purchase and sale agreement to a “factoring
12 agreement” and held factoring agreements serve the valid purpose of providing HOAs with
13 immediate access to cash, and help them meet their perpetual upkeep obligations. The Court added it
14 was disinclined to interfere with the HOA’s use of factoring agreements absent a theory as to how
15 factoring agreements result in harm.

16 97. In this case, the PSA signed by the HOA, ULS, and First 100 was akin to a “factoring
17 agreement” and it served the valid purpose of providing the HOA with access to cash. Plaintiff has
18 failed to provide any evidence that the HOA, ULS, and First 100 unlawfully colluded.

19 98. Similarly, Plaintiff’s other contentions related to the PSA do not show that fraud,
20 unfairness, or oppression affected the sale. First, contrary to Plaintiff’s complaints regarding the
21 \$99.00 minimum bid, Mr. Atkinson testified that he was not aware of any statutory requirement in
22 NRS Chapter 116 to establish a minimum bid; and the minimum bid was set at \$99.00 in the valid
23 PSA to encourage bidding. Next, contrary to Plaintiff’s complaints that the HOA was prohibited
24 from making a credit bid, Mr. Atkinson testified, in his experience, HOAs did not want to acquire a
25 property via a credit bid because they did not want to be responsible for paying assessments,
26 cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out
27 squatters. Finally, Plaintiff’s complaints that all actions were conducted for the benefit of First 100
28 pursuant to the PSA did not improperly affect the sale. In *West Sunset 2050 Trust*, the Court

1 recognized and did not object that the agreement required the HOA's agent to remit payments to
2 First 100. Again, Plaintiff's references to the PSA fail to show that fraud, unfairness, or oppression
3 affected the sale.

4 99. Plaintiff also argues there was fraud, oppression and unfairness associated with the
5 foreclosure sale because the HOA put the public on constructive notice in its CC&Rs, that the
6 HOA's foreclosure would not disturb the first Deed of Trust. In support of its argument, Plaintiff
7 cited to the United State District Court's holding in *Zzyzx 2 v. Dizon*, No. 2:13-CV-1307, 2016 U.S.
8 Dist. LEXIS 39467, 2016 WL 1181666 (D. Nev. 2016).

9 100. In *United States Bank N.A. v. Vistas Homeowners Ass'n*, 2018 Nev. Unpub. LEXIS
10 1146 (December 14, 2018) the Nevada Supreme Court rejected the appellant's argument that the
11 CC&R's mortgagee protection clause was evidence of unfairness. In opining that it was not
12 persuaded that evidence regarding the mortgage protection clause constituted unfairness, the Court
13 noted the appellant had not provided any evidence that potential bidders were misled by the CC&R's
14 protective covenant and that the bidding was chilled. *Id.* at *1. The court also noted that it must
15 presume that any bidders at the HOA Sale were also aware of NRS 116.1104, and therefore, they
16 were not misled. *Id.* at *2.

17 101. In *Vistas Homeowners*, the Court distinguished *Zzyzx 2* because, in *Zzyzx 2*, the HOA
18 sent a letter to the deed of trust beneficiary that it did not need to protect the Deed of Trust. *Id.* at fn.
19 2. The HOA in *Vistas Homeowners* did not send such a letter. *Id.*

20 102. In *Vistas Homeowners*, the Court also pointed out that in *SFR Inv. Pool 1, LLC v. U.S.*
21 *Bank, N.A.*, 334 P.3d 408, (2014), it had held that nothing in NRS 116.3116 expressly provides for
22 the waiver of the HOA's rights under NRS Chapter 116. *Id.* at *2. The Court determined that the
23 protective covenant in the *Vistas Homeowners* CC&R was not distinguishable from the covenant at
24 issue in *SFR*. *Id.*

25 103. Like the appellant in *Vistas Homeowners*, Plaintiff has failed to produce any evidence
26 showing the mortgagee protection clause in this case created unfairness. Further, Plaintiff failed to
27 produce any evidence that potential bidders were misled by the CC&R's protective covenant and
28 that bidding was chilled. Further, the Nevada Supreme Court's holding in *SFR* also applies in this

1 case and Plaintiff has failed to produce any evidence that mortgagee protection clause in this case is
2 distinguishable from the clauses in *SFR* or *Vistas Homeowners*.

3 **F. PLAINTIFF'S CONTENTIONS THAT NEITHER FIRST 100 NOR CHERSUS**
4 **WERE BONA FIDE PURCHASERS ARE IRRELEVANT.**

5 104. Plaintiff argues that the HOA Sale was not valid because neither First 100 nor Chersus
6 is a bona fide purchaser because they purchased the property with notice of Ocwen's interest in the
7 property.

8 105. Defendant Chersus disputes Plaintiff's contention it was not a bona fide purchaser.

9 106. Again, however, the Nevada Supreme Court recently held in *West Sunset 2050 Trust*,
10 that since the underlying HOA sale was valid, the Court did not need to resolve a dispute as to
11 whether First 100 and Chersus were bona fide purchasers. 420 P 3d. at 1037.

12 107. Again, this Court holds the HOA Sale was a valid sale and Plaintiff is not entitled to any
13 equitable relief. Thus, Plaintiff's arguments about whether First 100, LLC or Defendant Chersus
14 were bona fide purchasers are irrelevant.

15 **G. CHERSUS IS ENTITLED TO JUDGMENT ON ITS COUNTERCLAIMS AS TO**
16 **ITS FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, AS A**
MATTER OF LAW.

17 108. Chersus has proven that the undisputed facts and circumstances surrounding the HOA
18 Sale. Chersus has also demonstrated it is entitled to judgment on its Counterclaims as to its First,
19 Second, Third, Fourth, and Fifth Causes of Action, as a matter of law. At the MSJ Hearing, Chersus
20 agreed to voluntarily dismiss its Sixth Cause of Action.

21 ***1. Wrongful Foreclosure***

22 109. In support of its claim for wrongful foreclosure, Chersus established that at the time
23 GMAC Mortgage, LLC exercised the power of sale and foreclosed, that no breach of condition or
24 failure of performance existed on Chersus's part which would have authorized the foreclosure or
25 exercise of the power of sale. There is no dispute that when GMAC Mortgage, LLC exercised the
26 power of sale and foreclosed, its Deed of Trust had been extinguished by the foreclosure sale. There
27 is no dispute that GMAC Mortgage, LLC and Plaintiff knew that after the HOA Sale: (1) GMAC
28 Mortgage, LLC had no interest in the Property; (2) GMAC Mortgage, LLC had no authority

1 whatsoever to authorize the foreclosure or exercise the power of sale that had been extinguished by
2 the HOA Foreclosure sale; (3) GMAC Mortgage, LLC had no authority to convey the Property to
3 Plaintiff; and (4) Plaintiff had no right or authority to take possession of the Property.

4 110. Thus, the authorization of the foreclosure sale, the exercise of the power of sale, the sale
5 to Plaintiff, and Plaintiff's taking possession of the Property was clearly wrongful and Chersus is
6 entitled to summary judgment on its wrongful foreclosure claim as a matter of law.

7 111. There may be genuine issues of material fact regarding the amount of damages that
8 should be awarded to Defendant Chersus for Wrongful Foreclosure. Accordingly, the Court shall
9 conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant
10 Chersus based on Defendant Chersus's claims for Trespass and Conversion.

11 ***2. Quiet Title***

12 112. Chersus has shown the undisputed facts and circumstances surrounding the HOA sale,
13 prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of
14 the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

15 113. Chersus has shown that Ocwen had actual and constructive notice of First 100's
16 superior claim to the Property.

17 114. Chersus has shown that the Deed of Trust, in which Ocwen purportedly holds an
18 interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property
19 when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

20 115. Thus, this Court holds that Chersus is entitled to an order quieting title to the Property in
21 favor of Chersus. The Court will enter a separate order quieting title in favor of Chersus that
22 incorporates these Findings of Fact and Conclusions of Law by reference.

23 116. Chersus further claims that it is entitled to recover the attorney's fees and costs it
24 incurred in this matter. However, Chersus's counsel has not yet submitted a memorandum of costs or
25 an Application for Attorney's Fees that addresses the *Brunzell v. Golden Gate Bank* (the "Brunzell
26 Factors"). See *Miller v. Wilfong*, 121 Nev. 619, 623 (2005). The Court will consider Chersus's
27 Memorandum of Costs and Application for Attorney's Fees separately from Chersus's Motion for
28 Summary Judgment.

1 **3. Declaratory Relief**

2 117. In its Third Cause of Action, Chersus asserts a dispute has arisen with Ocwen that is
3 ripe for adjudication, specifically, concerning the ownership of the Property and interpretation of
4 NRS of 116.3116 et. seq.

5 118. Chersus contends that per NRS 30.030 and 30.040, it is entitled to declaratory relief
6 concerning the proper interpretation and enforcement of the NRS 116.3116 et. seq.

7 119. Chersus has shown the undisputed facts and circumstances surrounding the HOA Sale
8 prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of
9 the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

10 120. Chersus has shown that Ocwen had actual and constructive notice of First 100's
11 superior claim to the Property.

12 121. Chersus has shown the Deed of Trust, in which Ocwen purportedly holds an interest,
13 was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it
14 purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

15 122. Thus, this Court holds that Chersus is entitled to an order declaring it is the lawful
16 owner of the Property, it holds fee simple title to the Property, and the Property is not subject to the
17 Deed of Trust. The Court will enter a separate order to this effect that incorporates these Findings of
18 Fact and Conclusions of Law by reference.

19 123. Chersus further claims that it is entitled to recover the attorney's fees and costs it
20 incurred in this matter. As stated above, the Court will consider Chersus's Memorandum of Costs
21 and Application for Attorney's Fees separately from this Motion for Summary Judgment.

22 **4. Trespass and Conversion**

23 124. Plaintiff wrongfully deprived Chersus of its right to own and possess the Property. The
24 Property includes the land and the appurtenant structures (the "Real Property"); and any
25 improvements that may be considered personal property (the "Personal Property").

26 125. Defendant Chersus admitted that it incorrectly partially labeled this Cause of Action as a
27 Cause of Action for "Conversion," and that it should have labeled the Cause of Action as one for
28 Trespass and Conversion.

1 126. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's
2 MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the
3 MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of
4 Action to apply to claims for Trespass and Conversion.

5 127. In support of its request, Defendant Chersus noted the allegations supporting the Cause
6 of Action refer to Chersus's "Property" and the allegations do not distinguish between Real Property
7 and Personal Property. Defendant Chersus also noted whether Plaintiff's actions amount to
8 Conversion or Trespass turns on the character of the property over which Plaintiff wrongfully
9 exercised control. *See e.g. Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008) (citing
10 NRS 40.170). Thus, Defendant Chersus contended that the Cause of Action properly alleged facts
11 that support claims based on Trespass and Conversion.

12 128. Defendant Chersus contends that it is undisputed that Plaintiff wrongfully exercised
13 control over its Real Property and Personal Property. Defendant Chersus further contends that when
14 the complaint was drafted, the nature of its interest in its Property was not clear. However, as a result
15 of the discovery completed in this case, it has long been clear that Chersus's damages include loss of
16 rental income; which would be based on a claim for Trespass. It has also long been clear that
17 Chersus's damages include loss of the use/value of its improvements; which likely include personal
18 property. Chersus claims for damages related to personal property would be based on a claim for
19 Conversion.

20 129. Chersus also stated in its Reply Brief, and at the MSJ Hearing, that it understood that the
21 measure of compensatory damages for Trespass and Conversion are similar to the measure of
22 damages for quasi-contract/unjust enrichment. However, Chersus pointed out that punitive damages
23 may be available for claims based on Trespass and Conversion.

24 130. Based on the contentions in its Reply Brief, and at the MSJ Hearing, the Court construes
25 Chersus's Fourth Cause of Action to be based on claims for Trespass and Conversion.

26 131. There may be genuine issues of material fact regarding the amount of damages that
27 could be awarded to Defendant Chersus for its claims for Trespass and Conversion. Accordingly, the
28

1 Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to
2 Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

3 **5. Unjust Enrichment**

4 132. In support of its claim for Unjust Enrichment, Defendant Chersus pointed out that the
5 appraisal performed by Plaintiff's expert appraiser Scott Dugan proves that Plaintiff is the record
6 owner of the Property pursuant to a Deed recorded January 13, 2014. In addition, the appraisal
7 indisputably shows Mr. Dugan estimated the monthly market rent to be \$1,050.00.

8 133. In this case, there was no contract between Plaintiff and Defendant Chersus. It is well
9 established that a court will imply a quasi-contract to grant unjust enrichment where there is no legal
10 contract but the person sought to be charged is in possession of property which in good conscience
11 and justice should not be retained. *Lease Partners Corp. v. Robert L. Brooks Trust Dated Nov. 12,*
12 *1975*, 113 Nev. 747, 756 (1997). Further, in *Asphalt Prods. Corp. v. All Star Ready Mix*, 111 Nev.
13 799 (1995), the Nevada Supreme Court determined that the seller prevailed on its claim for unjust
14 enrichment. As a result, the court compelled the buyer to pay the reasonable rental value for use of
15 the tractor after the buyer failed to obtain financing according to an unenforceable sales agreement.

16 134. Accordingly, this Court imposes a quasi-contract upon Plaintiff and it compels Plaintiff
17 to pay Defendant Chersus the reasonable rental value of the property as established by Plaintiff's
18 expert's appraisal.

19 135. In addition to payment for the reasonable rental value of the property, Plaintiff is liable
20 to Defendant Chersus because Plaintiff was unjustly enriched by any improvements that Defendant
21 Chersus made to the Property.

22 136. There appear to be genuine issues of material dispute regarding the amount of any
23 improvements made by Defendant Chersus. Accordingly, the Court shall conduct a separate
24 evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus for
25 improvements that Chersus made to the Property.

1 **H. THE HOA IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

2 137. The Findings of Fact set forth above, and the Conclusions of Law vis-à-vis Plaintiff and
3 Defendant Chersus, also demonstrate the HOA is entitled to judgment as a matter of law.

4 ***1. Injunctive Relief***

5 138. Ocwen asserts a cause of action for a preliminary and permanent injunction against the
6 HOA seeking an order prohibiting Defendant Chersus from selling, transferring or encumbering the
7 Property.

8 139. The HOA has never claimed an ownership interest in the Property and the allegations in
9 this cause of action are not directed at the HOA.

10 140. Moreover, a request for injunctive relief by itself does not state a cause of action. *Jensen*
11 *v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Ca. 2010). Accordingly, the Court
12 dismisses with prejudice Ocwen's Cause of Action for Injunctive Relief pursuant to NRCP 12(b)(5)
13 for failure to state a cause of action.

14 ***2. Wrongful Foreclosure***

15 141. Ocwen alleges the HOA wrongfully foreclosed based on the following contentions: (a)
16 the HOA did not comply with mailing and notice requirements; (2) the HOA foreclosure sale
17 "violated applicable law;" and (3) the HOA foreclosure sale was not commercially reasonable.

18 142. As is stated in the Findings of Fact and in the Conclusions of Law supporting the
19 Court's Order granting summary judgment in favor of Chersus, each of Ocwen's contentions fail as
20 a matter of law. The Court again finds (1) that the HOA Sale was properly noticed pursuant to NRS
21 Chapter 116, (2) that the HOA Sale was properly conducted pursuant to NRS Chapter 116, (3) that
22 no other interest party at the time of the HOA Sale tendered the superpriority amount of the HOA's
23 lien before the HOA Sale, (4) that the HOA was authorized to foreclose at the time of the HOA Sale.
24 Thus, the HOA is entitled to summary judgment on Ocwen's cause of action for wrongful
25 foreclosure.

26 ***3. Negligence and Negligence Per Se***

27 143. As a preliminary matter, the Court notes that "negligence per se" is not an independent
28 cause of action separate from the negligence claim but a legal theory affecting the standards of the

1 negligence claim. *US Bank, N.A. v. SFR Investments Pool I, LLC*, 3:15-CV-00241-RCJ-WGC, 2017
2 WL 2991359, at *1 (D. Nev. July 12, 2017). Accordingly, the Court addresses Ocwen's negligence
3 and negligence per se causes of action as one negligence claim.

4 144. To prevail on a claim for negligence, a plaintiff adduce evidence that shows: (1) the
5 defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach was
6 the legal cause of the plaintiff's injuries; and (4) the plaintiff suffered damages. *Sadler v. PacifiCare*
7 *of Nev., Inc.*, 340 P.3d 1264, 1267 (Nev. 2014).

8 145. With regard to its cause of action for negligence, Ocwen alleged: (a) the HOA owed a
9 duty to Plaintiff to conduct the HOA Sale properly and in a manner that allowed them an opportunity
10 to cure the super-priority lien; (b) the HOA breached its duty; (c) the breach was a proximate cause
11 of damages; and (d) Ocwen suffered damages.

12 146. In its Motion for Summary Judgment, the HOA argued: (1) it did not owe a duty to
13 Ocwen; (2) Ocwen produced no evidence that HOA breached any purported duty to Ocwen; and (3)
14 any negligence claim Ocwen may have was barred by the economic loss doctrine. Ocwen disputed
15 that its claim was barred by the economic loss doctrine.

16 147. As is stated in the Findings of Fact and in the Conclusions of Law that support the
17 Court's Order granting summary judgment in favor of Chersus, the Court determined that the HOA
18 Sale was properly noticed and conducted pursuant to NRS 116. Assuming, *arguendo*, that the HOA
19 did owe a duty to Ocwen, there is no evidence that the HOA breached its duty, or engaged in any
20 other type of negligent action. Thus, the Court grants the HOA's motion for summary judgment as to
21 Ocwen's causes of action for negligence and negligence per se.

22 ***4. Breach of Contract***

23 148. Ocwen alleged it was an intended beneficiary of the HOA's CC&Rs and the HOA
24 breached the CC&Rs by the circumstances under which they conducted the HOA Sale.

25 149. In its Motion for Summary Judgment, the HOA contended it did not breach the CC&Rs
26 based on the Nevada Supreme Court's decision in *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 130
27 Nev. 742, 757-58, 334 P.3d 408, 419 (2014); where the Court recognized that NRS 116.1104
28 overrules mortgage protection clauses contained in CC&Rs. *See also* NRS 116.1104 (stating that

1 NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as
2 provided by the statute).”

3 150. As is stated in the Findings of Fact and in the Conclusions of Law that support the
4 Court’s Order granting summary judgment in favor of Chersus, the Court has determined that the
5 Nevada Supreme Court’s holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-
6 58, 334 P.3d 408, 419 (2014), applies to this case, and as a result, the provisions of NRS Chapter
7 116 cannot be varied or waived by the CC&Rs. Accordingly, the Court grants the HOA’s motion for
8 summary judgment as to Ocwen’s claim for breach of contract.

9 **5. Negligent Misrepresentation**

10 151. As to Negligent Misrepresentation, Ocwen alleged: (1) the HOA should have known
11 that Ocwen would rely on the representations contained in the Mortgagee Protection Clause in the
12 CC&Rs; (2) it justifiably relied on the representations contained in the Mortgagee Protection Clause
13 in giving consideration for the Deed of Trust; (3) the HOA’s representations about the Mortgagee
14 Protection Clause were false; (4) the HOA knew, or should have known the representations in the
15 CC&RS, including the Mortgagee Protection Clause, were false; (5) the HOA had a pecuniary
16 interest in having Plaintiff rely on the CC&Rs, including the Mortgagee Protection Clause; and (6)
17 the HOA failed to exercise reasonable care or competence in communicating the information within
18 the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

19 152. In its Motion for Summary Judgment, the HOA argued Ocwen’s misrepresentation
20 claim was barred by the economic loss doctrine. The HOA also argued the claim failed as a matter of
21 law because NRS 116.1104 clearly and unambiguously states that NRS Chapter 116 provisions
22 cannot be varied by agreement. Thus, Ocwen did not, and could not have, justifiably relied on any
23 misrepresentations related to the Mortgagee Protection Clause. Ocwen disputed that its claim was
24 barred by the economic loss doctrine. Ocwen also argued that based on *ZYZZX2 v. Dizon, supra*, it
25 had set forth a viable claim for misrepresentation.

26 153. As is stated in the Findings of Fact and in the Conclusions of Law that support the
27 Court’s Order granting summary judgment in favor of Chersus, the Court has determined that the
28 Nevada Supreme Court’s holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-

1 58, 334 P.3d 408, 419 (2014), applies to this case. As a result, the Court holds the provisions of NRS
2 Chapter 116 cannot be varied or waived by the CC&Rs. Thus, Ocwen did not, and could not have,
3 justifiably relied on any misrepresentations related to the Mortgagee Protection Clause.
4 Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for
5 misrepresentation.

6 ***6. Unjust Enrichment***

7 154. As to its Cause of Action for Unjust Enrichment, Plaintiff alleged: (a) it has been
8 deprived of the benefit of its secured deed of trust by the actions of the HOA; (b) the HOA benefitted
9 from the unlawful HOA Sale, and (c) the HOA benefitted from Plaintiff's payment of property taxes,
10 insurance premiums, or homeowner's association assessments.

11 155. The HOA contended its Motion for Summary Judgment should be granted because
12 Ocwen did not pay any money to it; and it did not unjustly retain money owed to Ocwen.

13 156. Based on the HOA's and Ocwen's briefing on the HOA's motion for summary
14 judgment, and the argument at the MSJ Hearing, the Court holds that the HOA did not benefit from
15 the Ocwen's payment of taxes, insurance premiums, or homeowner's association assessments. First,
16 any property taxes paid by Ocwen were not paid to the HOA and the HOA did not benefit from
17 Ocwen's payment of property taxes because the HOA was not the property owner. Second, at the
18 hearing, the Court asked Ocwen's counsel to explain how the payment of insurance premiums
19 benefitted the HOA. Ocwen's counsel stated the payment of insurance premiums benefitted the HOA
20 because the HOA owned the Property. However, it is undisputed that the HOA did not own the
21 Property.

22 157. Finally, based on its purported purchase of the Property at the Deed of Trust
23 Foreclosure, Ocwen obtained possession of the Property, and it was identified as the record owner of
24 the Property. While it was the record owner of the Property, and while it held possession of the
25 Property, it was in Ocwen's interest to pay the property taxes, insurance premiums and homeowner's
26 association assessments. Consequently, the HOA was not unjustly enriched by Ocwen's payment of
27 property taxes, insurance premiums and homeowner's association assessments. Thus, the HOA's
28 motion for summary judgment as to Ocwen's unjust enrichment cause of action must be granted.

1 158. If any Conclusion of Law set forth herein is determined to properly constitute a Finding
2 of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

3 ***7. Tortious Interference with Contractual Relations***

4 159. To prevail on a claim for tortious inference with contractual relations, Ocwen must
5 demonstrate that: "(1) a valid and existing contract; (2) the [HOA's] knowledge of the contract; (3)
6 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of
7 the contract; and (5) resulting damage." J.J. Indus., LLC v. Bennett, 71 P.3d 1264, 1267 (Nev. 2003).

8 160. Ocwen argues that the HOA's decision to foreclose on the Property was designed to
9 disrupt the contractual relationship between [Ocwen] and the borrower by extinguishing the senior
10 deed of trust.

11 161. The Court finds that Ocwen cannot demonstrate any motive by the HOA to interfere.
12 The borrower breached the contract with Ocwen well before the HOA Sale. Thus, the HOA did not
13 induce the borrower to breach. There is also no actual disruption because the borrower had already
14 breached the contract.

15 162. The Court further finds that the HOA Sale in no way prevented Ocwen from taking
16 legal action against the borrower for her breach of the note. Ocwen could have pursued its own
17 foreclosure before the HOA Sale and the HOA Sale did not preclude Ocwen from taking other legal
18 action against the borrower for breaching her contract with Ocwen.

19 163. The Court finds that HOA Sale did not cause Ocwen any harm. Rather, Ocwen caused
20 any purported harm by failing to tender the superpriority portion of the lien or to take any other
21 affirmative action to protect its interest. If the deed of trust was extinguished by the foreclosure sale,
22 then any harm stems entirely from the inaction of Ocwen and its predecessors, not the HOA.

23 164. The Court, therefore, grant summary judgment in favor of the HOA on Ocwen's tortious
24 interference claim.

25 **ORDER**

26 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
27 HEREBY ORDERS AS FOLLOWS:

28 1. Ocwen's Motion for Summary Judgment is DENIED;

1 2. The HOA's Motion for Summary Judgment is GRANTED;

2 3. Chersus's Oral Motion, made at the MSJ Hearing, to Dismiss Its Counterclaim for
3 Slander of Title with Prejudice is GRANTED;

4 4. Chersus's Motion for Summary Judgment is GRANTED as follows:

5 A. An Order shall be entered granting Judgment in favor of Chersus and dismissing
6 Ocwen's Second Amended Complaint against Chersus.

7 B. An Order shall be entered granting Judgment in favor of Chersus as to its
8 Counterclaims for Quiet Title and Declaratory Relief. The Order granting Judgment in favor of
9 Chersus shall provide that: (1) Chersus is the undisputed owner of the Property, (2) Chersus is the
10 holder of "fee simple" title to the Property; (3) the Property is not subject to the Deed of Trust; and
11 (4) the Deed of Trust was extinguished by the HOA Sale.

12 C. An Order shall be entered granting partial summary judgment in favor of
13 Chersus, as to liability only, with respect to Chersus's Counterclaims for Wrongful Foreclosure,
14 Trespass and Conversion, and Unjust Enrichment.

15 D. Within 30 days of the Notice of Entry of this Order, Chersus shall file an
16 Application for a Prove-Up Hearing as to the amount and types of damages to be awarded to
17 Chersus with respect to its Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and
18 Unjust Enrichment.

19 E. Within 45 days of the Notice of Entry of this Order, Chersus shall file its
20 Memorandum of Costs, and Motion for Attorney's Fees.

21 5. A certified copy of this Order may be recorded in the Official Records as proof and
22 confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 against the Property under any of the Deed of Trust has been extinguished.

2 IT IS SO ORDERED.

3 DATED this 2 day of March, 2019

4 
DISTRICT JUDGE

5
6 Submitted by:

7
8 THE LAW OFFICE OF VERNON NELSON

9
10 By: /s/ Vernon Nelson
11 VERNON NELSON, ESQ.
12 Nevada Bar No.: 6434
13 9480 S. Eastern Avenue, Suite 252
14 Las Vegas, NV 89123
15 Tel: 702-476-2500
16 Fax: 702-476-2788
17 E-Mail: vnelson@nelsonlawfirmnv.com
18 Attorney for Defendant Chersus Holdings, LLC
19
20
21
22
23
24
25
26
27
28

A-14-696357C

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC v. CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On ~~March 19~~ ^{May 2}, 2019, I served the following document(s):

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
Paralegal .	bknotices@nv-lawfirm.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Thomas N. Beckom .	tbeckom@mccarthyholthus.com

☒ **By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:13 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL- EX I

Paterno- Separately, I disagree with Dana's comment that the Order should state who the notices were sent to. That is not consistent with our argument that the recitals establish that these requirements were met and it is not consistent with Judge Early's ruling.

Vernon

1. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter 116.

From: Vernon Nelson <vnelson@nelsonlawfirmllv.com>
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani <pjurani@wrightlegal.net>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Paterno-

Sorry for the delay. I have attached the transcript.

With respect to the issue about Trespass being raised at the MSJ, please refer to pp. 43-44 of the transcript. At lines 4-5 is where I repeated that the brief argued that the Conversion claim should have been labeled as Trespass and Conversion...however, there was a lot of back and forth and Judge Early and I were talking over each other. I had started talking about trespass, and she cut me off and started distinguishing conversion.

1. Trespass and Conversion.

2. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of Action to apply to claims for Trespass and Conversion.

With respect to

Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property

At pp. 54-55, the Judge is asking Dana to explain the unjust enrichment claim. On page 55 at lines 13-24 he explains how the HOA benefited and he includes the payment of insurance premiums.

From: Paterno Jurani <pjurani@wrightlegal.net>
Sent: Tuesday, March 26, 2019 1:50 PM
To: Vernon Nelson <vnelson@nelsonlawfirmnv.com>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Vernon, Ashlie,

Attached is the order with Dana's changes and comments. There are a couple of paragraphs that reference his comments at the hearing. Could you please provide us with the transcript and identify where the comments were made. Alternatively, please identify the time stamp as we have video of the hearing. Thanks.

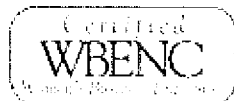
Paterno C. Jurani, Esq.

Attorney
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Regional Counsel for California, Nevada,
Arizona, Washington, Oregon, Utah and
New Mexico**



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From: Vernon Nelson [<mailto:vnelson@nelsonlawfirmnv.com>]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi All- Hope you are well. I apologize for the delay in getting this out. We had some turnover and Steve Burke, Coreene Drose, and Julie Hall are no longer with the firm. Jennifer Martinez is our new Legal Assistant. Pls cc Jennifer and Michelle on all communications.

I have attached a draft of proposed Findings of Fact and Conclusions of Law.

Please review and let me know if you have any comments/changes. If you do have changes, please use the track changes feature in Word. Please do not send a list of changes for our staff to type into the document. Unfortunately, we stretched a little thin to do that work.

Kind regards,

Vernon

EXHIBIT 2

EXHIBIT 2

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL-EX II

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Paterno C. Jurani, Esq.

Attorney
Licensed in Nevada and California



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Arizona, Washington, Oregon, Utah and
New Mexico**



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immediately at (949) 477-5052 and arrangements will be made
for the return of this material. Thank You.

From: Vernon Nelson [<mailto:vnelson@nelsonlawfirmllv.com>]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

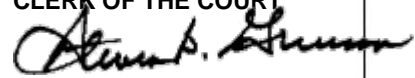
Hi All- Hope you are well. I apologize for the delay in getting this out. We had some turnover and Steve Burke, Coreene Drose, and Julie Hall are no longer with the firm. Jennifer Martinez is our new Legal Assistant. Pls cc Jennifer and Michelle on a communications.

I have attached a draft of proposed Findings of Fact and Conclusions of Law.

Please review and let me know if you have any comments/changes. If you do have changes, please use the track changes feature in Word. Please do not send a list of changes for our staff to type into the document. Unfortunately, we stretched a little too thin to do that work.

Kind regards,

Vernon



1 **ORD**
2 VERNON A. NELSON, JR., ESQ.
3 Nevada Bar No.: 6434
4 THE LAW OFFICE OF VERNON NELSON
5 6787 W. Tropicana Ave., Suite 103
6 Las Vegas, NV 89103
7 Tel.: 702-476-2500
8 Fax.: 702-476-2788
9 E-mail: vnelson@nelsonlawfirm.lv.com
10 *Attorney for Defendant Chersus Holdings, LLC*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 OCWEN LOAN SERVICING, LLC, a foreign
10 Limited Liability Company,

11 Plaintiff,

12 v.

13 CHERSUS HOLDINGS, LLC, a Domestic
14 Limited Liability Company; First 100, LLC, a
15 Domestic Limited Liability Company;
16 SOUTHERN TERRACE HOMEOWNERS
17 ASSOCIATION, a Domestic Non-Profit
18 Corporation; RED ROCK FINANCIAL
19 SERVICES, LLC, A Foreign Limited Liability
20 Company; UNITED LEGAL SERVICES,
21 INC., a Domestic Corporation; DOES I
22 through X; and ROE CORPORATIONS XI
23 through XX, inclusive

24 Defendant.

25 CHERSUS HOLDINGS, LLC, a Domestic
26 Limited Liability Company,

27 Counterclaimant,

28 OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

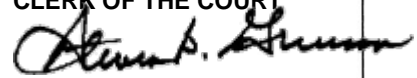
**ORDER DENYING OCWEN LOAN
SERVICING, LLC'S MOTION TO
ALTER OR AMEND JUDGMENT AND
FOR RECONSIDERATION PURSUANT
TO N.R.C.P. 59 AND 60**

This matter came before the Court on February 6, 2020, on Plaintiff's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCp 59 and 60 ("Motion for Reconsideration") filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019 and a Notice of Supplemental Authority on September 6, 2019. The Court having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, hereby DENIES Plaintiff's Motion for Reconsideration.

Kerry S. Enley
DISTRICT COURT JUDGE

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89130
Tel: 702-476-2500
Fax: 702-476-2788
E-Mail: vnelson@nelsonlawfirmnv.com
Attorneys for Defendant Chersus Holdings, LLC

A-14-696357-C
Ord Denying Ocwen
Loan-MTN to Alter
or Amend judg +
Reconsideration



1 **NEO**
2 VERNON A. NELSON, JR., ESQ.
3 Nevada Bar No.: 6434
4 THE LAW OFFICE OF VERNON NELSON
5 9480 S. Eastern Ave., Ste. 252
6 Las Vegas, NV 89123
7 Tel.: 702-476-2500
8 Fax.: 702-476-2788
9 E-mail: vnelson@nelsonlawfirmly.com
10 Attorney for Defendant Chersus Holdings, LLC
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DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; First 100, LLC, a
Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, A Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

**NOTICE OF ENTRY OF ORDER
DENYING OCWEN LOAN SERVICING,
LLC'S MOTION TO ALTER OR AMEND
JUDGMENT AND FOR
RECONSIDERATION PURSUANT TO
N.R.C.P. 59 AND 60**

1 **NOTICE OF ENTRY OF ORDER DENYING OCWEN LOAN SERVICING, LLC'S**
2 **MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION**
3 **PURSUANT TO N.R.C.P. 59 AND 60**

4 PLEASE TAKE NOTICE that on the 20th day of February, 2020, an Order Denying Ocwen
5 Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to
6 N.R.C.P. 59 and 60 was entered on the Court's docket. A copy of said Order is attached hereto.

7
8 DATED this 20th day of February, 2020

THE LAW OFFICE OF VERNON NELSON

9 /s/ Vernon A. Nelson

10 VERNON A. NELSON, JR., ESQ.

Nevada Bar No.: 6434

11 9480 S. Eastern Avenue, Suite 252

Las Vegas, NV 89123

12 Tel: 702-476-2500

Fax: 702-476-2788

13 E-Mail: ynelson@nelsonlawfirmnv.com

14 *Attorney for Defendant Chersus Holdings,*
15 *LLC*

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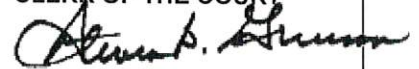
20

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24

25



1 **ORD**
2 VERNON A. NELSON, JR., ESQ.
3 Nevada Bar No.: 6434
4 THE LAW OFFICE OF VERNON NELSON
5 6787 W. Tropicana Ave., Suite 103
6 Las Vegas, NV 89103
7 Tel.: 702-476-2500
8 Fax.: 702-476-2788
9 E-mail: vnelson@nelsonlawfirmllv.com
10 Attorney for Defendant Chersus Holdings, LLC

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 OCWEN LOAN SERVICING, LLC, a foreign
10 Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

11 Plaintiff,

12 v.

13 CHERSUS HOLDINGS, LLC, a Domestic
14 Limited Liability Company; First 100, LLC, a
15 Domestic Limited Liability Company;
16 SOUTHERN TERRACE HOMEOWNERS
17 ASSOCIATION, a Domestic Non-Profit
18 Corporation; RED ROCK FINANCIAL
19 SERVICES, LLC, A Foreign Limited Liability
20 Company; UNITED LEGAL SERVICES,
21 INC., a Domestic Corporation; DOES I
22 through X; and ROE CORPORATIONS XI
23 through XX, inclusive

24 Defendant.

25 CHERSUS HOLDINGS, LLC, a Domestic
26 Limited Liability Company,

27 Counterclaimant,

28 OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

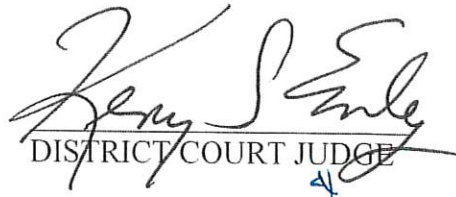
Counter-Defendants.

**ORDER DENYING OCWEN LOAN
SERVICING, LLC'S MOTION TO
ALTER OR AMEND JUDGMENT AND
FOR RECONSIDERATION PURSUANT
TO N.R.C.P. 59 AND 60**

1 **ORDER DENYING OCWEN LOAN SERVICING, LLC'S**
2 **MOTION TO ALTER OR AMEND JUDGMENT**
3 **AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60**

4 This matter came before the Court on February 6, 2020, on Plaintiff's Motion to Alter or
5 Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 ("Motion for
6 Reconsideration") filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A.
7 Nelson, Esq. filed an Opposition thereto on July 2, 2019 on behalf of Defendant Chersus Holdings,
8 LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019 and a Notice of
9 Supplemental Authority on September 6, 2019. The Court having reviewed the matter, including all
10 points, authorities, and exhibits submitted by counsel, hereby DENIES Plaintiff's Motion for
11 Reconsideration.

12 ITS IS SO ORDERED this 14 day of February, 2020.

13
14 
15 DISTRICT COURT JUDGE

16 Respectfully Submitted:

17 THE LAW OFFICE OF VERNON NELSON

18
19 _____
20 VERNON A. NELSON, JR., ESQ.

21 Nevada Bar No.: 6434

22 6787 W. Tropicana Ave., Suite 103

23 Las Vegas, NV 89130

24 Tel: 702-476-2500

25 Fax: 702-476-2788

26 E-Mail: vnelson@nelsonlawfirmllv.com

27 Attorneys for Defendant Chersus Holdings, LLC

28
A-14-696357-C
Ord Denying Ocwen
Loan-MTN to Alter
or Amend judg +
Reconsideration

Aaron S. Lancaster

CLERK OF THE COURT

ORDR

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
THE LAW OFFICE OF VERNON NELSON
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel.: 702-476-2500
Fax.: 702-476-2788
vnelson@nelsonlawfirm.lv.com
Attorney for Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; First 100, LLC, a
Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, A Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive

**ORDER GRANTING JUDGMENT IN
FAVOR OF COUNTERCLAIMANT
CHERSUS HOLDINGS, LLC.**

Defendant,

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

This matter came for before the Court for a prove-up hearing on Counter Claimant, Chersus Holdings, LLC's MOTION FOR: (1) JUDGMENT OR PROVE-UP HEARING FOR COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES; (2) ORDER AWARDING ATTORNEY'S FEES TO CHERSUS HOLDINGS LLC; AND (3) ORDERS FOR SPECIFIC PERFORMANCE. Vernon Nelson, Esq. appeared for Chersus Holdings, LLC. Aaron Lancaster

THE LAW OFFICE OF VERNON NELSON
ATTORNEY AT LAW

appeared for Counter Defendant and Ashlie Surur appearing for Defendant Southern Terrace Homeowner's Association. The Court, having the moving papers, the testimony of witnesses, the papers and pleadings on file herein, and the arguments of counsel, and good cause appearing, the Court HEREBY ORDERS:

1. Counter Claimant is hereby awarded lost rental damages as follows:

a. November and December 2016:	\$1,200.00/month x 2 months	\$ 2,400.00
b. 2017	\$1,300/month x 12 months	\$15,600.00
c. 2018	\$1,400/month x 12 months	\$16,800.00
d. 2019	\$1,550/month x 12 months	\$18,600.00
e. 2020	\$1,550/month x 12 months	\$18,600.00
f. 2021	\$1,550/month x 3 months	\$ 4,650.00

Total Amount of Lost Rental Damages	\$76,650.00
-------------------------------------	-------------

(At the hearing, Mr. Nelson miscalculated this amount to be \$58,050.00. The correct amount is \$76,650.00).

2. Counter Claimant is awarded costs based on amounts that are documented within the Memorandum of Costs; which are as follows:

Independent Transcriber Charges	01/30/2019	\$378.63	MC Exhibit 1
Deposition Transcripts	03/01/2018	\$527.24	MC Exhibit 2
Court Runner Services	02/15/219	\$117.00	MC Exhibit 3
Court Runner Services	02/22/2019	\$30.00	MC Exhibit 4
Court Runner Services	01/18/2019	\$92.00	MC Exhibit 5
Court Runner Services	05/28/2019	\$55.00	MC Exhibit 6
Litigation Support Vendor	05/01/2019	\$401.26	MC Exhibit 7
Deposition Transcripts	07/16/2018	\$368.80	MC Exhibit 8

1	Deposition Transcript	01/09/2018	\$ 535.27	MC Exhibit 9
2	Deposition Transcripts	08/22/2018	\$357.77	MC Exhibit 11
3	Deposition Transcripts	08/30/2018	<u>\$554.07</u>	MC Exhibit 11
4	Total Documented Costs		\$2,522.17	

5
6 3. The Court determined Counterclaimant is not entitled to damages for taxes, trash liens from
7 Republic Services, the Preliminary Title Report and for a home inspection.

8 4. The Court determined Counterclaimant shall not be awarded punitive damages or treble
9 damages pursuant to NRS 42.230.

10 5. As to specific Performance, the COURT ORDERS, Ocwen to comply with any requests
11 from the title company that is hired by Chersus Holdings that are necessary to transfer title.

12 6. As to attorney's fees the COURT FINDS it was reasonable for Ocwen to reject the offer of
13 judgment based on the constant and current flux of law on these foreclosure issues. COURT
14 FURTHER FINDS, attorney's fees are not warranted under NRS Section 18.010(b).

15 IT IS SO ORDERED that Judgment shall be awarded to Counter Claimant Chersus Holding,
16 LLC, and Counter Defendant Ocwen Loan Servicing, LLC Defendants in the amount of SEVENTY-
17 NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 (\$79,172.17) is hereby entered
18 as follows:
19

20 1. The principal amount due and owing to Plaintiff for lost rent in the amount of
21 SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS (\$76,650.00).
22

23 2. Costs and disbursements in the amount of ONE THOUSAND THREE HUNDRED
24 SIXTY-FOUR AND 60/100 DOLLARS (\$1,364.60).

25 3. For a total judgment of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-
26 TWO AND 17/100 (\$79,172.17)
27
28

4. This Judgment shall bear interest at the Nevada statutory rate from the entry of the Judgment until paid in full.

~~DATED this _____ day of March, 2021~~

Dated this 22nd day of March, 2021



DISTRICT COURT JUDGE

Respectfully submitted by:

E2A 5FD 62AF EAC6

Nadia Krall

District Court Judge

LAW OFFICE OF VERNON NELSON, PLLC

/s/ Vernon A. Nelson, Jr., Esq.

VERNON A. NELSON, JR., ESQ.

Nevada Bar No. 6434

6787 W. Tropicana Ave., Suite 103

Las Vegas, NV 89103

Tel: 702-476-2500

Fax: 702-476-2788

Email: vnelson@nelsonlawfirmnv.com

Attorneys for Plaintiff

Approved as to form:

SURUR LAW GROUP

WRIGHT FINLAY & ZAK

/S/ Ashlie L. Surur

ASHLIE L. SURUR, ESQ.

Nevada Bar No. 11290

561 Ivy Spring St.

Las Vegas, NV 89138

Attorneys for Southern Terrace

Homeowners Association

NO RESPONSE FROM COUNSEL

Aaron Lancaster, Esq.

Nevada Bar No.

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

Attorneys for Ocwen Holdings, LLC

Ana Brady

From: Ashlie Surur <ashlie@sururlaw.com>
Sent: Monday, March 15, 2021 1:13 PM
To: Vernon Nelson`
Cc: Aaron D. Lancaster; Ana Brady; Paula Keller
Subject: Re: Proposed Judgment

Hi Vernon,

I approve and you may submit with my electronic signature.

Ashlie L. Surur, Esq.
SURUR LAW GROUP
D: 702-909-0838
ashlie@sururlaw.com
www.sururlaw.com

On Thu, Mar 11, 2021 at 2:03 PM Vernon Nelson` <vnelson@nelsonlawfirmly.com> wrote:

Hi All- Here is the proposed judgment. As you will see, I made a mistake when I calculated the lost rental income amount at the hearing. I have corrected it in the proposed judgment.

Let me know if you have any questions/comments, and/or if we have your approval to submit to the Court along with an email indicating your approval.

Thanks

Vernon Nelson

The Law Office of Vernon Nelson

6787 W. Tropicana Ave., Suite 103

Las Vegas, NV 89103

702-476-2500 (Office)

702-525-7884 (Cell)

vnelson@nelsonlawfirmly.com

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ocwen Loan Servicing, LLC,
7 Plaintiff(s)

CASE NO: A-14-696357-C

8 vs.

DEPT. NO. Department 4

9 Chersus Holdings, LLC,
10 Defendant(s)

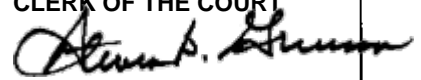
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order 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: 3/22/2021

16 "Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
17 Alexandria Raleigh .	ARaleigh@lawhjc.com
18 Ashlie Surur .	ASurur@lawhjc.com
19 Brody Wight .	bwight@kochscow.com
20 David R. Koch .	dkoch@kochscow.com
21 Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
22 NVEfile .	nvefile@wrightlegal.net
23 Paralegal .	bknotices@nv-lawfirm.com
24 Paterno Jurani .	pjurani@wrightlegal.net
25 Staff .	aeshenbaugh@kochscow.com
26	
27	
28	

1	Steven B. Scow .	sscow@kochscow.com
2	Thomas N. Beckom .	tbeckom@mccarthyholthus.com
3	Lisa Cox	lcox@wrightlegal.net
4	Aaron Lancaster	alancaster@wrightlegal.net
5	Master Calendering	mail@nelsonlawfirm.lv.com
6	Vernon Nelson	vnelson@nelsonlawfirm.lv.com
7	Vernon Nelson	vnelson@nelsonlawfirm.lv.com
8	Michelle Adams	michellea@nelsonlawfirm.lv.com
9	Legal Assistant	legalassistant@nelsonlawfirm.lv.com
10	Ashlie Surur	ashlie@sururlaw.com
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1 NEO
2 VERNON A. NELSON, JR., ESQ.
3 Nevada Bar No.: 6434
4 THE LAW OFFICE OF VERNON NELSON
5 6787 W. Tropicana Ave., Suite 103
6 Las Vegas, NV 89103
7 Tel.: 702-476-2500
8 Fax.: 702-476-2788
9 E-mail: vnelson@nelsonlawfirmnv.com
10 Attorney for Defendant Chersus Holdings, LLC

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 OCWEN LOAN SERVICING, LLC, a foreign
14 Limited Liability Company,

15 Plaintiff,

16 v.

17 CHERSUS HOLDINGS, LLC, a Domestic
18 Limited Liability Company; First 100, LLC, a
19 Domestic Limited Liability Company;
20 SOUTHERN TERRACE HOMEOWNERS
21 ASSOCIATION, a Domestic Non-Profit
22 Corporation; RED ROCK FINANCIAL
23 SERVICES, LLC, A Foreign Limited Liability
24 Company; UNITED LEGAL SERVICES,
25 INC., a Domestic Corporation; DOES I
26 through X; and ROE CORPORATIONS XI
27 through XX, inclusive

28 Defendant.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

**NOTICE OF ENTRY OF ORDER
GRANTING JUDGMENT IN FAVOR OF
COUNTERCLAIMANT CHERSUS
HOLDINGS, LLC.**

PLEASE TAKE NOTICE that on the 22nd day of March, 2021, an Order Granting Judgment
In Favor of Counterclaimant Chersus Holdings, LLC was entered on the Court's docket. A copy of

1 said Order is attached hereto.

2 DATED this 22nd day of March, 2021.

3 THE LAW OFFICE OF VERNON NELSON

4 /s/ Vernon Nelson

5 VERNON A. NELSON, JR., ESQ.

6 Nevada Bar No.: 6434

6 6787 W. Tropicana Ave., Suite 103

7 Las Vegas, NV 89130

7 Tel: 702-476-2500

8 Fax: 702-476-2788

8 E-Mail: vnelson@nelsonlawfirmnv.com

9 *Attorney for Defendant Chersus Holdings, LLC*

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EXHIBIT 1

Aaron Lancaster
CLERK OF THE COURT

ORDER

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
THE LAW OFFICE OF VERNON NELSON
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel.: 702-476-2500
Fax.: 702-476-2788
vnelson@nelsonlawfirmnv.com
Attorney for Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Case No.: A-14-696357-C
Dept No.: IV

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company; First 100, LLC, a
Domestic Limited Liability Company;
SOUTHERN TERRACE HOMEOWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, LLC, A Foreign Limited Liability
Company; UNITED LEGAL SERVICES,
INC., a Domestic Corporation; DOES I
through X; and ROE CORPORATIONS XI
through XX, inclusive

**ORDER GRANTING JUDGMENT IN
FAVOR OF COUNTERCLAIMANT
CHERSUS HOLDINGS, LLC.**

Defendant,

CHERSUS HOLDINGS, LLC, a Domestic
Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign
Limited Liability Company,

Counter-Defendants.

This matter came before the Court for a prove-up hearing on Counter Claimant, Chersus Holdings, LLC's MOTION FOR: (1) JUDGMENT OR PROVE-UP HEARING FOR COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES; (2) ORDER AWARDING ATTORNEY'S FEES TO CHERSUS HOLDINGS LLC; AND (3) ORDERS FOR SPECIFIC PERFORMANCE. Vernon Nelson, Esq. appeared for Chersus Holdings, LLC. Aaron Lancaster

1 appeared for Counter Defendant and Ashlie Surur appearing for Defendant Southern Terrace
2 Homeowner's Association. The Court, having the moving papers, the testimony of witnesses, the
3 papers and pleadings on file herein, and the arguments of counsel, and good cause appearing, the
4 Court HEREBY ORDERS:

5 1. Counter Claimant is hereby awarded lost rental damages as follows:

6 a. November and 7 December 2016:	\$1,200.00/month x 2 months	\$ 2,400.00
8 b. 2017	\$1,300/month x 12 months	\$15,600.00
9 c. 2018	\$1,400/month x 12 months	\$16,800.00
10 d. 2019	\$1,550/month x 12 months	\$18,600.00
11 e. 2020	\$1,550/month x 12 months	\$18,600.00
12 f. 2021	\$1,550/month x 3 months	<u>\$ 4,650.00</u>

13		
14	Total Amount of Lost Rental Damages	\$76,650.00

15 (At the hearing, Mr. Nelson miscalculated this amount to be \$58,050.00. The correct amount is
16 \$76,650.00).

17 2. Counter Claimant is awarded costs based on amounts that are documented within the
18 Memorandum of Costs; which are as follows:

19				
20	Independent Transcriber Charges	01/30/2019	\$378.63	MC Exhibit 1
21	Deposition Transcripts	03/01/2018	\$527.24	MC Exhibit 2
22	Court Runner Services	02/15/219	\$117.00	MC Exhibit 3
23	Court Runner Services	02/22/2019	\$30.00	MC Exhibit 4
24	Court Runner Services	01/18/2019	\$92.00	MC Exhibit 5
25	Court Runner Services	05/28/2019	\$55.00	MC Exhibit 6
26	Litigation Support Vendor	05/01/2019	\$401.26	MC Exhibit 7
27	Deposition Transcripts	07/16/2018	\$368.80	MC Exhibit 8
28				

1	Deposition Transcript	01/09/2018	\$ 535.27	MC Exhibit 9
2	Deposition Transcripts	08/22/2018	\$357.77	MC Exhibit 11
3	Deposition Transcripts	08/30/2018	<u>\$554.07</u>	MC Exhibit 11
4	Total Documented Costs		\$2,522.17	

5
6 3. The Court determined Counterclaimant is not entitled to damages for taxes, trash liens from
7 Republic Services, the Preliminary Title Report and for a home inspection.

8 4. The Court determined Counterclaimant shall not be awarded punitive damages or treble
9 damages pursuant to NRS 42.230.

10 5. As to specific Performance, the COURT ORDERS, Ocwen to comply with any requests
11 from the title company that is hired by Chersus Holdings that are necessary to transfer title.

12 6. As to attorney's fees the COURT FINDS it was reasonable for Ocwen to reject the offer of
13 judgment based on the constant and current flux of law on these foreclosure issues. COURT
14 FURTHER FINDS, attorney's fees are not warranted under NRS Section 18.010(b).

15 IT IS SO ORDERED that Judgment shall be awarded to Counter Claimant Chersus Holding,
16 LLC, and Counter Defendant Ocwen Loan Servicing, LLC Defendants in the amount of SEVENTY-
17 NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 (\$79,172.17) is hereby entered
18 as follows:
19

20 1. The principal amount due and owing to Plaintiff for lost rent in the amount of
21 SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS (\$76,650.00).
22

23 2. Costs and disbursements in the amount of ONE THOUSAND THREE HUNDRED
24 SIXTY-FOUR AND 60/100 DOLLARS (\$1,364.60).

25 3. For a total judgment of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-
26 TWO AND 17/100 (\$79,172.17)
27
28

4. This Judgment shall bear interest at the Nevada statutory rate from the entry of the Judgment until paid in full.

~~DATED this _____ day of March, 2021~~

Dated this 22nd day of March, 2021


DISTRICT COURT JUDGE

Respectfully submitted by:

E2A 5FD 62AF EAC6
Nadia Krall
District Court Judge

LAW OFFICE OF VERNON NELSON, PLLC

/s/ Vernon A. Nelson, Jr., Esq.
VERNON A. NELSON, JR., ESQ.
Nevada Bar No. 6434
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel: 702-476-2500
Fax: 702-476-2788
Email: vnelson@nelsonlawfirmly.com
Attorneys for Plaintiff

Approved as to form:

SURUR LAW GROUP

WRIGHT FINLAY & ZAK

/s/ Ashlie L. Surur
ASHLIE L. SURUR, ESQ.
Nevada Bar No. 11290
561 Ivy Spring St.
Las Vegas, NV 89138
Attorneys for Southern Terrace
Homeowners Association

NO RESPONSE FROM COUNSEL
Aaron Lancaster, Esq.
Nevada Bar No.
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorneys for Ocwen Holdings, LLC

Ana Brady

From: Ashlie Surur <ashlie@sururlaw.com>
Sent: Monday, March 15, 2021 1:13 PM
To: Vernon Nelson`
Cc: Aaron D. Lancaster; Ana Brady; Paula Keller
Subject: Re: Proposed Judgment

Hi Vernon,

I approve and you may submit with my electronic signature.

Ashlie L. Surur, Esq.
SURUR LAW GROUP
D: 702-909-0838
ashlie@sururlaw.com
www.sururlaw.com

On Thu, Mar 11, 2021 at 2:03 PM Vernon Nelson` <vnelson@nelsonlawfirmly.com> wrote:

Hi All- Here is the proposed judgment. As you will see, I made a mistake when I calculated the lost rental income amount at the hearing. I have corrected it in the proposed judgment.

Let me know if you have any questions/comments, and/or if we have your approval to submit to the Court along with an email indicating your approval.

Thanks

Vernon Nelson

The Law Office of Vernon Nelson

6787 W. Tropicana Ave., Suite 103

Las Vegas, NV 89103

702-476-2500 (Office)

702-525-7884 (Cell)

ynelson@nelsonlawfirmly.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ocwen Loan Servicing, LLC,
Plaintiff(s)

CASE NO: A-14-696357-C

7
8 vs.

DEPT. NO. Department 4

9 Chersus Holdings, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing 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:

15 Service Date: 3/22/2021

16 "Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
17 Alexandria Raleigh .	ARaleigh@lawhjc.com
18 Ashlie Surur .	ASurur@lawhjc.com
19 Brody Wight .	bwight@kochscow.com
20 David R. Koch .	dkoch@kochscow.com
21 Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
22 NVEfile .	nvefile@wrightlegal.net
23 Paralegal .	bknotices@nv-lawfirm.com
24 Paterno Jurani .	pjurani@wrightlegal.net
25 Staff .	aeshenbaugh@kochscow.com
26	
27	
28	

1	Steven B. Scow .	sscow@kochscow.com
2		
3	Thomas N. Beckom .	tbeckom@mccarthyholthus.com
4	Lisa Cox	lcox@wrightlegal.net
5	Aaron Lancaster	alancaster@wrightlegal.net
6	Master Calendering	mail@nelsonlawfirmly.com
7	Vernon Nelson	vnelson@nelsonlawfirmly.com
8	Vernon Nelson	vnelson@nelsonlawfirmly.com
9	Michelle Adams	michellea@nelsonlawfirmly.com
10	Legal Assistant	legalassistant@nelsonlawfirmly.com
11		
12	Ashlie Surur	ashlie@sururlaw.com
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 25, 2014

A-14-696357-C Ocwen Loan Servicing, LLC, Plaintiff(s)
vs.
Chersus Holdings, LLC, Defendant(s)

September 25, 2014 8:30 AM

All Pending Motions

HEARD BY: Thompson, Charles

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Billie Jo Craig

RECORDER:

REPORTER: Loree Murray

PARTIES

PRESENT: Fink, Gary S. Attorney

JOURNAL ENTRIES

- PLAINTIFF OCWEN LOAN SERVICING, LLC'S, MOTION FOR SUMMARY JUDGMENT...
DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT AND DEFENDANT/COUNTER-CLAIMANT'S COUNTERMOTION FOR SUMMARY
JUDGMENT

Attorney Donna Dimaggio present for Defendant Chersus Holdings.

At request of counsel, COURT ORDERED, Plaintiff's Motion for Summary Judgment is
WITHDRAWN. A briefing scheduled is set as follows for the Defendant/Counter-Claimant's
Countermotion for Summary Judgment:

Plaintiff's Supplemental Briefing Due: 10/21/14

Defendant's Opposition Due: 11/4/14

Plaintiff's Reply Due: 11/25/14

DECISION: 12/24/14 - CHAMBERS

COURT ORDERED, matter SET for Decision: Defendant/Counter-Claimant's Countermotion for

PRINT DATE: 03/24/2021

Page 1 of 17

Minutes Date: September 25, 2014

Summary Judgment on the Chambers Calendar.

Ms. Dimaggio inquired as to the Plaintiff's lis pendens on the property. Mr. Fink advised he would look at it and contact her. Court noted if not, Defendant will file a Motion with attorney's fees and it will be Granted.

12/24/14 DECISION: DEFENDANT/COUNTER-CLAIMANT'S COUNTERMOTION
FOR SUMMARY JUDGMENT - CHAMBERS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	December 09, 2014
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A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)	
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December 09, 2014 3:00 AM Minute Order

HEARD BY: Earley, Kerry **COURTROOM:** No Location

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to EDCR 2.23, the Court has decided this matter without oral argument. The Court having reviewed Defendant/Counter-Claimant Chersus Holdings, LLC s Motion To Strike Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC s Supplemental Brief In Opposition To Defendant/Counter-Claimant s Motion For Summary Judgment On An Order Shortening Time and the papers and pleadings on file herein, hereby DENIES the instant Motion. To address any claimed prejudice, Defendant/Counter-Claimant Chersus Holdings, LLC shall have up to and including January 2, 2015, to file a Response to Plaintiff/Counter-Defendant Ocwen Loan Servicing s Reply To Supplement To Summary Judgment. No further briefing will be permitted. Decision on this matter is CONTINUED to the Court s CHAMBER Calendar on January 26, 2015. The hearing currently scheduled for December 11, 2014, at 8:30 AM is hereby VACATED. Ms. DiMaggio to prepare the Order and circulate for approval as to form and content.

CLERK S NOTE: A copy of this Minute Order was distributed to the following parties via e-mail: Donna DiMaggio, Esq. ddimaggio@weildrage.com] and Kristin A. Schuler-Hintz, Esq. [khintz@mccarthyholthus.com]. (KD 12/9/14)

PRINT DATE: 03/24/2021

Page 3 of 17

Minutes Date: September 25, 2014

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property**COURT MINUTES****May 04, 2015**

A-14-696357-C Ocwen Loan Servicing, LLC, Plaintiff(s)
 vs.
 Chersus Holdings, LLC, Defendant(s)

May 04, 2015**3:00 AM****Decision****HEARD BY:** Earley, Kerry**COURTROOM:** No Location**COURT CLERK:** April Watkins**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- This matter came before the court for Plaintiff OCWEN's Motion for Summary Judgment, Defendant/Counter-Claimant Chersus Holdings, LLC's Opposition thereto, as well as Defendant/Counter-Claimant's Countermotion for Summary Judgment. At the oral argument scheduled for September 25, 2014, Plaintiff withdrew its Motion for Summary Judgment and the Court set a briefing schedule for supplements to Defendant/Counter-Claimant's Countermotion. Having reviewed the matters, along with all pleadings, points, and authorities therein, the court hereby DENIES Defendant/Counter-Claimant's Countermotion for summary judgment. First, the court FINDS that Chersus Holdings, LLC has not met its burden of establishing the requisite facts to support its countermotion for summary judgment. Further the Court FINDS there are genuine issues of material fact including, but not limited to, whether the HOA sale was validly conducted, whether any tender of payment was made to pay off the superpriority lien prior to the HOA foreclosure sale, or whether there was a federally-protected interest in the subject loan. Counsel for Plaintiff to prepare the Order, to be approved as to form and content by counsel for the Defendant/Counter-Claimant.

CLERK'S NOTE: The above minute order has been distributed to: Thomas N. Beckom, Esq.,

PRINT DATE: 03/24/2021

Page 4 of 17

Minutes Date: September 25, 2014

(TBeckom@mccarthyholthis.com) and Jason G. Martinez, Esq., (jmartinez@ggrmlawfirm.com). aw

September 22, 2015

A-14-696357-C Ocwen Loan Servicing, LLC, Plaintiff(s)
vs.
Chersus Holdings, LLC, Defendant(s)

PRESENT: Martinez, Jason G. Attorney
Schuler-Hintz, Kristin A., ESQ Attorney

- Counsel indicated the parties are waiting on a decision from a pending summary judgment motion from December 2014. Ms. Schuler-Hintz stated there is an indication there is a ruling, but parties are not aware of what the decision is and there has been no order filed. Discovery Commissioner will follow up on the summary judgment order with Judge Earley. Counsel anticipate 2 - 3 days for trial re: Quiet Title / Declaratory Relief. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 06/24/16; adding parties, amended pleadings, and initial expert disclosures DUE 03/28/16; rebuttal expert disclosures DUE 04/26/16; dispositive motions TO BE FILED BY 07/25/16. Scheduling Order will issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	May 02, 2016
A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)	

May 02, 2016	3:00 AM	Motion to Amend	Ocwen Loan Servicing, LLC's Motion for Leave to Amend its Complaint; or, in the alternative, Motion to Stay Litigation
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HEARD BY: Earley, Kerry**COURTROOM:** Chambers**COURT CLERK:** April Watkins**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the court for Plaintiff OCWEN Loan Servicing, LLC s Motion for Leave to Amend Its Complaint; or, in the alternative, Motion to Stay Litigation and Defendant/Counter-Claimant s Opposition thereto. Having reviewed the pleading, along with the points and authorities therein, the court orders Plaintiff s Motion to Amend GRANTED pursuant to NRCP 15(a). Counsel for Plaintiff to prepare the Order, to be approved as to form and content by counsel for the Defendant/Counter-Claimant.

CLERK'S NOTE: The above minute order has been distributed to: Dana J. Nitz, Esq., (dnitz@wrightlegal.com) and Neil Durrant, Esq., (ndurrant@weildrage.com). aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 02, 2017

A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s)
	vs.
	Chersus Holdings, LLC, Defendant(s)

November 02, 2017 2:00 PM Minute Order

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the court for Plaintiff/Counter-Defendant OCWEN Loan Servicing, LLC s Motion for Leave to Amend Its Complaint, filed September 18, 2017 by counsel Natalie C. Lehman, Esq. A Notice of Non-Opposition was field October 2, 2017 by counsel Melissa Ingleby, Esq. Having received no Opposition to the matter and pursuant to NRCP 15(a), EDCR 2.20, and for good cause showing, the Court hereby GRANTS Plaintiff/Counter-Defendant Motion. Counsel for Plaintiff/Counter-Defendant to prepare the Order. Vernon a. Nelson, Jr., Esq. vnelson@nelsonlawfirm.lv.com; Dana J. Nitz, Esq. dnitz@wrightlegal.net

CLERK'S NOTE: This Minute Order was electronically served by Court Clerk, P. Irby, to all registered parties for Odyssey File & Serve./pi (11-2-17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	January 10, 2019
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A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)	
---------------	---	--

January 10, 2019	9:00 AM	All Pending Motions
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HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER: Sharon Nichols

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- OCWEN LOAN SERVICING, LLC'S MOTION FOR SUMMARY JUDGMENT SOUTHERN TERRACE HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT NOTICE OF MOTION

Ms. Surur requested a continuance. Mr. Nitz had no objection. Ms. Surur stated she would be out of the country at the beginning of trial. Counsel stated there was a 5-year rule issue, however counsel agreed to waive the 5-year rule. Court advised a stipulation and order of the parties would be required. Mr. Nitz stated he would prepare the Order.

CONTINUED TO: 1/22/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	January 22, 2019
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A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)
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January 22, 2019 9:00 AM All Pending Motions

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK:
Elizabeth Vargas

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT:	Nelson, Vernon A.	Attorney
	Nitz, Dana J.	Attorney
	Surur, Ashlie L	Attorney

JOURNAL ENTRIES

- OCWEN LOAN SERVICING, LLC'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT
CHERSUS HOLDINGS' MOTION FOR SUMMARY JUDGMENT...SOUTHERN TERRACE
HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

Mr. Nitz argued regarding case law and merits of the Ocwen's Motion for Summary Judgment. Mr. Nelson argued in opposition of the Motion and reviewed applicable case law. Ms. Surur addressed the notice issue, and requested supplemental briefing be provided by counsel, if necessary. COURT FURTHER ORDERED, Ocwen Loan Servicing, LLC's Motion for Summary Judgment DENIED.

Mr. Nelson argued regarding Atkinson deposition testimony. Mr. Nitz provided opposition regarding foreclosure deed recitals and applicable case law. Court inquired regarding slander of title, wrongful foreclosure and declaratory relief. COURT STATED FINDINGS, and ORDERED Cersus Holdings' Motion for Summary Judgment GRANTED; slander of title claim WITHDRAWN.

PRINT DATE: 03/24/2021

Page 10 of 17

Minutes Date: September 25, 2014

COURT ORDERED, South Terrace Homeowners Association's Motion for Summary Judgment GRANTED IN PART; second cause of action DISMISSED WITH PREJUDICE pursuant to Rule 12(b)(5), third cause of action GRANTED, fourth cause of action GRANTED, fifth cause of action GRANTED, sixth cause of action GRANTED, seventh cause of action GRANTED, eighth cause of action GRANTED, and ninth cause of action GRANTED. Mr. Nelson stated he would prepare a Findings of Fact and Conclusions of Law. Upon counsels' inquiry, Court agreed to waive the 10 days for the Order to be submitted.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property**COURT MINUTES****October 21, 2019**

A-14-696357-C Ocwen Loan Servicing, LLC, Plaintiff(s)
 vs.
 Chersus Holdings, LLC, Defendant(s)

October 21, 2019**3:00 AM****Motion****HEARD BY:** Earley, Kerry**COURTROOM:** RJC Courtroom 12D**COURT CLERK:** Alice Jacobson**RECORDER:****REPORTER:** Gina Shrader**PARTIES****PRESENT:**

JOURNAL ENTRIES

- This matter came before the Court on October 21, 2019 on Plaintiff s Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60, filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July, 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019, and a Notice of Supplemental Authority on September 6, 2019.

Having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, the Court hereby enters its decision. COURT FINDS that NRCP 59(e) states that A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment. COURT FINDS that NRCP 59(f) states that The 28-day time periods specified in this rule cannot be extended under Rule 6(b). COURT FINDS that here, the Notice of Entry of the Judgment in question, the Findings of Fact, Conclusions of Law and Order granting summary judgment for Defendants Chersus Holdings, LLC and Southern Terrace Homeowners Association, was entered on May 6, 2019. COURT FINDS that Plaintiff s Motion to Alter or Amend Judgment was filed on June 11, 2019, 36 days after the Judgment was entered. THEREFORE, Plaintiff s Motion is DISMISSED pursuant to NRCP 59(e).

PRINT DATE: 03/24/2021

Page 12 of 17

Minutes Date: September 25, 2014

The hearing scheduled for October 24, 2019 at 9am is hereby VACATED. Counsel for Defendants to prepare and submit the Order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	COURT MINUTES	January 03, 2020
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A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)
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January 03, 2020	3:00 AM	Minute Order
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HEARD BY: Earley, Kerry **COURTROOM:** Chambers

COURT CLERK: Andrea Natali

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- This matter came before the Court on Ocwen Loan Servicing, LLC's Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60, filed on November 18, 2019 by counsel Dana Jonathon Nitz, Esq. Defendant's Motion to Vacate Hearing on Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60 was filed on December 20, 2019 by counsel Vernon A. Nelson, Jr., Esq., wherein Defendant noted it was not filing an Opposition.

Having reviewed all points, authorities, and exhibits, the Court hereby renders its opinion. Pursuant to EDCR 2.20, NRCP 59, NRCP 60, and for good cause shown, the Court hereby GRANTS Plaintiff's Motion for Reconsideration of the Court's October 30, 2019 Order. The October 30, 2019 Order denying Ocwen's June 11, 2019 Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 is hereby REVERSED, and a hearing set for this Motion is hereby set in Department IV on February 6, 2020 at 9:00 am.

The hearing currently set on January 7, 2020 for Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order, and the hearing currently set on January 7, 2020 for Chersus Holding, LLC's

Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney s Fees to Chersus Holdings, LLC; and (3) Orders for Specific Performance are hereby VACATED.

Counsel for Plaintiff to prepare and submit the Order.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (1/3/20 amn).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 06, 2020

A-14-696357-C	Ocwen Loan Servicing, LLC, Plaintiff(s)
	vs.
	Chersus Holdings, LLC, Defendant(s)

**February 06, 2020 9:00 AM Motion to Amend
Judgment**

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Alice Jacobson

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT:	Jurani, Paterno C.	Attorney
	Nelson, Vernon A.	Attorney
	Surur, Ashlie L	Attorney

JOURNAL ENTRIES

-

Mr. Jurani argued for reconsideration of the Court's order as the wrong analysis was applied by the Court. Argument regarding commercial reasonably and the factoring agreement. Opposition by Mr. Nelson. Statement there were multiple bidders present at the sale and the price was \$3,500.00. COURT ORDERED, motion for reconsideration, DENIED. Court finds that a Prove Up Hearing was necessary and would contact counsel with a Court date. Court advised that Ms. Surur was excused from attending the Prove Up Hearing. Mr. Nelson to prepare the order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property**COURT MINUTES****March 04, 2021**

A-14-696357-C Ocwen Loan Servicing, LLC, Plaintiff(s)
 vs.
 Chersus Holdings, LLC, Defendant(s)

March 04, 2021**9:00 AM****Prove Up****HEARD BY:** Krall, Nadia**COURTROOM:** RJC Courtroom 03H**COURT CLERK:** Louisa Garcia**RECORDER:** Stacey Ray**REPORTER:****PARTIES****PRESENT:**

Lancaster, Aaron

Attorney

Nelson, Vernon A.

Attorney

Surur, Ashlie L

Attorney

JOURNAL ENTRIES

- Mr. Nelson stated case history. Mr. Lancaster stated they filed an objection to the bill of costs. Colloquy regarding Jagdish Mehta sworn and testified. Johnathan Zimmer sworn and testified. COURT ORDERED, Judgment GRANTED as follows: Rental loss \$58,050.00; costs in the amount it stated on the record and that are listed in the memorandum of costs and disbursements, filed October 12, 2019. The Court advised it was not going to order any award for taxes, trash, title policy and home inspection. As to specific Performance, COURT ORDERED, Ocwen to comply with any requests from the title company that is hired by Chersus to transfer title. COURT FINDS that on Attorney's fees it was reasonable for Ocwen to reject the offer of judgment based on the constant and current flux of law on these foreclosure issues. COURT FURTHER FINDS, attorney's fees were not warranted under NRS Section 45. COURT did not find that Ocwen acted with any malice based on the law that was in effect at the time. The Court advised it was also not going to award punitive or treble damages or for the personal property. Mr. Lancaster to prepare Order and provide to Mr. Lancaster as to form and content.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

AARON D. LANCASTER, ESQ.
7785 W. SAHARA AVE., STE 200
LAS VEGAS, NV 89117

DATE: March 24, 2021
CASE: A-14-696357-C

RE CASE: OCWEN LOAN SERVICING, LLC vs. CHERSUS HOLDINGS, LLC; FIRST 100, LLC; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION

NOTICE OF APPEAL FILED: March 23, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; OCWEN LOAN SERVICING, LLC'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF ORDER; ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60; NOTICE OF ENTRY OF ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60; ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC.; NOTICE OF ENTRY OF ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC.; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

OCWEN LOAN SERVICING, LLC,

Plaintiff(s),

vs.

CHERSUS HOLDINGS, LLC; FIRST 100,
LLC; SOUTHERN TERRACE
HOMEOWNERS ASSOCIATION,

Defendant(s),

Case No: A-14-696357-C

Dept No: IX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of March 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk