

**In the Supreme Court of Nevada**

WYETH RANCH  
COMMUNITY  
ASSOCIATION,  
Appellant,

vs.

MARCHAI B.T, A NEVADA  
BUSINESS TRUST,  
Respondent.

**Supreme Court Case No. 83069**

District Court Case No. A68946-1  
Electronically Filed  
Nov 15 2021 01:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX OF DOCUMENTS**

**VOLUME II OF III**

LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

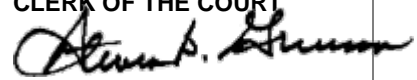
*Attorneys for Appellant, Wyeth Ranch Community Association*

<b>Volume</b>	<b>Document</b>	<b>Bates No.</b>
I	Case Appeal Statement (SFR Investments Pool 1, LLC)	AA 113-117
III	Case Appeal Statement (Wyeth Ranch Community Association)	AA 495-499
I	Decision and Order	AA 078-092
II	Findings of Fact and Conclusions of Law	AA 293-315
I	Judgment	AA 118-121
I	Marchai's Answer to Counterclaims	AA 022-028
I	Marchai's Complaint	AA 001-007
I	Marchai's Consolidated Complaint	AA 029-042
I	Marchai's Motion to Reopen Discovery	AA 137-147
I	Marchai's Motion to Retax and Settle Costs	AA 435-441
II	Marchai's Opposition to Motion for Fees and Costs	AA 445-455
II	Marchai's Opposition to Motion for Reconsideration	AA 261-273
I	Marchai's Opposition to Motion for Summary Judgment	AA 179-197
II	Marchai's Reply in Support of Motion to Retax	AA 461-465
I	Marchai's Statement of Facts	AA 198-213
I	Notice of Appeal (SFR Investments Pool 1, LLC)	AA 110-112
III	Notice of Appeal (Wyeth Ranch Community Association)	AA 492-494
I	Notice of Entry of Decision and Order	AA 093-109
II	Notice of Entry of Findings of Fact, Conclusions of Law	AA 323-347
I	Notice of Entry of Judgment	AA 122-127
I	Notice of Entry of Order Consolidating Cases	AA 047-050
II	Notice of Entry of Order Denying Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 316-322
I	Notice of Entry of Order Denying Defendant Wyeth Ranch Community Association's Motion for Summary Judgment	AA 235-240
I	Notice of Entry of Order Denying, in Part, and Granting in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss	AA 054-058
I	Notice of Entry of Order Granting Marchai's Motion to Reopen Discovery on an Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule	AA 155-163
I	Order Denying Amended Complaint	AA 043-044

III	Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs	AA 486-491
II	Order Denying Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 288-292
I	Order Denying Defendant Wyeth Ranch Community Association's Motion for Summary Judgment	AA 231-234
I	Order Denying, in Part, and Granting in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss	AA 051-053
II	Order Denying Marchai's Motion to Retax and Settle the Costs	AA 478-485
I	Order Granting Marchai's Motion to Reopen Discovery	AA 148-154
I	Order Lifting Stay and Consolidating Cases	AA 045-046
I	Order Vacating Judgment and Remanding	AA 131-136
I	SFR Investments Pool 1, LLC's Amended Notice of Appeal	AA 128-130
I	SFR Investments Pool 1, LLC's Answer to Complaint	AA 069-077
I	SFR Investments Pool 1, LLC's Answer, Counterclaim, and Cross-Claim	AA 008-021
II	SFR Investments Pool 1, LLC's Opposition to Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements	AA 442-444
I	Wyeth Ranch Community Association's Answer and Affirmative Defenses	AA 059-068
II	Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs	AA 353-434
II	Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 241-260
I	Wyeth Ranch Community Association's Motion for Summary Judgment	AA 164-178
II	Wyeth Ranch Community Association's Opposition to the Motion to Retax and Settle Costs	AA 456-460
II	Wyeth Ranch Community Association's Reply in Support of its Motion for Attorney's Fees and Costs	AA 466-477
II	Wyeth Ranch Community Association's Reply in Support of its Motion for Reconsideration or	AA 274-287

	Clarification Under NRCP 60, Alternatively Motion in Limine	
I	Wyeth Ranch Community Association's Reply in Support of its Motion for Summary Judgment	AA 214-230
II	Wyeth Ranch Community Association's Verified Memorandum of Fees and Costs	AA 348-352
III	Trial Transcript	AA 500-711





LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
MOTION FOR  
RECONSIDERATION OR  
CLARIFICATION UNDER NRCP  
60, ALTERNATIVELY MOTION IN  
LIMINE**

**(HEARING DATE REQUESTED)**

AND ALL RELATED CLAIMS AND ACTIONS.

Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., respectfully submits the following Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine.

///

///

///

///

///

1           This Motion is made and based upon the Memorandum of Points and Authorities,  
2 the exhibits attached hereto, the pleadings and papers on file herein, and any oral  
3 argument that may be presented at any hearing on the Motion.

4           DATED this 4<sup>th</sup> day of December, 2020.

5  
6                                   LIPSON NEILSON P.C.

7                                   */s/ David T. Ochoa*  
8 By: \_\_\_\_\_  
9                                   KALEB D. ANDERSON, ESQ.  
10                                  Nevada Bar No. 7582  
11                                  DAVID T. OCHOA, ESQ.  
12                                  Nevada Bar No. 10414  
13                                  9900 Covington Cross Drive, Suite 120  
14                                  Las Vegas, Nevada 89144

15                                  *Attorneys for Defendant*  
16                                  *Wyeth Ranch Community Association*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Despite the case having been litigated for years, recently remanded, and set for trial, Marchai is attempting to amend its claims and argue new damages presented for the first time in its November 2, 2020, Opposition to the HOA's Summary Judgment Motion. Marchai has never before asserted anything different than either the deed of trust survived the sale, or otherwise the sale should be set aside as a wrongful foreclosure. Now Marchai alleges for the first time that if the foreclosure on superpriority portion of the lien is found and upheld, it has still been damaged by misapplication of the proceeds of the sale, after the sale. As will be explained below, Marchai has never asserted this before in its Complaint, prior motions, written discovery responses, or disclosures, including never providing a computation of damages for this assertion.

If Marchai knew this was where it was going to go after remand, it had the burden to amend its pleadings and update its disclosures. To this point, Marchai is obviously aware of this burden as it has previously, in this case, filed a Motion to amend its claims after the deadline and argued a change in law as a basis. Additionally, Marchai filed a motion to reopen discovery after the remand, but on a limited basis not related to the application of proceeds after a valid sale.

Asserting a claim for the first time in an Opposition is not a request to amend, and no request to amend has been submitted. No computation of the new alleged damages has ever been provided. Marchai made the choice to not litigate the scenario of whether a superiority sale was actually upheld and application of the proceeds after the sale. Marchai should not be able to amend its claims or assert those damages now.

Marchai raised this issue for the first time in its Opposition. The HOA attempted to address Marchai's untimely assertion in its Reply. The HOA sought clarification of the Summary Judgment Order at the November 10 Calendar Call shortly after the hearing. See opening minutes of November 10 Calendar Call. Counsel for the HOA and Marchai

1 conferred about the dispute of whether Marchai is raising this issue for the first time and  
2 a dispute about the Court's clarification. See **Exhibit 1**, attached hereto. The HOA  
3 submitted a competing Order it believed incorporated the clarification by the Court,  
4 however, the Court signed Marchai's Order that does not address this issue. Marchai  
5 has expressed that intends to bring this new claim at trial. Exhibit 1. Thus, this motion  
6 is necessary to seek reconsideration or clarification of the prior order, or alternatively  
7 this is a motion in limine seeking a separate order that this issue should not be raised at  
8 trial.

## 9 **II. STATEMENT OF UNDISPUTED FACTS**

10 On or around October 19, 2005, Cristela Perez ("Borrower") obtained a loan to  
11 purchase the Property. See Complaint in Case No. A-16-742327-C, attached hereto as  
12 **Exhibit 2** ¶ 7. The loan was secured by a deed of trust with CMG Mortgage named as  
13 beneficiary. *Id.* ¶ 8. The deed of trust was subsequently assigned to CitiMortgage, Inc.  
14 and Stanwich Mortgage Loan Trust, Series 2012-6. *Id.* ¶¶ 22, 24. In March 2013, the  
15 deed of trust was assigned to Plaintiff. *Id.* ¶ 27.

16 Sometime after purchasing the Property, Borrower defaulted on her quarterly  
17 homeowners' assessments. See generally *id.*; The HOA's, sold the Property to SFR  
18 Investment Pool 1 LLC ("SFR") for \$21,000. Ex. 1 ¶ 30. A trustee's deed upon sale was  
19 recorded in SFR's favor in September 2013. See Trustee's Deed Upon Sale, **Exhibit 3**.

## 20 **III. STANDARD OF REVIEW**

### 21 **Reconsideration**

22 EDCR 2.24(b) provides in part that "[a] party seek reconsideration of ruling of the  
23 court, . . . , must file a motion for such relief within 14 days after service of written notice  
24 of the order." The Nevada Supreme Court has held that motions for reconsideration are  
25 appropriate when decision is clearly erroneous," *Masonry and Tile Contractors v. Jolly*  
26 *Urga & Wirth*, 113 Nev. 737, 741 (1997). Given that Marchai's Opposition  
27 inappropriately raised a new issue it is unclear if the Court's Order allows that issue to  
28 proceed; respectfully, if the issue is allowed to be raised in this way and allowed to

1 proceed the decision is clearly erroneous. You do not ask for around ten thousand in  
2 proceeds from a valid sale by alleging the sale was wrongful and asking for an alleged  
3 value of the property of hundreds of thousands of dollars.

#### 4 **Clarification**

5 NRCP 60(a) provides: “[t]he court may correct a clerical mistake or a mistake arising  
6 from oversight or omission whenever one is found in a judgment, order, or other part of  
7 the record. The court may do so on motion or on its own, with or without notice. If the  
8 Court meant to address that a party cannot for the first time raise a new claim and new  
9 damages in an Opposition at the motion deadline after years of litigation, the Court can  
10 clarify the prior order.  
11

#### 12 **Motion in Limine**

13 Motions in Limine have long been recognized as a vehicle by which a party may  
14 seek to preclude the introduction of evidence prior to trial to avoid undue prejudice.  
15 Determinations about admissibility of evidence are properly “conducted out of the  
16 hearing of the jury, to prevent the suggestion of inadmissible evidence.” NRS 47.080.  
17 The purpose of a motion in limine is to allow the trial court to rule in advance of trial on  
18 the admissibility and relevance of certain forecasted evidence. *See Luce v. United*  
19 *States*, 469 U.S. 38, 41 n. 4 (1984). In fact, motions in limine are the preferred method  
20 for making pre-trial determination on the admissibility of evidence. Otherwise valuable  
21 time and judicial resources can be wasted when objections to the admissibility of  
22 evidence are brought during trial. *See State ex rel. Dept. of Highways v. Nevada*  
23 *Aggregates & Asphalt Co.*, 92 Nev. 370, 373, 551 P.2d 1095, 1098 (1976).  
24 Furthermore, “[t]he decision to admit or exclude testimony is within the sound discretion  
25 of the trial court and will not be disturbed unless it is manifestly wrong.” *Hall v. SSF,*  
26 *Inc.*, 112 Nev. 1384, 1392-93, 930 P.2d 94, 99 (1996); *Nevada Aggregates & Asphalt*  
27  
28

1 Co., 92 Nev. at 376, 551 P.2d at 1098. Specifically, it is within the sound discretion of  
2 the trial court to exclude as evidence at trial any discovery completed after the discovery  
3 cut-off date. See *Dow Chem. Co. v. Mahlum.*, 114 Nev. 1468, 1506, 970 P.2d 98, 122-  
4 23 (1998), overruled on other grounds by *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11  
5 (2011); *Leiper v. Margolis*, 111 Nev. 1012, 899 P.2d 574 (1995).

#### 6 7 **IV. PROCEDURAL BACKGROUND**

8 In the District Court's Order entered March 22, 2016, the Court found that Marchai  
9 failed to establish the sale was commercially unreasonable, violated the takings or due  
10 process clauses, or that the statute was unconstitutionally vague. **Exhibit 4.**

11 In the District Court's Order entered January 24, 2017, the Court dismissed  
12 Marchai's Quiet Title Claim against the HOA. **Exhibit 5.**

13 In the District Court's October 3, 2017 Order, the Court found that Notice was  
14 proper, however, found for Marchai based on a determination that Borrower's partial  
15 payments paid off the superpriority portion of the lien. **Exhibit 6.**

16 On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal,  
17 appealing the determination on the application of Borrower's partial payments. **Exhibit**  
18 **7.**

19 Marchai did not appeal the earlier orders or the determination on notice from the  
20 October 3, 2017.

21 On March 18, 2020, the Nevada Supreme Court entered its Order Vacating  
22 Judgment and Remanding. **Exhibit 11.** Within that Order the Nevada Supreme Court  
23 found and affirmed that the 2008 Notice of Delinquent Assessment was the operative  
24 notice to review superpriority and that a Borrower's payments could satisfy the  
25 superpriority portion of an HOA lien. However, the Court remanded on finding that  
26 under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5,  
27 2020), the facts surrounding the payments needed to be analyzed to determine if the  
28 payments actually satisfied the superpriority portion of the lien.

1 On August 13, 2020, Marchai filed its Motion to Reopen Discovery “to allow Marchai  
2 to take the N.R.C.P. 30(b)(6) deposition of Wyeth Ranch Community Association or its  
3 property manager,” referencing the Nevada Supreme Court’s decision was based on  
4 *Cranesbill*. See Motion to Reopen at 1-2. *Cranesbill* does not deal with proceeds after  
5 the sale, but a homeowner’s partial payments on a HOA’s lien prior to the sale.

6 On September 25, 2020, the HOA filed its Motion for Summary Judgment arguing  
7 the remaining *Cranesbill* issue remanded is irrelevant to the elements of the wrongful  
8 foreclosure claim, because It is undisputed that the HOA foreclosed on the remaining  
9 balance of the lien, whether it was all subpriority or still split at the time of foreclosure,  
10 and thus was not a wrongful foreclosure.<sup>1</sup>

11 On October 19, 2020, Marchai in addition to arguing issues of fact remain for trial,  
12 also raised a new claim and damages. Marchai’s Opposition at 15, stating: “Wyeth  
13 Ranch could only apply \$640.50 to its lien and should have remitted the remaining  
14 \$10,038.62 to Marchai.” This new claim in the Opposition was alleging misapplication of  
15 proceeds during a scenario of a valid superpriority foreclosure.

16 On November 2, 2020, the HOA filed its Reply, where it pointed out that Marchai  
17 was raising a new claims and new damages for the first time, with supporting case law  
18 on why such a tactic is not allowed.

19 On November 10, 2020, at the Calendar Call the HOA sought clarification of the  
20 Summary Judgment decision, specifically addressing the new claim. See opening  
21 minutes of November 10 Calendar Call. Counsel for the HOA and Marchai conferred  
22 about the dispute of whether Marchai is raising this issue for the first time and a dispute  
23 about the Court’s clarification. See Exhibit 1, attached hereto. The HOA submitted a  
24

25  
26  
27  
28 <sup>1</sup> The HOA disputes that issue of fact remain on Marchai’s claim for alternative damages against  
the HOA. However, the point of this Motion is to argue the alternative damages in the  
Complaint are not the damages Marchai raised for the first time in its Opposition.

1 competeing Order it believed incorporated the clarification by the Court, however, the  
2 Court signed Marchai's Order that does not address this issue. Marchai has expressed  
3 that intends to bring this new claim at trial. Exhibit 1.

4 **V. LEGAL ARGUMENT**

5 **A. Marchai Alleges a New Claim for Relief and New Damages for the**  
6 **First Time in its Opposition, Which Should Not Be Allowed.**

7 **1. Marchai's reference to proceeds after the sale in its Opposition is**  
8 **the introduction of a New Claim and New Damages**

9 In its Opposition, Marchai is alleging for the first time that it suffered damages  
10 from a misapplication of proceeds after the sale, if in fact it was a superpriority sale. See  
11 Marchai's Opposition at 15, stating: "Wyeth Ranch could only apply \$640.50 to its lien  
12 and should have remitted the remaining \$10,038.62 to Marchai."

13 Marchai is asserting SFR paid to purchase an interest in the property at the  
14 foreclosure sale, and that payment became proceeds from the sale that went to Alessi &  
15 Koenig, as well as the HOA and its management company. Further, Marchai alleges it  
16 should have obtained a majority of what went to the HOA. This is distinguishable from  
17 what Marchai previously pled and what damages they previously sought. As argued  
18 below, Marchai has only ever asserted a wrongful foreclosure, however, these new  
19 damages deal with proceeds from the sale and the issue only arises from a scenario  
20 where a valid superpriority sale has been recognized. Marchai simply could not have  
21 previously pled this claim because it never previously entertained within pleadings to  
22 this Court the possibility of a valid superpriority foreclosure.

23 Review of the record demonstrates that Marchai has not previously alleged it is  
24 entitled to proceeds that went to the HOA. In its Complaint Marchai's Fourth Cause of  
25 Action is for a violation of NRS 116.1113 stating:

26 ///

27 ///

28 ///



**Fourth Claim for Relief**

**(Violation of NRS § 116.1113 et seq.-Against Wyeth Ranch and Alessi & Koenig)**

79. Marchai repeats and realleges each of the paragraphs set forth above.

80. Wyeth Ranch and Alessi & Koenig **wrongfully foreclosed** upon the property in violation of the Statute.

81. Given the above-enumerated violations of the Statute, Marchai asserts that Wyeth Ranch's purported sale of the property be voided and set aside and requests any and all damages flowing from these violations.

Marchai's Complaint at 11 (emphasis added). Thus, Marchai's violation of NRS 116.1113 is pled similar to wrongful foreclosure and directs the review to wrongful foreclosure. It makes sense that Marchai would do this as Wrongful foreclosure is actually limited to whether the debt foreclosed on existed, and other allegations such as notice issues are better pled as a violation of the statute. Or in otherwords, most of Marchai's Third claim for wrongful foreclosure should have been pled just as a breach of NRS 116.1113. Marchai essentially links these claims, arguing they are wrongful foreclosure or breach of NRS 116.1113. However, in linking the claims, Marchai does not address these proceeds after the sale in either the violation of NRS 116.1113 or the wrongful foreclosure claim. Marchai does not address proceeds after the sale, and does not provide a calculation for any related damages: See Cause of Action for Wrongful foreclosure as stated below:

**Third Claim for Relief**

**(Wrongful Foreclosure-Against SFR, Wyeth Ranch, and Alessi & Koenig)**

67. Marchai repeats and realleges each of the paragraphs set forth above.

68. SFR wrongfully purported to purchase Marchai's property in violation of the Statute and common law.

69. The foreclosure sale was wrongful because the foreclosure itself was contrary to law, in that:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to **due process** under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory **taking** of Marchai's secured interest in the property

without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to **due process** under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) **Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.**

70. SFR is not a bona fide purchaser of the Property.

71. SFR's \$21,000.00 purchase price for the property was **unconscionable**.

72. The sale and purchase of the property was not **commercially reasonable**.

73. Based upon the foregoing, Marchai requests an **order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust**, which continues as a valid encumbrance against the property.

74. Based upon the foregoing, Marchai requests an **order declaring that the purported foreclosure sale be voided** and set aside because SFR is not a bona fide purchaser of the property.

75. Based upon the foregoing, Marchai requests an order setting aside the purported foreclosure sale as void because SFR's \$21,000.00 purchase price for the property was **not commercially reasonable**.

76. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's \$21,000.00 purchase price for the property was **unconscionable**.

77. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

78. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Marchai's Complaint at 9 -11 (emphasis added). None of the allegations in the Third Claim for Relief of Wrongful foreclosure above and emphasized in bold address the new claim of misapplication of proceeds after the sale. Further, nothing in the Fourth Claim that refers back to the Third Claim of wrongful foreclosure addresses these proceeds from the sale either.

///

1 First, paragraph 69(e) in the Third Claim discusses the prior homeowner's partial  
2 payments during the foreclosure process; not the new owner SFR's (the Purchaser at  
3 the Foreclosure Sale's) payment at the sale. These prior homeowner payments are  
4 relevant to the *Cranesbill* analysis that was remanded by the Nevada Supreme Court.  
5 However, these payments by the Homeowner to pay down the debt during the  
6 collection/foreclosure process are obviously different then the payment from SFR to  
7 purchase the property at the foreclosue sale. Mentioning the prior homeowners partial  
8 payments toward the debt, does nothing to put the HOA on notice that Marchai believed  
9 there was an issue with or was seeking damages related to SFR's payment at the  
10 foreclosure sale. Marchai, arguing now that the payment from SFR was misapplied is a  
11 new claim.  
12

13 Second, Marchai only referencing wrongful foreclosure in its Fourth Claim for  
14 Breach of NRS 116.1113 makes it more obvious that an issue with proceeds from the  
15 foreclosure sale was not addressed. Not only did we just review that the Third Claim for  
16 Wrongful Foreclosure did not address this, including paragraph 69(e), but wrongful  
17 foreclosure is the exact opposite of what needs to be pled for this claim because this  
18 new claim presumes a valid foreclosure (more specifically a valid superpriority  
19 foreclosure). See Marchai's Opposition at 15 and see *Bank of Am., N.A. v. Las Vegas*  
20 *Rental & Repair, LLC*, 2019 Nev. Unpub. LEXIS 1256, \*2-3, 451 P.3d 547, 2019 WL  
21 611913. In *Las Vegas Rental & Repair, LLC*, 2019 Nev. Unpub. LEXIS 1256, \*2-3, 451  
22 P.3d 547, 2019 WL 611913, It was either not disputed that misapplication of proceeds  
23 was being persued, or if it was, the Nevada Supreme Court determined that Lender  
24 actually sought the excess proceeds from the foreclosure sale, stating: "However, we  
25 conclude that summary judgment was improper on appellant's claim for breach of the  
26 duty of good faith. In particular, appellant sought the excess proceeds from the  
27  
28

1 foreclosure sale after the HOA was paid the superpriority portion of its lien and  
2 allowable costs and fees. If the foreclosure sale extinguished appellant's deed of  
3 trust, appellant would have been entitled to the excess proceeds. See *SFR Invs. Pool*  
4 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 743, 334 P.3d 408, 409 (2014).” Marchai  
5 would have needed to plead in its Fourth Claim alternatively to wrongful foreclosure,  
6 that if a valid superpriority foreclosure took place that it may be entitled to proceeds  
7 from what SFR paid for the property. Its Complaint does not address this alternative,  
8 and perhaps because Marchai did not want to discuss the alternative of a valid  
9 superpriority or its alleged damages being substantially limited. However, in its  
10 Opposition it did raise this for the first time stating: “Wyeth Ranch could only apply  
11 \$640.50 to its lien and should have remitted the remaining \$10,038.62 to Marchai.”  
12 Marchai’s Opposition at 15. Wyeth Ranch is now entitled to clarification on this issue  
13 and an order that this new claim cannot be raised at trial. Here, Marchai has not timely  
14 sought these damages or even made a request to amend.  
15

16  
17 Review of additional documents from the litigation also demonstrate that Marchai  
18 has not previously sought proceeds that went to the HOA. As argued above Marchai’s  
19 violation of NRS 116.1113 claim in the Complaint directs review to wrongful foreclosure.  
20 In responses to written discovery requests regarding wrongful foreclosure Marchai  
21 never alleges facts related to the application of the proceeds after the sale. See  
22 Responses to Written Discovery (specifically responses to interrogatories 13 – 15)  
23 attached hereto as **Exhibit 8**. Marchai’s response also incorporates its Motion for  
24 summary judgment at the time into its written discovery response for further information.  
25 *Id.* However, the motion for summary judgment similarly does not seek proceeds after  
26 the sale. See Marchai’s January 14, 2016 Motion for Summary Judgment.  
27

28 ///

Further, Marchai's last disclosure of witnesses and documents does not include a computation of damages that seeks proceeds after the sale. Marchai's last disclosure states:

**(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and**

Marchai primarily judicial foreclosure and a ruling that Wyeth Ranch Community Association's foreclosure did not extinguish Marchai's deed of trust or, if it did, that the sale was void or voidable. If the Court does not grant judicial foreclosure, declare that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust, or set aside the foreclosure sale as void or voidable, Marchai seeks damages in the amount of the fair market value of the property. According to Marchai's expert, the property had a fair market value of \$360,000 at the time of Wyeth Ranch's foreclosure. See Marchai, B.T.'s Initial Expert Disclosure (Apr. 25, 2017).

See Marchai's Third Supplemental Disclosure and Expert Report, attached hereto as **Exhibit 9**. The damages requested demonstrate Marchai has not sought proceeds from the sale. This is a new claim and newly requested damages.

**2. Marchai's New Claim and New Damages should not be allowed in on the eve of trial.**

Pursuant to NRCP 15(a), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court may properly deny leave to amend when factors such as bad faith, dilatory motive, undue delay, futility of amendment, or undue prejudice are present. See *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104., 106, 507 P.2d 138, 139 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Additionally, the deadline to amend pleadings has passed. Pursuant to NRCP 16(b)(4), good cause is required to amend a schedule. "[T]he purpose of NRCP 16(b) is 'to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) quoting *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 339-40 (2d Cir.2000). Because "[d]isregard of the

[scheduling] order would undermine the court’s ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier” in order to extend a deadline imposed by a court order, the party seeking such an extension must establish good cause. *Nutton*, 131 Nev. Adv. Op. 34, 357 P.3d at 972 quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9<sup>th</sup> Cir. 1992). NRCP 16 was drafter precisely to prevent this from occurring, and “[i]ts standards may not be short-circuited by an to those of Rule 15.” *Id.* at 971 *quoting Johnson*, 975. F.2d at 610. “[I]f the moving party was not diligent in at a least attempting to comply with the deadline, ‘the inquiry should end [there].’” *Id. quoting Johnson*, 975 F.2d at 609 (emphasis added). Thus, if there was a delay in moving to extend the deadline to amend pleadings, the moving party would be barred from doing so.

The foreclosure sale occurred in 2013. Exhibit 19 1. An interpleader action was filed the same year and provided a breakdown of the distribution of the proceeds. Interpleader Complaint case # A-13-690586-C, attached hereto at **Exhibit 10**. Thus, there is no good cause for Marchai making this claim at this point in the litigation, and it was instead done in bad faith with the realization that the Quiet Title claim against the HOA had been dismissed. See Exhibit 21 (Dismissal of Quiet Title Claim).

Additionally, Nevada Rule of Civil Procedure 16.1(a)(1)(A)(iv) requires a party to disclose a computation of damages without awaiting a discovery request:

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 16.1(a)(1)(B) or as otherwise stipulated or ordered by the court, **a party must, without awaiting a discovery request, provide to the other parties:**

(iv) **a computation of each category of damages claimed** by the disclosing party — who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

Nev. R. Civ. P. 16.1(a)(1)(A)(iv) (emphasis added in bold and underlined). If, as here, a party fails to comply with the rules of disclosure under NRCP 16.1, the court must

1 impose appropriate sanctions, such as "[a]n order prohibiting the use of any witness,  
2 document or tangible thing which should have been disclosed, produced, exhibited, or  
3 exchanged pursuant to Rule 16.1(a)." NRCP 16.1(e)(3)(b). Moreover, the Nevada  
4 Supreme Court recently clarified that "when a party has failed to abide by NRCP 16.1's  
5 disclosure requirements, NRCP 37(c)(1) provides the appropriate analytical framework  
6 for district courts to employ in determining the consequence of that failure." *Pizarro-*  
7 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28,  
8 2017). NRCP 37(c)(1) provides that a party cannot rely upon any undisclosed  
9 evidence or witnesses unless it shows that there was a substantial justification for  
10 the failure to disclose or it shows the failure was harmless. *Id.* (quoting NRCP 37(c)(1);  
11 and citing NRCP 16.1(e)(3)(B)). As such, the Court in *Pizzaro-Ortega* held that the trial  
12 court erred as a matter of law to the extent it absolved the plaintiffs of their obligation to  
13 provide a computation of damages  
14 under NRCP16.1(a)(1)(C). *Id.*

15  
16  
17 Such failures are not justified as the Plaintiff presumably had in its possession  
18 the documents, facts, and information necessary to calculate damages. *See Pizarro-*  
19 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28,  
20 2017). Furthermore, the failure to produce a timely and compliant damages  
21 computation was not harmless as this case has continued for years without the  
22 Association knowing about the request for these damages. Thus, even assuming  
23 something in the Complaint actually tipped the HOA off that Marchai was asserting a  
24 misapplication of proceeds after the sale, Marchai would have had to provide a  
25 computation of the related damages and it has not. Further, the HOA could have filed a  
26 Motion in Limine on this basis previously, if the claim was actually asserted in the past  
27 and not in Marchai's Opposition at the motion deadline.  
28

1 Marchai, has never previously alleged the HOA misapplied proceeds after the  
2 sale. Marchai has not requested to amend to add this claim. Marchai has never  
3 provided a computation of damages for misapplied proceeds. To put it simply, when  
4 Marchai asserts in its Complaint a wrongful foreclosure, it did not also assert an issue  
5 with a valid foreclosure. When it asserted an issue with Homeowners payments, it did  
6 not also assert an issue with SFR's payment at the sale. When Marchai failed to  
7 disclose these damages, it did not also disclose the damages.

8  
9 Marchai's Complaint alleges it should keep its deed of trust, or alternatively that it  
10 was a wrongful foreclosure and it should receive fair market value. Those assertions do  
11 not amount to an assertion that there was a valid superpriority foreclosure, and the  
12 assertions to not amount to an assertion they are now entitled to additional proceeds  
13 from SFR's payment to purchase the property. Marchai has not sought leave to make  
14 this claim or allege these damages.

15  
16 Marchai, may allege the 2019 case is new law, but the case cites to the 2014  
17 *SFR* decision, and Marchai has already alleged it was not new law. See Opposition at  
18 15, note 5, stating: "Presumably Wyeth Ranch will argue that it did not understand the  
19 law at the time of the foreclosure when it applied the full amount of the proceeds to  
20 Perez's account." Even assuming it is new law, Marchai is aware of how to file for leave  
21 to amend based on the same and did not do so. Marchai previously filed a Motion to  
22 amend its claims after the deadline and argued a change in law as a basis. See  
23 Marchai's August 18, 2016 Motion. Marchai did not previously seek these damages and  
24 the case was not remanded to review these damages as *Cranesbill* deals with  
25 homeowner partial payments prior to the sale, not the purchase payment at the sale.  
26 Additionally, Marchai filed a motion to reopen discovery after the remand, but on a  
27 limited basis (*Cranesbill* and prior homeowner's partial payments) not related to the  
28



1 application of proceeds after the sale. See Marchai's August 13, 2020, Motion to  
2 Reopen Discovery.

3 Marchai has stated that it intends to bring this claim at trial. See Declaration of  
4 Attorney David Ochoa and Exhibit 1. For the reasons provided above, any request to  
5 amend or provide proof of these damages at this point in the litigation should be denied.  
6 The HOA is entitled to reconsideration or clarification of the previous order indicating  
7 Marchai cannot raise this claim at trial, or alternatively the HOA is entitled to a separate  
8 order that Marchai cannot raise this claim at trial.  
9

10 **VI. CONCLUSION**

11 Based on the foregoing arguments, the HOA respectfully requests an addition or  
12 clarification to the prior order stating that Marchai cannot raise this claim at trial, or  
13 alternatively, a separate order that Marchai cannot raise this claim at trial.

14 DATED this 4<sup>th</sup> day of December, 2020.

15 LIPSON NEILSON P.C.

16  
17 */s/ David T. Ochoa*

18 By: \_\_\_\_\_

KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

DAVID T. OCHOA, ESQ.

Nevada Bar No. 10414

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

21 *Attorneys for Defendant*

22 *Wyeth Ranch Community Association*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that on the 4<sup>th</sup> day of December, 2020, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION’S MOTION FOR RECONSIDERATION OR CLARIFICATION UNDER NRCP 60, ALTERNATIVELY MOTION IN LIMINE** to the Clerk’s Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerrillpc.com](mailto:david@djmerrillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1, LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.

**DECLARATION OF DAVID OCHOA, ESQ.**

David Ochoa, declares as follows:

1. I am an attorney licensed to practice in the State of Nevada. I am counsel in the above captioned matter for Wyeth Ranch Community Association ("HOA").

2. I make this declaration upon personal knowledge, and if called as a witness, I could and would competently testify to the facts contained in this declaration.

3. On November 10, 2020, the parties participated in a hearing on the HOA's Motion for Summary Judgment and Calendar Call.

4. At the Calendar Call I requested clarification on the Court's Order.

5. On November 18, 2020, counsel for Marchai David Merrill emailed a proposed order and requested input or e-signatures. Exhibit 1.

6. I sent additions to counsel for Marchai that incorporated what I believed to be the clarification from the Court. Exhibit 1.

7. I exchanged emails with Marchai over the competing drafts of the Order, explaining my belief that he was inappropriately adding new claims for trial. See emails at Exhibit 1.

8. Counsel for Marchai expressed his belief that it was not a new claim and that he intended to bring the claims at trial. Exhibit 1.

9. Given that the claim was not previously asserted, the HOA could not file a Motion in Limine before the deadline and attempted to address the new issue in its Reply.

10. The Order Denying the HOA's MSJ does not address this ongoing dispute.

11. The HOA respectfully request that this issue be resolved at a hearing prior to trial. Given that a new trial date is currently pending, the HOA's motion may require a hearing on shorten time in the future, and the HOA intends to seek an order shortening time if it becomes necessary.

///

///

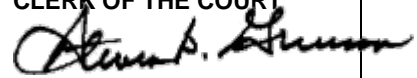
1           12.    The Motion is made in good faith, is reasonably necessary, and is not  
2 brought for purposes of undue delay, bad faith or other dilatory motive.

3           13.    I declare under penalty of perjury that the foregoing is true and correct.  
4

5 DATED this 4<sup>th</sup> day of December, 2020.

6                               */s/ David Ochoa*

7                               \_\_\_\_\_  
8 DAVID OCHOA  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**OPPM**

David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
Email: david@djmerrillpc.com  
Attorney for Marchai, B.T.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-  
TIONS

**Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community As-  
sociation's Motion for Reconsideration or Clarification Under NRCP 60,  
Alternatively Motion in Limine**

Date of Hearing: January 8, 2021

Time of Hearing: Chambers

**Introduction**

Marchai, B.T.'s position is consistent: its deed of trust survived Wyeth Ranch Commu-  
nity Association's foreclosure because the homeowner satisfied the superpriority portion of Wy-  
eth Ranch's lien. Hence, SFR Investments Pool 1, LLC took subject to Marchai's deed of trust.  
This is precisely the issue on which this Court granted summary judgment for Marchai.

But the Nevada Supreme Court reversed for this Court to determine how Wyeth Ranch  
applied Perez's partial payments. Over Wyeth Ranch's objections, Marchai took the deposition

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

1 of Wyeth Ranch's 30(b)(6) witness in September 2020. The witness, Yvette Saucedo, who spent  
2 20 minutes reviewing the file and 40 minutes speaking to her attorney, testified that Wyeth  
3 Ranch first applied payments to the current quarter's association dues and any remainder to the  
4 oldest association dues. But *no document* supports her testimony. Instead, when asked how she  
5 knew Wyeth Ranch applied payments in the manner she suggested, she said, "I just know that."

6 But Saucedo's testimony directly conflicts with Wyeth Ranch's documents. A report ran  
7 in 2008 reflects that consistent with the common law, Wyeth Ranch applied payments first to the  
8 *oldest* association dues.

9 Saucedo's testimony painted Wyeth Ranch into a corner. On the one hand, Wyeth Ranch  
10 is trying to help SFR, but that testimony harms Wyeth Ranch. Following the foreclosure, Wyeth  
11 Ranch received payment of its entire assessment lien (\$10,679.12). By law, Wyeth Ranch could  
12 only have received the whole outstanding amount of its assessment lien *if* Perez's payments satis-  
13 fied the lien's superpriority portion. Otherwise, Wyeth Ranch would have obtained only the  
14 lien's superpriority part and paid the remainder to Marchai.

15 Although Marchai is confident this Court will conclude that Perez paid the superpriority  
16 portion of the lien, if, after the trial, this Court disagrees, then Wyeth Ranch must pay the excess  
17 proceeds from the foreclosure.

18 Wyeth Ranch claims that Marchai pleaded no such claim. This is not true. Marchai as-  
19 serted a bad faith claim under NRS § 116.1113 and argued explicitly as a basis for Wyeth Ranch's  
20 bad faith that Perez paid the lien's superpriority portion and asked for damages.

21 Wyeth Ranch also claims that Marchai did not disclose the grounds of its bad faith claim  
22 in its answers to interrogatories. But Wyeth Ranch did not propound an interrogatory asking the  
23 grounds for Marchai's bad faith claim.

24 Further, Wyeth Ranch asserts that Marchai did not disclose a computation of damages.  
25 Again, this is not true. Marchai revealed damages and provided a calculation. Wyeth Ranch may  
26 dispute that amount, but that does not mean Marchai did not disclose damages.

27 Wyeth Ranch asserted each of these argument in its briefing on the motion for summary  
28 judgment. But the Court denied Wyeth Ranch's motion. Despite previously hearing (and

1 rejecting) these arguments at the summary judgment hearing, Wyeth Ranch submitted a compet-  
2 ing order on summary judgment that supported the arguments. This Court declined to enter Wy-  
3 eth Ranch's order and entered Marchai's order. Now, Wyeth Ranch has moved for reconsidera-  
4 tion, clarification, or in limine based upon the same arguments this Court rejected. But Wyeth  
5 Ranch's arguments fail. Hence, Marchai asks this Court to deny the motion.

### 6 **Statement of Facts and Procedural History**

7 In January 2008, Cristela Perez, a property owner in the Wyeth Ranch community, be-  
8 came delinquent in her quarterly assessments. (*See* Marchai B.T.'s Statement of Undisputed and  
9 Disputed Facts in Supp. of its Opp'n to Wyeth Ranch Cmty. Ass'ns Mot. for Summ. J. Nos. 17-  
10 18.) In April 2008, Wyeth Ranch charged Perez with another quarterly assessment. (SOF No.  
11 19.) But on April 16, 2008, Perez submitted a payment. (SOF No. 20.) According to Wyeth  
12 Ranch's documents, it applied this payment *first* to the *oldest association dues* (January 2008) and  
13 the remainder to the next oldest association dues (April 2008). (SOF No. 127.)

14 Between April 2008 and November 2012, Perez paid Wyeth Ranch \$3,390.00, \$2,381.75  
15 of which Wyeth Ranch applied to Perez's assessment account. (*See* SOF Nos. 35-100.)

16 In 2013, Wyeth Ranch foreclosed on its lien. (SOF No. 115.) SFR Investments Pool 1,  
17 LLC submitted the winning bid of \$21,000. (SOF No. 116.) At the time of the foreclosure, the  
18 assessment ledger shows that Perez owed Wyeth Ranch \$10,679.12, which included assessments,  
19 late fees, and interest. (SOF No. 117.) Wyeth Ranch received payment in full (\$10,679.12) of all  
20 amounts owed on its assessment ledger. (SOF No. 118.)

21 In 2013, Marchai filed a complaint for judicial foreclosure. (Compl. for Judicial  
22 Foreclosure of Deed of Trust (Sept. 30, 2013).) In 2016, this Court entered a Decision and Order  
23 on competing motions for summary judgment filed by SFR and Marchai. (Decision & Order  
24 (Mar. 22, 2016).) This Court concluded that genuine issues of material fact precluded it from rul-  
25 ing that Perez satisfied the superpriority portion of Wyeth Ranch's lien through the \$3,390 in  
26 payments Perez made after Wyeth Ranch instituted an action to enforce the lien. (*See id.* at 21:6-  
27 19.)  
28

1 In 2016, Marchai filed another complaint that alleged claims against Wyeth Ranch for  
2 wrongful foreclosure, bad faith, and intentional interference with contract. (*See* Compl. Aug. 25,  
3 2016.) One basis for the bad faith claim is that Perez satisfied the superpriority portion of Wyeth  
4 Ranch's lien. (*Id.* ¶¶ 69(e), 79.) And Marchai sought damages for Wyeth Ranch's bad faith. (*Id.* ¶  
5 81.) This Court consolidated both cases. (*See* Order Lifting Stay and Consolidating Cases at 2:3–5  
6 (Dec. 13, 2016).)

7 Despite previously deciding that genuine issues of material fact precluded summary judg-  
8 ment, in 2017, SFR again moved for summary judgment. (*See* SFR Invs. Pool 1, LLC's Mot. for  
9 Summ. J. (July 21, 2017).) And so did Wyeth Ranch. (*See* Def. Wyeth Ranch Cmty. Ass'ns Mot.  
10 for Summ. J. (July 21, 2017).) But this time, this Court not only denied SFR and Wyeth Ranch's  
11 motions for summary judgment, but it also entered summary judgment for Marchai. (*See* Deci-  
12 sion & Order at 14:2–5 (Oct. 3, 2017).) This Court concluded that Perez's payments satisfied the  
13 superpriority portion of Wyeth Ranch's lien. (*Id.* at 13:15–26.) SFR (but not Wyeth Ranch) ap-  
14 pealed this Court's decision. (*See* Notice of Appeal (Nov. 3, 2017).)

15 The Nevada Supreme Court vacated the judgment and remanded based upon its decision  
16 in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 459 P.3d 227 (2020), to deter-  
17 mine whether Perez's payments satisfied the lien's superpriority portion. (*See* Order Vacating J.  
18 & Remanding.)

19 The court in *Cranesbill* left the district courts to determine both legal and factual issues.  
20 The court concluded that the district court must first determine whether the association treated  
21 the lien's superpriority and subpriority portions as separate accounts or one running account.  
22 *9352 Cranesbill Trust*, 136 Nev. at 81, 459 P.3d at 231–32. After making that determination, the  
23 district court must decide whether the parties had an agreement directing the application of pay-  
24 ments, whether the debtor specifically directed the application of payments to certain obligations  
25 at the time of payment, how the creditor applied the payments, and potentially, the district court  
26 must weigh the equities concerning applying payments. *Id.* at 80–81, 459 P.3d at 231. The Nevada  
27 Supreme Court concluded these issues raised genuine issues of material fact for which summary  
28 judgment is not proper. *Id.* at 81, 459 P.3d at 282.



1 After remand, Marchai moved for an order reopening discovery to take the N.R.C.P.  
2 30(b)(6) deposition of Wyeth Ranch concerning the application of payments. (*See* Marchai's  
3 Mot. to Reopen Disc. on an Order Shortening Time (Aug. 13, 2020).) Wyeth Ranch opposed the  
4 motion. (*See* Def. Wyeth Ranch Cmty. Ass'ns Resp. to Mot. to Reopen Disc., & Alternative  
5 Countermot. for a Briefing Schedule (Aug. 17, 2020).) The Court granted Marchai's motion.  
6 (*See* Order Granting Marchai's Mot. to Reopen Disc. on an Order Shortening Time & Den. the  
7 Alternative Countermot. for a Briefing Schedule (Aug. 21, 2020).)

8 Marchai deposed Wyeth Ranch's 30(b)(6) witness, Yvette Saucedo, on September 18,  
9 2020. (*See* SOF Nos. 12, 122–26.) Saucedo is the Accounting Director for Complete Association  
10 Management Company, Wyeth Ranch's community manager. (*Id.*) Although Wyeth Ranch's  
11 documents reflect that it applied payments first to the oldest association dues and then to the  
12 next oldest association dues, Saucedo testified that Wyeth Ranch applied payments first to the  
13 current quarter's association dues and any remainder to the oldest association dues. (*See id.*) But  
14 Saucedo could not identify a single document that supported her testimony. (*See* SOF No. 126.)  
15 Instead, when asked how Saucedo knew how Wyeth Ranch applied the payment in the manner  
16 she suggested, she testified, "I just know that." (*See id.*)

17 Although the Nevada Supreme Court concluded that genuine issues of material fact pre-  
18 cluded summary judgment, after Saucedo's deposition Wyeth Ranch again moved for summary  
19 judgment. (*See* Def. Wyeth Ranch Cmty. Ass'ns Mot. for Summ. J. (Sept. 25, 2020).) Marchai  
20 opposed Wyeth Ranch's motion. (*See* Marcha, B.T.'s Opp'n to Def. Wyeth Ranch Cmty. Ass'ns  
21 Mot. for Summ. J. (Oct. 19, 2020).) In the opposition, Marchai argued that genuine issues of ma-  
22 terial fact preclude summary judgment, but that Marchai was confident this Court would con-  
23 clude that Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien and, thus,  
24 the foreclosure did not affect Marchai's deed of trust. (*See id.*) But, based upon Saucedo's recent  
25 testimony, Marchai noted that "if this Court decides that Perez did not satisfy the lien's super-  
26 priority portion, then Wyeth Ranch's receipt of excess funds above its superpriority lien is bad  
27 faith." (*Id.* at 17:3–5.)  
28

1 In its reply, Wyeth Ranch argued, as it does here, that Marchai attempted to plead a new  
2 claim and assert new, previously undisclosed damages. (*See* Def. Wyeth Ranch Cmty. Ass’ns Re-  
3 ply in Supp. of its Mot. for Summ. J. (Nov. 2, 2020).) Yet, just four days later, Wyeth Ranch ap-  
4 proved a Joint Pre-Trial Memorandum, which describes Marchai’s bad faith claim in part as:  
5 “Also, if the Court concludes that Perez did not satisfy the lien’s superpriority part, then Wyeth  
6 Ranch did not act in good faith when it accepted the proceeds of the foreclosure to which it was  
7 not entitled.” (*See* J. Pre-Trial Memo. at 2:20–22.) Wyeth Ranch did not object to this descrip-  
8 tion. (*See id.*)

9 At the hearing, Marchai argued that it had pleaded its bad faith claim and disclosed dam-  
10 ages. (*See* Tr. of Proceedings at 7:1–19 (Nov. 10, 2020).) This Court denied the motion for sum-  
11 mary judgment. (*See* Order Den. Def. Wyeth Ranch Cmty. Ass’ns Mot. for Summ J. (Nov. 24,  
12 2020).)

13 During the calendar call, which occurred on the same day as the hearing on the motion for  
14 summary judgment, Wyeth Ranch asked to clarify the Court’s summary judgment ruling. (*See*  
15 Tr. of Proceedings at 12:20–22.) Wyeth Ranch asked if the Court was allowing Marchai “to bring  
16 in this new claim regarding the application of proceeds?” (*Id.*) This Court responded, “I am not,  
17 but it appears the application of proceeds may have been part of the good faith and fair dealing  
18 claim but we will, of course, litigate that at the trial.” (*Id.* at 13:23–14:1.)

19 After the summary judgment hearing, Marchai submitted a proposed order to Wyeth  
20 Ranch’s counsel. (*See* email from Merrill to Ochoa and Hanks (Nov. 18, 2020 at 11:24 AM), at-  
21 tached as Ex. 1 to the Mot.) Although this Court rejected the arguments Wyeth Ranch raised in  
22 its reply, Wyeth Ranch demanded additional language to the order that contradicted this Court’s  
23 decision. (*See* email from Ochoa to Merrill (Nov. 18, 2020 at 12:52 PM), attached as Ex. 1 to the  
24 Mot.) Marchai refused to add the requested language. (*See* email from Merrill to Ochoa (Nov. 18,  
25 2020 at 12:56 PM), attached to the Mot. as Ex. 1.) Ultimately, Marchai and Wyeth Ranch submit-  
26 ted competing orders. (*See* email from Ochoa to Merrill (Nov. 18, 2020 at 5:23 PM), attached to  
27 the Mot. as Ex. 1.) This Court rejected Wyeth Ranch’s order and entered Marchai’s order. (*See*  
28 Order Den. Def. Wyeth Ranch Cmty. Ass’ns Mot. for Summ. J. (Nov. 24, 2020).)

1 But Wyeth Ranch wants another bite at the apple and believes (based upon the same argu-  
2 ments asserted in its reply, at the hearing, and in its proposed order) this Court will change its  
3 mind. Wyeth Ranch now seeks reconsideration, clarification, or a motion in limine based upon  
4 the same arguments this Court heard and rejected. (*See* Def. Wyeth Ranch Cmty. Ass’ns Mot.  
5 for Reconsid. or Clarification under NRCP 60, Alternatively Mot. in Lim. (Dec. 4, 2020).) But  
6 the Court correctly denied summary judgment, rightly rejected Wyeth Ranch’s arguments, and  
7 correctly entered Marchai’s proposed order. Hence, Marchai asks this Court, once again, to re-  
8 ject Wyeth Ranch’s arguments and deny the motion.

9  
10 **Argument**

11 **A. If this Court concludes that Wyeth Ranch’s foreclosure extinguished Marchai’s deed of trust,**  
12 **Marchai plead a bad faith claim, which includes a claim for Wyeth Ranch’s failure to distrib-**  
13 **ute funds following the foreclosure properly.**

14 Wyeth Ranch argues that Marchai attempted to plead a new claim and new damages  
15 through its opposition to the motion for summary judgment, and this Court should preclude any  
16 attempt to assert this alleged “new claim.” (Mot. at 8:6–25.) Wyeth Ranch’s argument lacks  
17 merit.

18 Marchai’s position is consistent: Wyeth Ranch’s foreclosure did *not* extinguish Marchai’s  
19 deed of trust because Perez satisfied the superpriority portion of Wyeth Ranch’s lien before the  
20 foreclosure. If this Court agrees, then Marchai’s deed of trust survives, and Marchai will not pre-  
21 vail on its claims against Wyeth Ranch. If this Court disagrees, then Marchai has pleaded claims  
22 against Wyeth Ranch, including a bad faith claim under NRS § 116.1113. The Nevada Supreme  
23 Court has ruled that an association’s receipt of excess funds above its superpriority lien is bad  
24 faith. *See Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 462 P.3d 255 (Nev. 2020) (Un-  
25 published) (reversing a judgment against the first deed of trust holder’s claim under NRS §  
26 116.1113 and concluding that if the association foreclosed on a superpriority lien, the first deed of  
27 trust holder is entitled to excess proceeds from the foreclosure); *Bank of Am., N.A. v. Las Vegas*  
28 *Rental & Repair, LLC Series 57*, 451 P.3d 547 (Nev. 2019) (Unpublished) (same).

1 Yet, Wyeth Ranch claims that Marchai pleaded wrongful foreclosure, not bad faith. (*See*  
2 Mot. at 9:7–20.) Again, Wyeth Ranch is wrong.

3 The Nevada Rules of Civil Procedure require a complaint to contain a “short and plain  
4 statement of the claim showing that the pleader is entitled to relief” and “a demand for the relief  
5 sought.” N.R.C.P. 8(a)(2)–(3). Because Nevada is a notice-pleading jurisdiction, this Court must  
6 liberally construe the pleadings “to allow issues that are fairly noticed to the adverse party.” *Nev.*  
7 *State Bank v. Jamison Fam. P’ship*, 106 Nev. 792, 801 P.2d 1377 (1990). “‘Notice pleading’ re-  
8 quires plaintiffs to set forth facts which support a legal theory, but does not require the legal the-  
9 ory relied upon to be correctly identified.” *Liston v. Las Vegas Metro. Police Dep’t*, 111 Nev. 1575,  
10 1578, 908 P.2d 720, 723 (1995) (footnote omitted) (citing *Swartz v. Adams*, 93 Nev. 240, 245, 563  
11 P.2d 74, 77 (1977).) “A plaintiff who fails to use the precise legalese in describing his grievance  
12 but who sets forth the facts which support his complaint thus satisfies the requisites of notice  
13 pleading.” *Id.*

14 Here, Marchai pleaded a bad faith claim as its fourth claim for relief. (*See* Compl. at  
15 11:12–19 (Aug. 25, 2016).) That claim relies on the allegations of paragraph 69(e), which alleges  
16 that “Perez paid more than nine months of association dues following Wyeth Ranch’s institution  
17 of an action to enforce its lien.” (*Id.* at 10:15–16.) And Marchai requested “any and all damages  
18 flowing from” the foreclosure. (*Id.* ¶ 81.) Also, the complaint alleges that SFR paid \$21,000 at  
19 the foreclosure sale. (*See* Compl. ¶ 42.) Hence, Wyeth Ranch had fair notice that how it applied  
20 payments (either before or after the foreclosure) was at issue. *See Liston*, 111 Nev. at 1578–79, 908  
21 P.2d at 723 (reversing the district court’s order to exclude testimony of a constructive discharge  
22 when the plaintiff pleaded facts to support a constructive discharge claim even though he did not  
23 use the terms “constructive discharge.”).

24 Further, Wyeth Ranch’s contention that Marchai’s bad faith claim is a wrongful foreclo-  
25 sure claim is wrong and irrelevant. (*See* Mot. at 11:13–12:16.) Marchai pleaded a wrongful foreclo-  
26 sure claim. If it intended its bad faith claim to serve as wrongful foreclosure, it would not have  
27 pleaded it. Nevertheless, it is the facts that support the legal theory, not the theory identified that  
28 controls. *See Liston*, 111 Nev. at 1578, 908 P.2d at 723. And because Marchai pleaded facts to

1 support a bad faith claim (regardless of what the pleading calls it), Wyeth Ranch had notice of  
2 Marchai's bad faith claim. *See id.*

3 Finally, Wyeth Ranch acknowledged the basis of Marchai's bad faith claim when it en-  
4 tered into the Joint Pre-Trial Memorandum, which states: "if the Court concludes that Perez did  
5 not satisfy the lien's superpriority part, then Wyeth Ranch did not act in good faith when it ac-  
6 cepted the proceeds of the foreclosure to which it was not entitled." (*See* J. Pre-Trial Memo. at  
7 2:20-22.) Wyeth Ranch asserted no objection or reservation to this description of Marchai's bad  
8 faith claim. (*See id.*)

9 **B. Wyeth Ranch did not propound interrogatories asking for the basis of Marchai's bad faith**  
10 **claim.**

11 Wyeth Ranch further argues that it had no notice of Marchai's bad faith claim because it  
12 did not refer to the basis of its claim in its answers to interrogatories. (*See* Mot. at 12:17-28.) Spe-  
13 cifically, Wyeth Ranch claims that Marchai had an obligation to describe its bad faith claim in its  
14 answers to Interrogatory Nos. 13 through 15. (*Id.*) But Interrogatory No. 13 sought facts about  
15 Marchai's claim that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust. (*See*  
16 Ex. 8 to the Mot. at 9:16-18.) Interrogatory No. 14 requested facts about the commercial reasona-  
17 bleness of the foreclosure. (*See id.* at 11:1-3.) And Interrogatory No. 15 asked for particulars about  
18 wrongful foreclosure, not Marchai's bad faith claim. (*See id.* at 12:3-5.) Hence, Wyeth Ranch's  
19 argument that Marchai did not disclose the basis of its claim in answers to interrogatories lacks  
20 merit.

21 **C. Marchai properly disclosed a computation of damages in its initial disclosures that includes its**  
22 **bad faith claim, but even if it didn't, the error is harmless, or failing to disclose was substan-**  
23 **tially justified.**

24 Wyeth Ranch also argues that Marchai did not disclose its damages for its bad faith claim  
25 under N.R.C.P. 16.1. (*See* Mot. at 13:1-15.) Again, Wyeth Ranch's argument lacks merit.

26 In its third supplemental disclosures under N.R.C.P. 16.1, Marchai included a statement  
27 of damages, which notes that Marchai primarily seeks a ruling that its deed of trust survived Wy-  
28 eth Ranch's foreclosure. (*See* Ex. 9 to the Mot. at 3:17-19.) But if the Court rules otherwise, Mar-  
chai "seeks damages" and calculated those damages as the fair market value of the property. (*Id.*)

1 at 3:19–24.) Wyeth Ranch may argue that Marchai is not entitled to damages in the amount of the  
2 property’s fair market value, but that differs from saying that Marchai did not disclose a compu-  
3 tation of damages.

4 Also, if the information to compute damages is in possession of another party, the rule  
5 does not expect a calculation. *See* Fed. R. Civ. P. 26, Advisory Committee Note, 146 F.R.D. 401,  
6 631–32 (1993). Here, Wyeth Ranch, not Marchai, had the information about its calculation of the  
7 lien’s alleged superpriority and subpriority portions. And Marchai did not discover how Wyeth  
8 Ranch made this calculation until Saucedo’s deposition in September 2020.

9 But even if Marchai should have disclosed a more precise computation of its damages, it  
10 was substantially justified in not doing the disclosure, and the error is harmless. Rule 26(e) re-  
11 quires parties to supplement initial disclosures only when “the additional or corrective infor-  
12 mation has not otherwise been made known to the other parties during the discovery process or  
13 in writing.” N.R.C.P. 26(e)(1). And Rule 37 provides that a party may use information not dis-  
14 closed when failing to disclose was “substantially justified or is harmless.” N.R.C.P. 37(c)(1).

15 If this Court concludes that Perez’s payments satisfied the superpriority portion of Wyeth  
16 Ranch’s lien, then Marchai has no damages on its bad faith claim. But if this Court concludes  
17 otherwise, the calculation of damages will depend upon how this Court applies Perez’s payments,  
18 which is the principal issue for trial remanded by the Nevada Supreme Court. Unlike future med-  
19 ical expenses in *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017)—the case  
20 on which Wyeth Ranch relies—after this Court determines how to apply Perez’s payments, the  
21 remaining calculation (if necessary) is simple math, not reasonably subject to dispute. Wyeth  
22 Ranch has the evidence upon which this Court will determine whether Perez satisfied the super-  
23 priority portion of the lien. And Marchai did not discover how Wyeth Ranch claims it applied Pe-  
24 rez’s payments until its deposition in September 2020. Further, Marchai supplied a potential cal-  
25 culation in writing in opposition to the motion for summary judgment (just weeks after Wyeth  
26 Ranch’s deposition), which complies with its disclosure obligation. *See* N.R.C.P. 26(e)(1). Wyeth  
27 Ranch has not disputed that calculation or contended (nor could it) that it needs additional dis-  
28 covery to determine the precise contours of Marchai’s potential alleged damages. Wyeth Ranch

1 does not even dispute that if the Court concludes Perez's payments did not satisfy the lien's su-  
2 perpriority portion, it improperly received excess funds. Hence, this Court should deny the mo-  
3 tion. *See Capanna v. Orth*, 134 Nev. 888, 894-95, 432 P.3d 726, 733-34 (2018) (concluding that  
4 the district court did not abuse its discretion when it allowed testimony about an undisclosed  
5 computation of future medical expenses because the error was harmless).

6 **D. Although Marchai does not believe it needs to amend its pleading or supplement its discov-**  
7 **ery, if the Court believes otherwise, Marchai asks this Court for leave to do so because Wy-**  
8 **eth Ranch will suffer no prejudice.**

9 Wyeth Ranch argues this Court should not allow an amendment to Marchai's pleading  
10 because it is "bad faith." (*See* Mot. at 14:14-16.) Wyeth Ranch claims that Marchai has known  
11 how Wyeth Ranch applied payments to Perez's assessment account for seven years. (*See id.* at  
12 14:12-17.) This is obviously untrue. Otherwise, the Nevada Supreme Court would not have re-  
13 manded this case back to this Court for determining how Wyeth Ranch applied payments to Pe-  
14 rez's account.

15 After the Nevada Supreme Court remanded this case for determining how Wyeth Ranch  
16 applied payments to Perez's assessment account, Marchai diligently moved to reopen discovery  
17 to take Wyeth Ranch's deposition. Until the deposition in September 2020, Marchai did not  
18 know that Wyeth Ranch's witness would contradict its documentary evidence and testify that  
19 Wyeth Ranch applied Perez's payments other than first to the superpriority portion of its lien.  
20 (*See* Mot. at 14:12-15:28.) Hence, if this Court believes that Marchai must amend its pleading or  
21 its discovery responses, Marchai requests the opportunity to do so. It has good cause for not  
22 amending before the September 2020 deposition, and Wyeth Ranch will suffer no prejudice by an  
23 amendment. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 286-87, 357 P.3d 966, 971 (Ct. App.  
24 2015) (recognizing that good cause exists to amend after the filing deadline if the "deadline can-  
25 not reasonably be met despite the diligence of the party seeking the amendment.")

### 26 Conclusion

27 Wyeth Ranch made a strategic blunder. It thought it could testify that it applied Perez's  
28 payments first to the current association dues and any remainder to the oldest association dues

1 with no consequences. But if Wyeth Ranch's position is correct (which it isn't), it subjects  
2 Wyeth Ranch to a previously pleaded claim of bad faith for receiving excess funds from its  
3 foreclosure. Wyeth Ranch's motion for reconsideration, clarification, or in limine is its most  
4 recent attempt to undo its testimony. But this Court has rejected Wyeth Ranch's efforts. And it  
5 should do so again by denying the motion.

6 Dated this 21st day of December 2020.

7 David J. Merrill, P.C.

8  
9 By:

  
\_\_\_\_\_  
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.



## Certificate of Service

I certify that on the 21st day of December 2020, I served a copy of Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine electronically to the following through the Court's electronic service system:

### Kim Gilbert Ebron

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

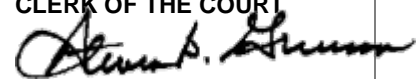
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

### Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
REPLY IN SUPPORT OF ITS  
MOTION FOR  
RECONSIDERATION OR  
CLARIFICATION UNDER NRCP  
60, ALTERNATIVELY MOTION IN  
LIMINE**

**HEARING DATE: January 8, 2021  
HEARING TIME: In Chambers**

AND ALL RELATED CLAIMS AND ACTIONS.

Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., respectfully submits the following Reply in Support of Its Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine.

///

///

///

///

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Despite the case having been litigated for years, recently remanded, and set for trial, Marchai is attempting to amend its claims and argue new damages presented for the first time in its November 2, 2020, Opposition to the HOA's Summary Judgment Motion. Marchai has never before asserted anything different than either the deed of trust survived the sale, or otherwise the sale should be set aside as a wrongful foreclosure. Now Marchai alleges for the first time a new claim and a third option, that if the foreclosure on superpriority portion of the lien is found and upheld, it has still been damaged by misapplication of the proceeds of the sale, after the sale.

Marchai's prior claim against the HOA for violation of NRS 116.1113 (or bad faith) alleged that the HOA extinguished its deed of trust in a wrongful foreclosure and thus Marchai alleged it was entitled to fair market value of the property. Marchai's new violation of NRS 116.1113 claim is dependant on the complete opposite factual scenario where a valid superiority foreclosure, and thus it is obvious it is a new claim. Marchai has never asserted this before in its Complaint, prior motions, written discovery responses, or disclosures, including never providing a computation of damages for this assertion.

Marchai was required to amend its pleadings and update its disclosures. To this point, Marchai is obviously aware of this requirement and associated burdens as it has previously, in this case, filed a Motion to amend its claims after the deadline and argued a change in law as a basis. Additionally, Marchai filed a motion to reopen discovery after the remand, but on a limited basis not related to the application of proceeds after a valid sale. Marchai has not filed a motion to amend and chose instead to mislead the Court into believing it had already asserted this claim.

Marchai, has not previously asserted this claim. Asserting a claim for the first time in an Opposition is not a request to amend, and no request to amend has been submitted. No computation of the new alleged damages has ever been provided.

Marchai made the choice to not litigate the scenario of whether a superiority sale was actually upheld, and thus also chose to not litigate the application of the proceeds after that sale. Marchai should not be able to amend its claims or assert those damages now.

Marchai raised this issue for the first time in its Opposition to summary judgment. The HOA, recognizing it as new claim, attempted to address Marchai's untimely assertion in its Reply. The HOA sought clarification of the Summary Judgment Order at the November 10 Calendar Call shortly after the hearing. See opening minutes of November 10 Calendar Call. Counsel for the HOA and Marchai conferred about the dispute of whether Marchai is raising this issue for the first time and a dispute about the Court's clarification. Exhibit 1, attached to the Motion. The HOA submitted a competing Order it believed incorporated the clarification by the Court, however, the Court signed Marchai's Order that does not address this issue. Marchai has expressed that it intends to bring this new claim at trial. Exhibit 1. Thus, this motion is necessary to seek reconsideration or clarification of the prior order, or alternatively this is a motion in limine seeking a separate order that this issue should not be raised at trial.

## **II. LEGAL ARGUMENT**

### **A. Marchai Alleges a New Claim for Relief and New Damages for the First Time in its Opposition to Summary Judgment, Which Should Not Be Allowed.**

In its Opposition, Marchai is alleging for the first time that it suffered damages from a misapplication of proceeds after the sale, if in fact it was a superpriority sale. See Marchai's Opposition at 15, stating: "Wyeth Ranch could only apply \$640.50 to its lien and should have remitted the remaining \$10,038.62 to Marchai."

Marchai is asserting SFR paid to purchase an interest in the property at the foreclosure sale, and that payment became proceeds from the sale that went to Alessi & Koenig, as well as the HOA and its management company. Further, Marchai alleges it should have obtained a majority of what went to the HOA. This is distinguishable from what Marchai previously pled and what damages they previously sought. As argued below, Marchai has only ever asserted a wrongful foreclosure, however, these new

1 damages deal with proceeds from the sale and the issue only arises from a scenario  
2 where a valid superiority sale has been recognized. Marchai simply could not have  
3 previously pled this claim because it never previously entertained within pleadings to  
4 this Court the possibility of a valid superpriority foreclosure.

5 Marchai attempts to mislead this court in arguing in its Opposition that it is not a  
6 new claim, but consistent with its Complaint where it plead bad faith/or a violation of  
7 NRS 116.1113. However, Marchai Violation of NRS 116.1113 claim states:

8  
9 **Fourth Claim for Relief**  
**(Violation of NRS § 116.1113 et seq.-Against Wyeth Ranch and**  
**Alessi & Koenig)**

10 79. Marchai repeats and realleges each of the paragraphs set forth  
11 above.

12 80. Wyeth Ranch and Alessi & Koenig **wrongfully foreclosed**  
13 upon the property in violation of the Statute.

14 81. Given the above-enumerated violations of the Statute, Marchai  
15 asserts that Wyeth Ranch's purported sale of the property be  
16 voided and set aside and requests any and all damages flowing  
17 from these violations.

18 Marchai's Complaint at 11 (emphasis added). Paragraph 80 alleges a **wrongful**  
19 **foreclosure** which is completely inconsistent with the new claim of misapplication of  
20 proceeds after a valid superpriority foreclosure claim. Paragraph 81 asks for the voiding  
21 of the sale, which is also inconsistent with a valid superpriority sale. This typical clam  
22 by lenders at the time is alleging a wrongful foreclosure and the set aside of the sale to  
23 preserve the deed of trust, or alternative damages equaling the value of the deed of  
24 trust. This claim does not acknowledge the possibility of a valid superpriority  
25 foreclosure, explain how proceeds should be distributed after a valid superpriority  
26 foreclosure, claim that the HOA did not follow those procedures in distributing proceeds  
27 after a valid superpriority foreclosure, or discuss the damages from an alleged  
28 misapplication of proceeds after a valid superpriority foreclosure. It is absurd nonsense  
to assert this violation of NRS 116.1113 claim was about the misapplication of proceeds  
after a valid superpriority sale, and extremely troubling that Marchai believes it can get  
the Court to accept it.

///

1 Not only are those assertions not laid out in the claim, but also there are no  
2 supporting facts anywhere in the Complaint to describe the misapplication of proceeds  
3 after a valid superpriority foreclosure sale, to put the HOA on notice of such a claim.  
4 Marchai was required to plead facts supporting a valid superpriority foreclosure and  
5 misapplication of proceeds after that valid superpriority foreclosure. See *Nev. State*  
6 *Bank v. Jamison Fam. P'ship*, 106 Nev. 792, 801 P.2d 1377 (1990), *Liston v. Las Vegas*  
7 *Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723, and *Swartz v. Adams*, 93  
8 Nev. 240, 245, 563 P.2d 74, 77 (1977).

9 Marchai asserts its Complaint discusses partial payments from the prior  
10 homeowner. Opposition at 4. Marchai in its statement of facts asserts:

11 In 2016, Marchai filed another complaint that alleged claims against  
12 Wyeth Ranch for wrongful foreclosure, bad faith, and intentional  
13 interference with contract. (See Compl. Aug. 25, 2016.) One basis for the  
14 bad faith claim is that Perez satisfied the superpriority portion of Wyeth  
15 Ranch's lien. (*Id.* ¶¶ 69(e), 79.) And Marchai sought damages for Wyeth  
16 Ranch's bad faith. (*Id.* ¶ 81.)

17 Opposition at 4. The phrasing makes it appear that there is another basis for the bad  
18 faith claim, presumably the misapplication of payments after the sale. However,  
19 Marchai does not point to language in its complaint that makes up another basis for the  
20 bad faith claim.

21 The language does point to Perez's payments prior to the sale is not the same  
22 issue or claim. The new claim has to do with proceeds from the sale, which would be  
23 the application of the payment from the Purchaser SFR. This is a completely separate  
24 issue from the *Cranesbill* issue that was remanded (which is the prior owner Perez's  
25 payment issue). However, Marchai decided for the first time that if the *Cranesbill* issue  
26 (the Perez payment issue) were decided against it, it would also like the Court to review  
27 the payment from SFR after a valid superpriority foreclosure. This new claim is alleging  
28 some of SFR's payment should have gone to Marchai if there was a valid superiority

1 foreclosure. However, again, Marchai does not acknowledge the possibility of a valid  
2 superpriority foreclosure in its Complaint, or potential damages from a valid foreclosure,  
3 or these specific damages from misapplication of a payment from Purchaser SFR. See  
4 Complaint generally. Marchai's Complaint, like Marchai's Opposition referenced above,  
5 only articulates an allegation that Perez satisfied the superpriority portion. *Id.* If that was  
6 true and the superpriority portion of the lien was paid off prior to the sale, there could  
7 not have been a superpriority sale. Marchai is now making the alternative argument  
8 (that never appears in its Complaint) that if a valid superpriority sale occurred, there was  
9 an issue with SFR's payment to the HOA. This is a new claim dependent on a  
10 superpriority sale. Marchai arguing, that Perez made payments so there could not have  
11 been a superpriority sale, does not put the HOA on notice of issues with actions after  
12 the alternative of a superpriority sale. Further, this is a subsequent action to the  
13 alternative, as it is application of SFR's payment or an action after a valid superpriority  
14 sale.  
15

16  
17 Marchai wants the Court to believe that when it only alleged in its Complaint that  
18 no superpriority sale occurred, that it was also making the alternative argument that if a  
19 valid superpriority occurred that SFR's payments were misapplied. Marchai's argument  
20 defies basic logic. When they made the one bad faith claim involving wrongful  
21 foreclosure, they did not also plead all variations of bad faith including alternative factual  
22 basis. Marchai never plead SFR's payments were misapplied. However, Marchai could  
23 have plead in the alternative that if there was a valid superpriority sale, then Marchai  
24 believes SFR's payments should have been applied differently. Marchai's failure to  
25 plead this claim and attempt to bring it in only on the eve of trial allows the Court to deny  
26 it.  
27

28 ///

Marchai cites to a 2020 case in *Bank of Am., N.V. v. Thomas Jessup, LLC Series VII*, 462 P.3d 255, that the misapplication of proceeds is potentially a viable bad faith claim. However, it is obvious that the 2020 decision that did not yet exist could not have been considered by Marchai when it filed its Complaint years before. It is also obvious that the language in that decision that it cites to now “receipt of excess funds above its superiority lien” did not make it into Marchai’s violation of NRS 116.1113 claim, or any of the Complaint’s factual assertions.

In Section C of its Opposition Marchai argues that it did disclose these damages by requesting fair market value of the property. Marchai is asking the Court to assume that when it asked for hundreds of thousands of dollars as fair market value of damages that it also asked for some of the tens of thousands of dollars that was paid by SFR. However, given that misapplication of SFR payments does not appear in the Complaint, there is no reason to assume Marchai’s requested damages include damages for this separate claim. Additionally, there is no reason to assume damages of fair market value tipped the HOA off that Marchai was also seeking part of SFR’s payment. Marchai admits in its Opposition “[o]ne basis for the bad faith claim is that Perez satisfied the superpriority portion of Wyeth Ranch’s lien. (*Id.* ¶¶ 69(e), 79.) And Marchai sought damages for Wyeth Ranch’s bad faith. (*Id.* ¶ 81.)” Opposition at 4. Therefore, Marchai admits it is tying its damages request to a wrongful foreclosure claim (an allegation that an improper foreclosure extinguished its deed of trust when it should not have). However, Marchai never distinguishes its bad faith wrongful foreclosure claim from a claim of misapplication of SFR’s payment, or in other words distinguished the damages for “wrongful foreclosure” from “damages of misapplication of SFR’s payments” (the proceeds from the sale). Marchai never disclosed these damages. Marchai never disclosed them for the obvious reason that it raised the claim for the first



1 time in its Opposition to the MSJ. Nothing put the HOA on notice that Marchai's  
2 damages could include a misapplication of SFR's payment.

3 Marchai argues in its Opposition that the HOA never had an Interrogatory  
4 regarding the violation of NRS 116.1113 (bad faith) claim. This is false, as it is Marchai  
5 that cannot have it both ways. If Marchai states its bad faith claim is about wrongful  
6 foreclosure and we ask about wrongful foreclosure, we are asking about its claim.

7 Again, Marchai's violation of NRS 116.1113 claim states:

8  
9 **Fourth Claim for Relief**  
**(Violation of NRS § 116.1113 et seq.-Against Wyeth Ranch and**  
**Alessi & Koenig)**

10 79. Marchai repeats and realleges each of the paragraphs set forth  
11 above.

12 80. Wyeth Ranch and Alessi & Koenig **wrongfully foreclosed**  
upon the property in violation of the Statute.

13 Marchai's Complaint at 11 (emphasis added). Therefore, when the HOA asked about  
14 wrongful foreclosure it was also asking about Marchai's Fourth Claim for Relief. The  
15 HOA has discussed in this Motion and Reply, that wrongful foreclosure is the exact  
16 opposite of what Marchai would have to plead to get to a factual scenario where these  
17 damages would even be possible, because the new claim is misapplication of sale  
18 proceeds after a valid superpriority foreclosure. However, even if this claim as stated in  
19 the Complaint included misapplication of proceeds after the sale, when the HOA asked  
20 about wrongful foreclosure Marchai should have included it in its response to the  
21 interrogatory and it did not.

22  
23 Review of additional documents from the litigation also demonstrate that Marchai  
24 has not previously sought proceeds that went to the HOA. As argued above Marchai's  
25 violation of NRS 116.1113 claim in the Complaint directs review to wrongful foreclosure.  
26 In responses to written discovery requests regarding wrongful foreclosure, Marchai  
27 never alleges facts related to the application of the proceeds after the sale. See  
28

Responses to Written Discovery (specifically responses to interrogatories 13 – 15) attached to the Motion as Exhibit 8. Marchai's response also incorporates its Motion for summary judgment at the time into its written discovery response for further information. *Id.* However, the motion for summary judgment similarly does not seek proceeds after the sale. See Marchai's January 14, 2016 Motion for Summary Judgment.

Finally, as discussed previously, Marchai's last disclosure of witnesses and documents does not include a computation of damages that seeks proceeds after the sale. Marchai's last disclosure states:

**(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and**

Marchai primarily judicial foreclosure and a ruling that Wyeth Ranch Community Association's foreclosure did not extinguish Marchai's deed of trust or, if it did, that the sale was void or voidable. If the Court does not grant judicial foreclosure, declare that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust, or set aside the foreclosure sale as void or voidable, Marchai seeks damages in the amount of the fair market value of the property. According to Marchai's expert, the property had a fair market value of \$360,000 at the time of Wyeth Ranch's foreclosure. See Marchai, B.T.'s Initial Expert Disclosure (Apr. 25, 2017).

See Marchai's Third Supplemental Disclosure and Expert Report, attached to the Motion as Exhibit 9. The damages requested demonstrate Marchai has not sought proceeds from the sale. Marchai does not suggest some of SFR's payment around \$20,000 should have gone to it, or what portion of SFR's payment that should have been. This is a new claim and newly requested damages.

///

///

///

///

///

**B. Marchai Alternatively Concedes the Claim is New and asks that It be allowed to add the New Claim, which should be denied.**

Even though the case has been litigated for years, Marchai argues if it is a new claim that it is raising for the first time in its Opposition to MSJ and on the eve of trial, that no prejudice exists. Marchai's actions are clearly prejudicial. Trial by Ambush traditionally occurs where a party withholds discoverable information and then later presents this information at trial, effectively ambushing the opposing party through gaining an advantage by the surprise attack." *Land Baron Invs., Inc. v. Bonnie Springs Family Ltd. P'ship*, 131 Nev. 686, 701 n.14, 356 P.3d 511, 522 n.14 (2015). Here, Marchai never articulated the claim in its Complaint or disclosures, designated damages for the claim, or disclosed witnesses that would discuss these damages. Marchai's request to amend that it is making now for the first time as an alternative argument in this Opposition should be denied.

The foreclosure sale occurred in 2013. Exhibit 19. An interpleader action was filed the same year and provided a breakdown of the distribution of the proceeds. Interpleader Complaint case # A-13-690586-C, attached to the Motion at Exhibit 10. Thus, good cause does not exist for Marchai making this claim at this point in the litigation, and it was instead done in bad faith with the realization that the Quiet Title claim against the HOA had been dismissed. See Exhibit 21 (Dismissal of Quiet Title Claim).

Such failures are not justified as the Plaintiff presumably had in its possession the documents, facts, and information necessary to calculate damages. See *Pizarro-Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28, 2017). The request to amend at this point is a violation of the spirit of the Nevada Rules of Civil Procedure, and specifically violates NRCP 1 (as Marchai failed to seek the just,

1 speedy, an inexpensive resolution of this new claim); NRCP 7 (as Marchai's current  
2 Opposition is not a motion necessary to seek amendment of claims); NRCP 8 (as  
3 Marchai still fails to provide a Complaint with a short and plain statement of the claim  
4 showing that the pleader is entitled to relief); NRCP 15 (as a late amendment would  
5 prejudice the HOA); NRCP 16 (as Marchai fails to demonstrate good cause to modify  
6 the scheduling order to allow a late amendment); NRCP 16.1 (as Marchai failed to  
7 disclose damages that could logically be linked to this claim); NRCP 26 (as Marchai  
8 failed to supplement discovery to include this issue) and NRCP 33 (as Marchai failed to  
9 appropriately respond to interrogatories with any mention of misapplication of SFR's  
10 payment).

12 Prejudice is presumed in the willful disregard of the judicial process. See *Foster*  
13 *v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049, 2010 Nev. LEXIS 5, \*15-16, 126  
14 Nev. Adv. Rep. 6, citing: *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217,  
15 1236 (9th Cir. 2006) (holding that, with respect to discovery abuses, "[p]rejudice from  
16 unreasonable delay is presumed" and failure to comply with court orders  
17 mandating discovery "is sufficient prejudice"). Prejudice also results when an  
18 amendment would unnecessarily increase costs or diminish the opposing party's ability  
19 to respond to the amended pleading. *BNSF Ry. Co. v. San Joaquin Valley R.R. Co.*,  
20 No.1:08-cv-01086-AWI-SMS, 2011 U.S. Dist. LEXIS 84694, 2011 WL 3328398, \*2 (E.D.  
21 Cal. Aug. 2, 2011). Again here, Alessi filed the Interpleader in 2013. Now at the end of  
22 2020, weeks before trial, Marchai wants to add a new claim. Marchai only ever plead  
23 the prior owner paid the superiority portion of the lien or the HOA wrongfully foreclosed.  
24 The new claim asks the Court to consider a third scenario of a superpriority foreclosure,  
25 where Marchai's deed of trust was extinguished, and then to review actions after that  
26 valid foreclosure of applying proceeds from that foreclosure. Nothing put the HOA on  
27  
28

notice of this claim or an issue with this factual scenario.

When Marchai plead violation of NRS 116.1113 (bad faith) it listed wrongful foreclose as discussed above. The interrogatory response asking for every fact supporting wrongful foreclosure directs the HOA to review of prior interrogatory responses in interrogatory responses Nos. 13 and 14. See Exhibit 8 attached to Motion at response to Interrogatory 15. Neither of those responses claims a misapplication of SFR's payment after a valid superpriority foreclosure. See Exhibit 8 at responses Nos. 13 and 14.

Finally, as argued in our Motion the review of prejudice under NRCP 15 was not meant to pilfer NRCP 16's dominion. "[T]he purpose of NRCP 16(b) is 'to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) *quoting Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 339-40 (2d Cir.2000). Because "[d]isregard of the [scheduling] order would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier" in order to extend a deadline imposed by a court order, the party seeking such an extension must establish good cause. *Nutton*, 131 Nev. Adv. Op. 34, 357 P.3d at 972 *quoting Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9<sup>th</sup> Cir. 1992). NRCP 16 was drafted precisely to prevent this from occurring, and '[i]ts standards may not be short-circuited by an to those of Rule 15.'" *Id.* at 971 *quoting Johnson*, 975. F.2d at 610. "[I]f the moving party was not diligent in at a least attempting to comply with the deadline, 'the inquiry should end [there].'" *Id. quoting Johnson*, 975 F.2d at 609 (emphasis added).

///

///

1 Here, Marchai has not even filed a motion in an attempt to argue good cause;  
2 and in bad faith instead chose to mislead the court in believing it is the same claim,  
3 when it clearly is not.

4 For the reasons provided above, any request to amend or provide proof of  
5 these damages at this point in the litigation should be denied. The HOA is entitled to  
6 reconsideration or clarification of the previous order indicating Marchai cannot raise this  
7 claim at trial, or alternatively the HOA is entitled to a separate order that Marchai cannot  
8 raise this claim at trial.  
9

10 **III. CONCLUSION**

11 Based on the foregoing arguments, the HOA respectfully requests an addition or  
12 clarification to the prior order stating that Marchai cannot raise this claim at trial, or  
13 alternatively, a separate order that Marchai cannot raise this claim at trial.

14 DATED this 30<sup>th</sup> day of December, 2020.

15 LIPSON NEILSON P.C.

16  
17 */s/ David T. Ochoa*

18 By: \_\_\_\_\_

KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

DAVID T. OCHOA, ESQ.

Nevada Bar No. 10414

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

21 *Attorneys for Defendant*

22 *Wyeth Ranch Community Association*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that on the 30<sup>th</sup> day of December, 2020, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION OR CLARIFICATION UNDER NRCP 60, ALTERNATIVELY MOTION IN LIMINE** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

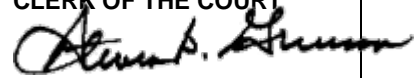
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerrillpc.com](mailto:david@djmerrillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1,  
LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.



1 **ODM**  
2 David J. Merrill  
3 Nevada Bar No. 6060  
4 David J. Merrill, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 Telephone: (702) 566-1935  
8 Facsimile: (702) 993-8841  
9 Email: david@djmerrillpc.com  
10 Attorney for Marchai, B.T.

11  
12  
13  
14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 MARCHAI, B.T., a Nevada business trust,

17 Plaintiff,

18 v.

19 CRISTELA PEREZ, an individual; *et al.*

20 Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

21  
22  
23  
24  
25  
26  
27  
28  
AND ALL RELATED CLAIMS AND AC-  
TIONS

29 **Order Denying Defendant Wyeth Ranch Community Asso-**  
30 **ciation's Motion for Reconsideration or Clarification Under**  
31 **NRCP 60, Alternatively Motion in Limine**

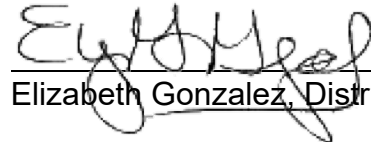
32 Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clari-  
33 fication Under NRCP 60, Alternatively Motion in Limine came before this Court, in chambers,  
34 on the 8th day of January 2021. The Court, having considered the motion, Marchai's opposition,  
35 Wyeth Ranch's reply, and good cause appearing therefor:

36 **It is hereby ordered** that the motion is **denied**. Marchai may raise the identified bad  
37 faith claim at trial because: (1) Marchai's complaint fairly noticed the issue to Wyeth Ranch; (2)  
38 Wyeth Ranch's interrogatory seeking the basis for Marchai's wrongful foreclosure claim did not

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935



encompass a request for information on Marchai's bad faith claim; and (3) Marchai adequately disclosed a computation of damages under N.R.C.P. 16.1.

 January 20, 2021  
Elizabeth Gonzalez, District Court Judge

Submitted by:

David J. Merrill, P.C.

By: /s/ David J. Merrill  
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

Approved as to form:

Kim Gilbert Ebron

Lipson Neilson, P.C.

By: /s/ Karen L. Hanks  
Karen L. Hanks  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300  
Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa  
David T. Ochoa  
Nevada Bar No. 10414  
9900 Covington Cross Drive,  
Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
Attorneys for Wyeth Ranch Community Association



David Merrill &lt;david@djmerillpc.com&gt;

---

**RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration**

1 message

---

**Karen Hanks** <karen@kgelegal.com>

Tue, Jan 19, 2021 at 11:27 AM

To: David Merrill &lt;david@djmerillpc.com&gt;, David Ochoa &lt;dochoa@lipsonneilson.com&gt;

You may insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but all of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [diana@kgelegal.com](mailto:diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com).

Sent from [Mail](#) for Windows 10

---

**From:** David Merrill**Sent:** Tuesday, January 19, 2021 11:06 AM**To:** David Ochoa**Cc:** Karen Hanks**Subject:** Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

Thank you, David.

Karen?

On Tue, Jan 19, 2021 at 10:37 AM David Ochoa <[DOchoa@lipsonneilson.com](mailto:DOchoa@lipsonneilson.com)> wrote:

AA 290

David,

You may e-sign on my behalf.

David



David Ochoa, Esq.

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

702-382-1500

702-382-1512 (fax)

E-Mail: [dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

**OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO \*\*\*\*\***  
\*\*\*\*\*

**CONFIDENTIALITY NOTICE**

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

---

**From:** David Merrill <[david@djmerillpc.com](mailto:david@djmerillpc.com)>

**Sent:** Tuesday, January 19, 2021 10:30 AM

**To:** David Ochoa <[DOchoa@lipsonneilson.com](mailto:DOchoa@lipsonneilson.com)>; Karen L. Hanks <[karen@kgelegal.com](mailto:karen@kgelegal.com)>

**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

David and Karen,

I have attached for your review and approval a draft of the order denying Wyeth Ranch's motion for reconsideration. Please review and advise if you have any comments or with approval to submit to the Court with your electronic signature. I must submit the order to the Court by **Thursday, January 21, 2021**. If I don't hear from you by noon on Thursday, I will submit it to the Court without your signature. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841

--

David J. Merrill

David J. Merrill, P.C.

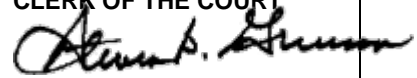
10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



FFCL

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

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND  
ACTIONS

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez on February 22, 2021; Plaintiff Marchai, B.T. (“Marchai”) being represented by its counsel David J. Merrill, Esq. of the law firm David J. Merrill, P.C.; Defendant SFR Investments Pool 1, LLC (“SFR”) being represented by Karen Hanks, Esq. of the law firm Kim Gilbert Ebron; and Defendant Wyeth Ranch Community Association (“Wyeth Ranch”) being represented by David T. Ochoa, Esq. of the law firm of Lipson Neilson P.C.; and Defendant Cristela Perez (“Perez”) having been defaulted; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on all

1 remaining issues before the Court,<sup>1</sup> pursuant to NRCP 52(a) and 58; the Court makes the  
2 following findings of fact and conclusions of law:

### 3 **PROCEDURAL HISTORY**

4 1. In A689461 the Complaint alleges Judicial Foreclosure of Deed of Trust. SFR  
5 alleges as Counterclaims & Cross Claims, Declaratory Relief/Quiet Title and Injunctive Relief.

6 2. In A742327 the Complaint alleges Declaratory Relief Under Amendment V of the  
7 United States Constitution-Takings Clause; Declaratory Relief Under the Due Process Clause of  
8 the United States and Nevada Constitutions; Wrongful Foreclosure; Violation for NRS §  
9 116.1113 et seq.; Intentional Interference with Contractual Relations; and Quiet Title.  
10

11 3. Default was entered against Perez in A689461 on April 22, 2014.

12 4. In the Order entered March 22, 2016, Judge Bell found that Marchai failed to  
13 establish the sale was commercially unreasonable, violated the takings or due process clauses, or  
14 that the statute was unconstitutionally vague.

15 5. To the extent Marchai's third through sixth cause of action related to taking, due  
16 process, or commercial reasonableness, those portions of those causes of action were resolved by  
17 the 2016 Order.  
18

19 6. In Judge Bell's Order entered January 24, 2017, Marchai's Quiet Title Claim  
20 against Wyeth Ranch was dismissed.

21 7. The October 3, 2017 Order found notice was proper, but found for Marchai based  
22 on a determination that Perez's partial payments paid off the superpriority portion of the lien.  
23  
24

---

25 <sup>1</sup> On March 18, 2019, the Nevada Supreme Court remanded this matter to the Court, after vacating this  
26 Court's prior Judgment in favor of Marchai B.T. The Nevada Supreme Court found that while Judge Bell correctly  
27 determined a homeowner's payments can cure the default of the super-priority portion of an Association's lien, an  
28 analysis of the intent of the homeowner and the Association as to whether the payments made by the homeowner in  
this case did in fact cure the super-priority default. Further, the Court directed an analysis of the factors outlined in  
*9352 Cranesbill v. Wells Fargo*, 136 NAO 8 (2020).

8. On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal, appealing the determination on the application of Perez's partial payments.

9. Marchai did not appeal the earlier orders or the determination on notice from the October 3, 2017.

10. On March 18, 2020, the Nevada Supreme Court entered its Order Vacating Judgment and Remanding.

11. The Nevada Supreme Court found and affirmed that the 2008 Notice of Delinquent Assessment was the operative notice to review superpriority.

12. The Nevada Supreme Court found that a borrower's payments could satisfy the superpriority portion of an HOA lien. However, the Court remanded on finding that under 9352 *Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5, 2020), the facts surrounding the payments needed to be analyzed to determine if the payments actually satisfied the superpriority portion of the lien.

## FINDINGS OF FACT

13. On October 4, 2002, Wyeth Ranch recorded its Declaration of Covenants, Conditions, and Restrictions (“CC&Rs”) in the Official Records of the Clark County Recorder as Instrument No. 2002100401353. Wyeth Ranch recorded various amendments.

14. On July 21, 2004, a Grant, Bargain, Sale Deed transferring the real property commonly known as 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013 (“Property”) to Perez was recorded in the Official Records of the Clark County Recorder as Instrument No. 20040721-0003728 (Exhibit 16).

15. The Property is in the Wyeth Ranch community.

16. On October 19, 2005, Perez refinanced her two prior loans by entering into an Interest First Adjustable Rate Note (“Note”) with CMG Mortgage, Inc. for \$442,000.00.

1           17.     On November 9, 2005, CMG Mortgage secured the Note by recording a Deed of  
2 Trust against the Property as Instrument No. 20051109-0001385 ("DOT").

3           18.     Eventually, the DOT was assigned to Marchai on March 12, 2013, and the  
4 assignment was recorded with the Clark County Recorder as Instrument No. 201308120002562.

5           19.     For all relevant time periods to this action, Wyeth Ranch collected association  
6 dues on the first day of each quarter.

7           20.     In 2008, Wyeth Ranch collected \$420.00 per quarter in association dues.

8           21.     Complete Association Management Company ("CAMCO") acted as the  
9 community management company for Wyeth Ranch.  
10

11          22.     Wyeth Ranch retained Alessi & Koenig, LLC ("A&K") as its collection agent,  
12 who collected delinquent assessments from Perez.

13          23.     Wyeth Ranch had no written documents outlining procedures for applying  
14 payments or partial payments to past due assessments.

15          24.     When Perez submitted payments, there is no evidence she directed how she  
16 wanted the payments applied.  
17

18          25.     Wyeth Ranch maintained two accounts for the Property, an assessment account  
19 and a violation account.

20          26.     Wyeth Ranch did not maintain separate superpriority and subpriority accounts for  
21 the Property.

22          27.     On January 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

23          28.     On January 30, 2008, Perez became delinquent in the payment of her quarterly  
24 assessments.  
25

26          29.     On April 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

27          30.     Exhibit 138 evidences a "running account" statement for the assessments at the  
28 Property. On April 16, 2008, Wyeth Ranch applied a \$507.60 payment to Perez's account.



1 Wyeth Ranch applied \$420.00 of the \$507.60 payment to the past due January 2008's association  
2 dues and the remainder (\$87.60) to the current April 2008 association dues.

3 31. Based upon Exhibit 45,<sup>2</sup> Wyeth Ranch did *not* apply payments first to late fees or  
4 interest. Instead, it applied payments first to the oldest outstanding association dues and then any  
5 remainder to the next oldest outstanding association dues.<sup>3</sup>

6 32. On July 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

7 33. On October 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly  
8 assessment.  
9

10 34. On October 2, 2008, Wyeth Ranch instituted an action to enforce its lien by  
11 sending Perez a Notice of Delinquent Assessment (Lien) ("NODA").

12 35. According to the NODA, executed September 30, 2008, Perez owed Wyeth  
13 Ranch \$1,425.17, including collection costs, attorney's fees, late fees, service charges, and  
14 interest. The NODA included the superpriority portion (statutorily permitted 6 months at the  
15 time) of the lien (\$840), subpriority portion of the lien, late fees, A&K's attorney's fees (\$370)  
16 and costs (\$50).  
17

18 36. The NODA was recorded on October 8, 2008.

19 37. In 2009, Wyeth Ranch increased its assessments from \$420.00 per quarter to  
20 \$457.50 per quarter.  
21

---

22 <sup>2</sup> Exhibit 45 bears a print date of 9/17/2008, a received stamp of 9/17/2008, and handwritten notations related  
23 to late fees and what appears to be the file number for this matter (11632) from A & K, *see* Exhibit 109. The Court  
24 infers that based upon Exhibit 45, A & K executed the Notice of Delinquent Assessment (Lien) on 9/30/08, in the  
25 total amount of \$1425.17 after adding the handwritten late fee entry for 9/08 in the amount of \$11.29. The Notice of  
Delinquent Assessment (Lien) recorded on 10/8/08, included the superpriority portion (statutorily permitted 6  
months at the time) of the lien (\$840), subpriority portion of the lien, late fees, A & K's attorney's fees (\$370) and  
costs (\$50) as reflected in Exhibit 47.

26 <sup>3</sup> The testimony of Yvette Saucedo of CAMCO is inconsistent with Exhibit 45 and outlines an audit process  
27 she and her staff follow on behalf of Wyeth Ranch. The Court finds the information contained in Exhibit 45  
28 credible as it was prepared at the time of the NODA, rather than an after the fact readjustment as described by Ms.  
Saucedo. According to Ms. Saucedo, no more recent version of the report similar to Exhibit 45 was available. As a  
result, the Court's analysis is to apply the treatment of the April 16, 2008 payment for all later payments made by  
Perez.

1           38.     On January 5, 2009, A&K recorded a Notice of Default and Election to Sell  
2 Under Homeowners Association Lien (“NOD”) on behalf of Wyeth Ranch in the Official  
3 Records of the Clark County Recorder as Instrument No. 20090105-0002988. The NOD stated  
4 Perez owed Wyeth Ranch \$3,096.46 as of December 17, 2008.

5           39.     On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude  
6 Non-Judicial Foreclosure and Conduct Trustee Sale. Wyeth Ranch authorized A&K to proceed  
7 with the non-judicial foreclosure of its assessment lien.  
8

9           40.     According to Wyeth Ranch, Perez owed \$3,330.32 in assessments.

10          41.     In 2010, Wyeth Ranch increased its assessments from \$457.50 to \$478.50 per  
11 quarter.

12          42.     Under Wyeth Ranch’s authorization, on January 14, 2010, A&K recorded a  
13 Notice of Trustee’s Sale, which set a foreclosure sale for February 17, 2010.

14          43.     The Notice of Trustee’s Sale stated Wyeth Ranch’s intention to foreclose the lien  
15 recorded on October 8, 2008.  
16

17          44.     According to the notice, Perez owed Wyeth Ranch \$6,964.25 for unpaid  
18 assessments.

19          45.     On February 3, 2010, A&K sent a demand to Perez and her husband, Robert  
20 Rose, in which A&K claimed that Perez owed Wyeth Ranch \$6,977.61.

21          46.     On February 12, 2010, Perez paid A&K \$900.00. A&K deducted \$309.60 in  
22 collection costs from the \$900 payment and disbursed the remainder (\$590.40) to Wyeth Ranch.  
23

24          47.     On March 2, 2010, Wyeth Ranch applied the \$590.40 disbursement to Perez’s  
25 account.

26          48.     On March 22, 2010, Perez was provided a payment plan. The payment plan  
27 commenced on April 1, 2010, and required monthly payments of \$669.87. Perez never made a  
28 payment under the payment plan.

1           49.     On May 11, 2010, Perez paid A&K \$300.00. A&K deducted \$95.40 in collection  
2 costs from the \$300 payment and disbursed the remainder (\$204.60) to Wyeth Ranch.

3           50.     On June 8, 2010, Wyeth Ranch applied the \$204.60 disbursement to Perez's  
4 account.

5           51.     On July 2, 2010, A&K sent Perez a letter notifying her that it terminated the  
6 payment plan.

7           52.     On July 13, 2010, A&K sent Perez a Pre-Notice of Trustee Sale Notification  
8 based upon the NODA recorded on October 8, 2008, and the NOD recorded on January 5, 2009.  
9

10          53.     The Pre-Notice of Trustee's Sale demanded payment from Perez for \$19,071.21.

11          54.     On August 2, 2010, Perez paid A&K \$250.00. A&K deducted \$77.24 in  
12 collection costs from the \$250 payment and disbursed the remainder (\$172.76) to Wyeth Ranch.

13          55.     On August 20, 2010, Wyeth Ranch applied the \$172.76 disbursement to Perez's  
14 account; \$172.76 for the October 2008 association dues, which left a balance for October 2008  
15 of \$204.64.  
16

17          56.     On September 29, 2010, Perez paid A&K \$220.00. A&K deducted \$67.98 in  
18 collection costs from the \$220 payment and disbursed the remainder (\$152.02) to Wyeth Ranch.

19          57.     On October 15, 2010, Wyeth Ranch applied the \$152.02 disbursement to Perez's  
20 account.

21          58.     On November 30, 2010, Perez paid A&K \$175.00. A&K deducted \$48.82 in  
22 collection costs from the \$175 payment and disbursed the remainder (\$126.18) to Wyeth Ranch.  
23

24          59.     On December 16, 2010, Wyeth Ranch applied the \$126.18 disbursement to  
25 Perez's account.  
26  
27  
28

1           60.     On March 9, 2011, A&K recorded a Rescission of Notice of Trustee's Sale, which  
2 rescinded the notice A&K recorded on January 14, 2010.<sup>4</sup>

3           61.     On March 10, 2011, Perez paid A&K \$160.00. A&K deducted \$40.48 in  
4 collection costs from the \$160 payment and disbursed the remainder (\$119.52) to Wyeth Ranch.

5           62.     On March 22, 2011, Wyeth Ranch applied the \$119.52 disbursement to Perez's  
6 account.

7           63.     On March 29, 2011, A&K recorded another Notice of Trustee's Sale based upon  
8 the January 5, 2009 NOD.

9           64.     On June 2, 2011, Wyeth Ranch executed another authorization to allow A&K to  
10 complete the non-judicial foreclosure and conduct the trustee sale.

11           65.     The authorization stated that Perez owed Wyeth Ranch \$4,730.03 in delinquent  
12 assessments.

13           66.     On May 23, 2011, Perez paid A&K \$160.00. A&K deducted \$35.68 in collection  
14 costs from the \$160 payment and disbursed the remainder (\$124.32) to Wyeth Ranch.

15           67.     On June 16, 2011, Wyeth Ranch applied the \$124.32 disbursement to Perez's  
16 account.

17           68.     On August 4, 2011, Perez paid A&K \$165.00.

18           69.     A&K deducted \$37.29 in collection costs from the \$165 payment and disbursed  
19 the remainder (\$127.71) to Wyeth Ranch.

20           70.     On August 18, 2011, Wyeth Ranch applied the \$127.71 disbursement to Perez's  
21 account.

22  
23  
24  
25  
26  
27 <sup>4</sup> Although the notice claims to rescind the Notice of Trustee's Sale recorded on January 11, 2010, A&K did  
28 not record a Notice of Trustee's Sale on January 11, 2010. It appears that A&K meant it rescinded the notice  
recorded on January 14, 2010, as it does refer to Instrument Number 2589, which is the January 14, 2010 Notice of  
Trustee's Sale.

1           71.     On September 30, 2011, A&K notified Perez that it terminated the payment plan  
2 of April 30, 2011.

3           72.     On October 1, 2011, Perez defaulted under her loan from CMG Mortgage.

4           73.     In 2011, Wyeth Ranch assessed \$448.50 each quarter for assessments.

5           74.     On November 29, 2011, A&K sent Perez a lien letter to which A&K attached  
6 another Notice of Delinquent Assessment (Lien).

7           75.     According to the notice, Perez owed Wyeth Ranch \$9,296.56.

8           76.     On December 20, 2011, A&K recorded the second Notice of Delinquent  
9 Assessment Lien, but did not release or rescind the NODA it recorded in 2008.

10          77.     On January 25, 2012, A&K followed up the second Notice of Delinquent  
11 Assessment (Lien) by mailing Perez a Pre-Notice of Default Letter demanding that Perez pay  
12 Wyeth Ranch \$9,865.06 in past-due assessments.

13          78.     On February 28, 2012, A&K recorded another Notice of Default and Election to  
14 Sell Under Homeowners Association Lien, but did not release or rescind the NOD it recorded on  
15 January 5, 2009.

16          79.     According to the notice, as of February 14, 2012, Perez owed Wyeth Ranch  
17 \$10,625.06 in unpaid assessments.

18          80.     The February 28, 2012 notice states that Perez first defaulted on her obligations to  
19 Wyeth Ranch in January 2008.

20          81.     On March 19, 2012, Perez paid A&K \$300.00. A&K deducted \$87.30 in  
21 collection costs from the \$300 payment and disbursed the remainder (\$212.70) to Wyeth Ranch.

22          82.     On April 3, 2012, Wyeth Ranch applied the \$212.70 disbursement to Perez's  
23 account.

24          83.     On May 7, 2012, Perez paid A&K \$295.00. A&K deducted \$85.84 in collection  
25 costs from the \$295 payment and disbursed the remainder (\$209.16) to Wyeth Ranch.  
26  
27  
28

1           84.     On May 23, 2012, Wyeth Ranch applied the \$209.16 disbursement to Perez's  
2 account.

3           85.     On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the  
4 nominee for CMG Mortgage, assigned CMG Mortgage's deed of trust to CitiMortgage, Inc.  
5 CMG Mortgage endorsed the note payable to the order of CitiMortgage. On June 5, 2012,  
6 CitiMortgage recorded a Corporate Assignment of Deed of Trust.

7           86.     On July 18, 2012, A&K sent Perez a Pre-Notice of Trustee Sale Notification, in  
8 which A&K demanded that Perez pay Wyeth Ranch \$11,371.07.  
9

10          87.     Ostensibly, A&K sent the Pre-Notice of Trustee's Sale Notification according to  
11 the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the Notice of  
12 Default and Election to Sell recorded nearly three years earlier on January 5, 2009.

13          88.     On July 26, 2012, Perez paid A&K \$165.00. A&K deducted \$43.72 in collection  
14 costs from the \$165 payment and disbursed the remainder (\$121.28) to Wyeth Ranch.  
15

16          89.     On July 26, 2012, CitiMortgage assigned the deed of trust to U.S. Bank, N.A., as  
17 trustee for Stanwich Mortgage Loan Trust, Series 2012-6. CitiMortgage also signed an allonge,  
18 endorsing the note payable to U.S. Bank. On July 26, 2012, U.S. Bank recorded the Assignment  
19 of Mortgage with the Clark County Recorder.

20          90.     On August 27, 2012, Wyeth Ranch applied the \$121.28 disbursement to Perez's  
21 account.  
22

23          91.     On October 3, 2012, Carrington Mortgage Services, LLC, the servicer for the loan  
24 assigned to U.S. Bank, sent Perez a Notice of Intent to Foreclose.

25          92.     According to the notice, Perez defaulted on the loan on October 1, 2011, and  
26 owed U.S. Bank \$36,281.60.

27          93.     On October 10, 2012, A&K prepared another Notice of Trustee's Sale.  
28

1           94.     According to the notice, A&K stated its intention to sell the Property at a  
2 foreclosure sale on November 28, 2012. The notice claims that A&K will conduct the sale  
3 according to the lien recorded on December 20, 2012. According to the notice, Perez owed  
4 \$11,656.07.

5           95.     On October 31, 2012, A&K recorded the Notice of Trustee's Sale, but did not  
6 rescind the Notice of Trustee's Sale it recorded on March 29, 2011.

7           96.     On November 13, 2012, Perez made a \$300.00 payment to A&K. A&K deducted  
8 \$78.90 in collection costs from the \$300 payment and disbursed the remainder (\$221.10) to  
9 Wyeth Ranch.  
10

11           97.     On December 14, 2012, Wyeth Ranch applied the \$221.10 disbursement to  
12 Perez's account.

13           98.     On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to  
14 Marchai, which it recorded with the Clark County Recorder on August 12, 2013. U.S. Bank  
15 executed an allonge endorsing the note to Marchai.  
16

17           99.     On July 11, 2013, A&K executed another Notice of Trustee's Sale.

18           100.    The notice claimed that Perez owed \$14,090.80 in unpaid assessments.

19           101.    According to the notice, A&K intended to sell the Property at a foreclosure sale  
20 on August 28, 2013.

21           102.    On July 31, 2013, A&K recorded the notice with the Clark County Recorder, but  
22 again failed to rescind the Notice of Trustee's Sale recorded on October 31, 2012.  
23

24           103.    On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan  
25 Servicing, Marchai's servicer, learned about the sale. Peak immediately contacted A&K and  
26 asked it to postpone the sale so it could pay the lien.

27           104.    On the morning of the day of the sale (August 28, 2013), Naomi Eden at A&K  
28 emailed Brittney O'Connor, the accounting clerk at CAMCO, in which she notes that "[t]he

1 mortgage company is asking for an extension so they can get it paid off.” Eden asked O’Connor  
2 if A&K could postpone the sale.

3 105. O’Connor responded to the email asking Eden how many oral postponements  
4 Wyeth Ranch had remaining.

5 106. Eden advised O’Connor that Wyeth Ranch still had three postponements left.

6 107. O’Connor then emailed Michele Weaver, a CAMCO manager. O’Connor told  
7 Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that it could postpone the  
8 sale three times, and that “[t]he mortgage company would like an extension so they can pay off  
9 the account.”

10 108. In her email to Weaver, O’Connor said she “will use all postponements then go to  
11 sale on the 3rd sale date set,” “[u]nless otherwise directed by the board.” Unless the association  
12 directed otherwise, postponing foreclosure sales until the third sale date was CAMCO’s standard  
13 practice.

14 109. According to the last email in the chain, Weaver “received confirmation” that  
15 Wyeth Ranch did “NOT want to postpone.”

16 110. Wyeth Ranch refused to postpone the sale so Marchai could pay off the account  
17 and proceeded with the foreclosure.

18 111. On August 28, 2013, A&K conducted a foreclosure sale.

19 112. The Wyeth Ranch foreclosure sale occurred on August 28, 2013. At the  
20 foreclosure sale, SFR Investments Pool 1, LLC, submitted the winning bid of \$21,000.00.

21 113. On September 9, 2013, a Trustee’s Deed Upon Sale (“Trustee’s Deed”) was  
22 recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR.

23 114. At the time of the foreclosure, Wyeth Ranch’s assessment ledger reflected a  
24 \$10,679.12 balance. There is no differentiation between superpriority and subpriority portions of  
25 the lien.  
26  
27  
28



115. Based upon the disbursements remitted to Wyeth Ranch by A&K after the NODA, the Court finds that the following amounts were applied to the running account:

Date	Disbursement	Superpriority Balance
9/30/08		840.00
3/2/10	590.40	249.60
6/8/10	204.60	45.00
8/20/10	172.76	(-127.76)

116. The disbursements from A&K extinguished the superpriority portion of the lien in August 2010, well before the foreclosure sale.

117. Even if the Court did not find that Wyeth Ranch applied the disbursements to the oldest outstanding delinquent assessment, the principles of justice and equity in this case weigh in favor of the application of those disbursements to the oldest delinquent assessment and the extinguishment of the superpriority portion of the lien.

118. SFR as a purchaser of over 600 properties at HOA foreclosure sales was aware of the issues related to superpriority HOA liens and the risks associated with purchasing a property at this type of auction.

119. Wyeth Ranch received payment in full (\$10,679.12) of its assessment lien.

120. The Declaration of Value asserts that the Property has a "Transfer Tax Value" of \$307,403.00.

121. The Property's fair market value on August 28, 2013, was \$360,000.00.

122. If any of the preceding findings of fact are more appropriately deemed conclusions of law, then they shall be considered conclusions of law.

## CONCLUSIONS OF LAW

123. The analysis made in this bench trial is limited to the matters on remand to the Court which includes:

a. Whether Perez's payments actually cured the superpriority default, based upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the District Court's assessment of justice and equity.

b. SFR's purported status as a bona fide purchaser.

124. Additionally, the Court evaluates the dispute between Wyeth Ranch and Marchai related to the conduct of the foreclosure sale and issues related to application and remittance of the proceeds of the sale.

125. NRS 40.010 provides that "an action may be brought by any person against another who claims an estate or interest in real property adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS § 40.010.

126. "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

127. NRS 116.3116 grants an association "a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.31035, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due." NRS § 116.3116(1) (2011).<sup>5</sup>

128. An association's lien "is prior to all other liens and encumbrances on a unit except:"

---

<sup>5</sup> The Legislature has amended NRS 116 several times in the time between when Wyeth Ranch initiated the foreclosure process and ultimately completed the foreclosure.

1 (a) Liens and encumbrances recorded before the recordation of the declaration  
...;

2 (b) A first security interest on the unit recorded before the date on which the  
assessment sought to be enforced became delinquent . . . ; and

3 (c) Liens for real estate taxes and other governmental assessments or charges  
4 against the unit . . . .

NRS § 116.3116(2) (2011).

5 129. NRS 116.3116(2) also provided:

6  
7 The lien is also prior to all security interests described in paragraph (b) to the  
8 extent of the assessments for common expenses based on the periodic budget  
9 adopted by the association pursuant to NRS 116.3115 which would have become  
due in the absence of acceleration during the 6 months *immediately preceding*  
*institution of an action to enforce the lien* . . . .

10 NRS § 116.3116 (2003) (emphasis added).<sup>6</sup>

11 130. Although the association’s lien includes all “assessments,” the lien has two parts:  
12 a superpriority piece, “consisting of the last nine months of HOA dues,” and a subpriority piece  
13 consisting of all other “assessments.” *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. 742,  
14 745, 334 P.3d 408, 411 (2014).

15 131. The “superpriority” piece of the association’s lien has priority over the first deed  
16 of trust, but the “subpriority” part is subordinate. *SFR*, 130 Nev. at 745, 334 P.3d at 411.

17 132. In 2008, NRS 116 limited the superpriority portion of an association’s lien to the  
18 “6 months immediately preceding institution of an action to enforce the lien.” NRS §  
19 116.3116(2).  
20

21 133. An association institutes an action to enforce the lien through the service of a  
22 notice of delinquent assessment. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP*  
23 *Morgan Chase Bank, N.A.*, 133 Nev. 21, 26, 388 P.3d 226, 231 (2017).  
24

25  
26  
27 <sup>6</sup> When Wyeth Ranch sent Perez the NODA in October 2008, the statute granted association’s superpriority  
28 of only six, not nine, months of dues. *See* NRS § 116.3116(2) (2003). The Legislature amended the section to grant a  
superpriority lien of nine months in October 2009. *See* NRS § 116.3116(2) (2009).

1           134. The lien's superpriority portion does not include collection fees, late fees, interest,  
2 or foreclosure costs. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132  
3 Nev. 362, 371, 373 P.3d 66, 70 (2016).

4           135. Wyeth Ranch instituted an action to enforce its lien on October 8, 2008, when it  
5 served and recorded the NODA.

6           136. Only those association dues that came due between April 1, 2008, and September  
7 30, 2008 - the six months before Wyeth Ranch instituted an action to enforce its lien - had  
8 superpriority status.<sup>7</sup> See NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*,  
9 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. at 371,  
10 373 P.3d at 70.

11           137. Wyeth Ranch assessed two quarterly charges of \$420.00 in dues during the six  
12 months preceding its institution of an action to enforce its lien: April 1, 2008 and July 1, 2008.

13           138. Wyeth Ranch had a superpriority lien for \$840.00.

14           139. After Wyeth Ranch instituted an action to enforce its lien, Perez made payments  
15 totaling \$3,390.00.

16           140. Perez did not direct the application of those payments to any particular expenses.

17           141. A&K applied the first fruits of those payments, totaling \$1,008.25, to collection  
18 costs.

19           142. A&K then disbursed to Wyeth Ranch the remainder, totaling \$2,381.75. The  
20 Court finds that Wyeth Ranch applied those disbursements to the oldest delinquent association  
21 dues.

22  
23  
24  
25  
26 <sup>7</sup> Before Judge Bell and the Nevada Supreme Court, SFR argued that the November 29, 2011 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. But Judge Bell previously rejected that argument and the Nevada Supreme Court affirmed that the September 2008 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. See *SFR Invs. Pool 1, LLC v. Marchai, B.T.*, No. 74416, Order Vacating J. & Remanding at 1–2 (Mar. 18, 2020).

1           143.    The payments by Perez more than satisfied the superpriority portion of Wyeth  
2 Ranch's lien prior to foreclosure.

3           144.    If the Court were to conduct an analysis of the basic principles of justice and  
4 equity so that a fair result can be achieved," *9352 Cranesbill Tr.*, 136 Nev. at 80, 459 P.3d at  
5 231, that analysis would militate in favor of the satisfaction of the superpriority portion of the  
6 lien through the payments made by Perez.

7           145.    Although Wyeth Ranch had one lien, it maintained two accounts: a violation  
8 account and an assessment account.

9           146.    A&K also maintained an account for collection costs.

10          147.    When Perez made a payment to A&K after Wyeth Ranch instituted an action to  
11 enforce the lien, it first applied a portion of those payments (totaling \$1,008.25) to its collection  
12 account before remitting the balance to Wyeth Ranch. None of the \$2,381.75 A&K disbursed to  
13 Wyeth Ranch went to collection costs.

14          148.    When Wyeth Ranch received the \$2,381.75 disbursements from A&K, it applied  
15 all payments to its assessment account. Wyeth Ranch applied none of those payments to the  
16 violation account.

17          149.    Wyeth Ranch applied the \$2,381.75 to one running account: the assessment  
18 account. Because payments to one running account are applied to the oldest amounts due,  
19 Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.

20          150.    This conclusion is also in the interests of justice and equity. Under this analysis,  
21 Perez, who did not abandon the Property but for five years made payments to Wyeth Ranch  
22 totaling \$3,390.00, receives the benefit of having any deficiency reduced by the fair market value  
23 of the Property at the time Marchai forecloses. SFR, who paid a mere \$21,000.00 for its interest  
24 in the Property, takes the Property subject to the DOT and has rented the property for the last  
25 seven years and may be entitled to excess proceeds of sale.

1           151. As SFR is in the business of purchasing properties at HOA foreclosures it is not a  
2 bona fide purchaser but is well aware of the risks associated with superpriority issues.

3           152. When Wyeth Ranch foreclosed, it foreclosed upon a subpriority lien, and  
4 Marchai's DOT survived Wyeth Ranch's foreclosure.

5           153. The Court rules for Marchai on its claim for quiet title and against SFR on its  
6 claim for declaratory relief/quiet title.

7           154. As SFR's declaratory relief/quiet title claim fails, the Court must also dismiss  
8 SFR's request for injunctive relief seeking to enjoin Marchai from foreclosing on its deed of  
9 trust.

10           155. A wrongful foreclosure occurs when "no breach of condition or failure of  
11 performance existed . . . which would have authorized the foreclosure." *Collins v. Union Fed.*  
12 *Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983).

13           156. "[T]he material issue of fact in a wrongful foreclosure claim is whether the trustor  
14 was in default when the power of sale was exercised." *Id.*

15           157. It is indisputable that Perez defaulted on subpriority amounts of Wyeth Ranch's  
16 lien.

17           158. As Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim for  
18 wrongful foreclosure.

19           159. The only "duties" owed to Marchai are outlined in Sections 116.3116 through  
20 116.31168. Wyeth Ranch satisfied these duties by complying with all notice and recording  
21 requirements.

22           160. NRS 116.1113 does not impose extra-statutory duties on an HOA; it only governs  
23 existing contracts and duties.

24           161. Here, the notice requirements of Sections 116.3116 through 116.31168 have  
25 already been reviewed on appeal, and the HOA has complied with the notice requirements.

1 Similarly, it has already been determined on appeal that the HOA was not required to postpone  
2 the sale to provide Marchai additional time pay.

3 162. Plaintiff never mentions in its Complaint a misapplication of proceeds, excess  
4 proceeds, or NRS 116.31164(3)(c)'s payment breakdown.

5 163. An interpleader action was filed by A&K (A-13-690586-C) regarding excess  
6 proceeds. It would be unduly prejudicial to direct a misapplication of proceeds claim against the  
7 HOA after A&K has filed bankruptcy and preventing the HOA from seeking any redress it may  
8 have against A&K, if A&K misapplied the proceeds from the sale.  
9

10 164. Plaintiff did not file an unjust enrichment claim or establish at trial that Wyeth  
11 Ranch was unjustly enriched.

12 165. NRS § 116.1113 imposes an obligation of good faith in the performance or  
13 enforcement of every contract or duty governed by NRS Chapter 116.

14 166. Wyeth Ranch has not violated NRS 116.1113.\

15 167. Marchai's claim for bad faith against Wyeth Ranch is dismissed.

16 168. Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

17 169. Because Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim  
18 against Wyeth Ranch for breach of its obligations under NRS § 116.1113.  
19

20 170. Marchai's claim under NRS § 116.1113 is dismissed.

21 171. To establish a claim for intentional interference with a contract, a plaintiff must  
22 prove it entered into a valid and existing contract, the defendant knew of the contract, the  
23 defendant engaged in intentional acts intended or designed to disrupt the contractual relationship,  
24 the contract was disrupted, and the plaintiff suffered damages. *J.J. Indus., LLC v. Bennett*, 119  
25 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).  
26

27 172. The Note and DOT evidenced a valid and existing contract between Marchai and  
28 Perez.

1           173.   Wyeth Ranch and SFR knew of Marchai's contract with Perez, because the  
2 recorded DOT and assignments are matters of public record.

3           174.   The foreclosure was not intended to disrupt, nor did it disrupt, the contract that  
4 contemplates the foreclosure.

5           175.   As Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien,  
6 Marchai's contract with Perez was not disrupted, and Marchai suffered no damages.

7           176.   Marchai's claim for intentional interference with contractual relations is  
8 dismissed.  
9

10          177.   It is not disputed that a portion of the assessment lien remained after Perez's  
11 payments were applied, and Perez was in default at the time of the sale.

12          178.   It is irrelevant to the wrongful foreclosure claim whether the remaining portion  
13 was superpriority or subpriority, because the HOA never made an affirmative representation at  
14 the time of the sale that it was foreclosing on a superpriority portion of lien.  
15

16          179.   Wyeth Ranch was not required to make an announcement regarding superpriority  
17 at the time of the foreclosure sale.

18          180.   NRS 40.430 *et seq.* provides the statutory framework for judicial actions for  
19 foreclosure of real mortgages in Nevada and "must be construed to permit a secured creditor to  
20 realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor  
21 when the debt or other obligation was incurred." NRS § 40.230 (2).  
22

23          181.   In an action for judicial foreclosure, "the judgment must be rendered for the  
24 amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the  
25 encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as  
26 provided in NRS 40.462." NRS § 40.430(1).  
27  
28



1           182. “[A] creditor of a note secured by real property must first pursue judicial  
2 foreclosure before recovering from the debtor directly.” *McDonald v. D.P. Alexander & Las*  
3 *Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005).

4           183. To enforce a deed of trust through foreclosure, the same party must hold the deed  
5 of trust and underlying promissory note. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505,  
6 512, 286 P.3d 249, 254 (2012) (citing *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d  
7 1034, 1039 (9th Cir. 2011)).

8           184. Separation of the note and deed of trust does not preclude enforcement when the  
9 documents are ultimately unified in the same holder. *Edelstein*, 128 Nev. at 520, 286 P.3d at 259  
10 (citing *In re Tucker*, 441 B.R. 638, 644 (Bankr. W.D. Mo. 2010)).

11           185. “To prove that a previous beneficiary properly assigned its beneficial interest in  
12 the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed  
13 writing.” *Edelstein*, 128 Nev. at 522, 286 P.3d at 260 (citing *Leyva v. Nat’l Default Servicing*  
14 *Corp.*, 127 Nev. 470, 255 P.3d 1275, 1279 (2011)).

15           186. This requirement parallels the requirements for assignment of an interest in lands  
16 generally, which “must be in writing, subscribed by the party creating, granting, assigning, or  
17 declaring the same, or by the party’s lawful agent thereunto authorized in writing.” NRS  
18 §111.205(1).

19           187. An assignment of a beneficial interest in a deed of trust must further be recorded  
20 in the recorder’s office of the county where the property is located. NRS § 106.210 (2015).

21           188. Through MERS, CMG Mortgage assigned the Deed of Trust to CitiMortgage,  
22 who assigned it to U.S. Bank, who ultimately assigned it to Marchai.

23           189. The assignments satisfy the above requirements: they are in writing, subscribed to  
24 by the agent of the prior beneficiary, and recorded in Clark County where the Property is located.

25           190. Marchai, as the beneficiary of the DOT, may enforce it.

1           191. For a subsequent lender to establish it may enforce a note, it must “present  
2 evidence showing endorsement of the note either in its favor or in favor of [its servicer].”  
3 *Edelstein*, 128 Nev. at 522, 286 P.3d at 261 (citing *In re Veal*, 250 B.R. 897, 921 (9th Cir. BAP  
4 2011)); *see also Leyva*, 255 P.3d at 1279.

5           192. When a promissory note is endorsed to another party, the UCC permits a note to  
6 “be made payable to bearer or payable to order,” depending on the endorsement. *Leyva*, 255 P.3d  
7 at 1280 (citing NRS § 104.3109).

8           193. The Note is payable to the order of Marchai. CMG Mortgage endorsed the Note  
9 payable to the order of CitiMortgage. CitiMortgage then executed an allonge making the Note  
10 payable to U.S. Bank, who then executed another allonge making the Note payable to Marchai.

11           194. Marchai may enforce the Note.

12           195. Perez must pay the principal and interest on the debt evidenced by the Note, and  
13 failure to make such payments constitutes default and breach of the Note and DOT.  
14

15           196. Upon default, the DOT’s beneficiary must notify Perez of the breach and provide  
16 30 days to cure.  
17

18           197. If Perez fails to cure, the beneficiary may accelerate the Note’s full payment and  
19 invoke the power of sale and any other remedies permitted by law.

20           198. Perez failed to make the October 1, 2011 payment on the Note and all payments  
21 due after that, resulting in default under the Note and DOT.

22           199. On October 3, 2012, the loan servicer gave notice of the breach to Perez.

23           200. Perez failed to cure the breach within 30 days, and Marchai elected to accelerate  
24 the amounts owed.  
25

26           201. Marchai is entitled to a judgment of this Court ordering the Property sold at  
27 foreclosure to satisfy the amounts due under the Note.  
28

1           202. Based upon the Court's conclusion related to the satisfaction of the superpriority  
2 portion of the lien, prior to the sale SFR took subject to the Note and DOT. SFR as a successor  
3 in interest to Perez, is entitled to all notices related to any sale of the Property by Marchai.

4           203. If any of the above conclusions of law are more appropriately characterized as  
5 findings of fact, then they shall be deemed findings of fact.

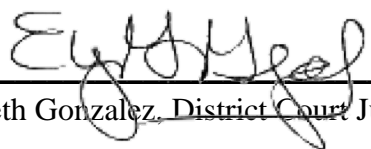
6                       Based upon the foregoing Findings of Fact and Conclusions of Law, and other  
7 good cause appearing:

8                       **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to  
9 Plaintiff's Claim for Declaratory Relief/Quiet Title, the Court finds in favor of Marchai that the  
10 Deed of Trust was not extinguished by the HOA foreclosure as the superpriority portion of the  
11 HOA lien was extinguished by Perez's payments;

12                       **IT IS FURTHER ORDERED** that SFR's interest in the Property is subordinate  
13 and subject to the interest of Marchai.

14                       **IT IS FURTHER ORDERED** that Marchai's claim for judicial foreclosure of  
15 the Property is granted.

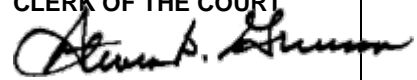
16  
17  
18   Dated this 5<sup>th</sup> day of March, 2021

19  
20  
21     
22   Elizabeth Gonzalez, District Court Judge

23   **CERTIFICATE OF SERVICE**

24           I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of  
25 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judi-  
26 cial District Court Electronic Filing Program.

27   /s/ *Dan Kutinac*  
28   Dan Kutinac, JEA



NEOJ  
David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
E-mail: david@djmerrillpc.com  
Attorney for Marchai, B.T.

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

MARCHAI, B.T., a Nevada business trust,  
  
Plaintiff,  
  
v.  
  
CRISTELA PEREZ, an individual; *et al.*  
  
Defendants.

Case No.: A-13-689461-C  
Dept. No. XI  
  
Consolidated with: A-16-742327-C


AND ALL RELATED CLAIMS AND AC-  
TIONS

**Notice of Entry of Order**

**Take notice** that on the 20th day of January 2021, the Court entered an Order Denying Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine, a copy of which is attached.

Dated this 11th day of March 2021.

David J. Merrill, P.C.

By:   
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

## Certificate of Service

I hereby certify that on the 11th day of March 2021, a copy of the Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

### **Kim Gilbert Ebron**

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

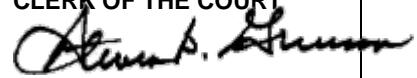
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

### **Lipson, Neilson, Cole, Seltzer & Garin, P.C.**

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



1 **ODM**  
2 David J. Merrill  
3 Nevada Bar No. 6060  
4 David J. Merrill, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 Telephone: (702) 566-1935  
8 Facsimile: (702) 993-8841  
9 Email: david@djmerrillpc.com  
10 Attorney for Marchai, B.T.

11  
12  
13  
14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 MARCHAI, B.T., a Nevada business trust,

17 Plaintiff,

18 v.

19 CRISTELA PEREZ, an individual; *et al.*

20 Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

21 AND ALL RELATED CLAIMS AND AC-  
22 TIONS

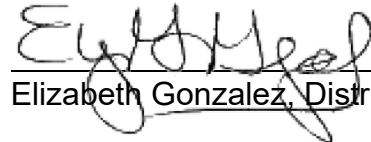
23  
24  
25 **Order Denying Defendant Wyeth Ranch Community Asso-**  
26 **ciation's Motion for Reconsideration or Clarification Under**  
27 **NRCP 60, Alternatively Motion in Limine**

28 Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clari-  
fication Under NRCP 60, Alternatively Motion in Limine came before this Court, in chambers,  
on the 8th day of January 2021. The Court, having considered the motion, Marchai's opposition,  
Wyeth Ranch's reply, and good cause appearing therefor:

**It is hereby ordered** that the motion is **denied**. Marchai may raise the identified bad  
faith claim at trial because: (1) Marchai's complaint fairly noticed the issue to Wyeth Ranch; (2)  
Wyeth Ranch's interrogatory seeking the basis for Marchai's wrongful foreclosure claim did not

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

encompass a request for information on Marchai's bad faith claim; and (3) Marchai adequately disclosed a computation of damages under N.R.C.P. 16.1.

 January 20, 2021  
Elizabeth Gonzalez, District Court Judge

Submitted by:

David J. Merrill, P.C.

By: /s/ David J. Merrill  
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

Approved as to form:

Kim Gilbert Ebron

Lipson Neilson, P.C.

By: /s/ Karen L. Hanks  
Karen L. Hanks  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300  
Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa  
David T. Ochoa  
Nevada Bar No. 10414  
9900 Covington Cross Drive,  
Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
Attorneys for Wyeth Ranch Community Association



David Merrill &lt;david@djmerillpc.com&gt;

---

**RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration**

1 message

---

**Karen Hanks** <karen@kgelegal.com>

Tue, Jan 19, 2021 at 11:27 AM

To: David Merrill &lt;david@djmerillpc.com&gt;, David Ochoa &lt;dochoa@lipsonneilson.com&gt;

You may insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but all of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [diana@kgelegal.com](mailto:diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com).

Sent from [Mail](#) for Windows 10

---

**From:** David Merrill**Sent:** Tuesday, January 19, 2021 11:06 AM**To:** David Ochoa**Cc:** Karen Hanks**Subject:** Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

Thank you, David.

Karen?

On Tue, Jan 19, 2021 at 10:37 AM David Ochoa <[DOchoa@lipsonneilson.com](mailto:DOchoa@lipsonneilson.com)> wrote:

AA 320



David,

You may e-sign on my behalf.

David



David Ochoa, Esq.

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

702-382-1500

702-382-1512 (fax)

E-Mail: [dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

**OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO \*\*\*\*\***  
\*\*\*\*\*

#### CONFIDENTIALITY NOTICE

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

---

**From:** David Merrill <[david@djmerillpc.com](mailto:david@djmerillpc.com)>

**Sent:** Tuesday, January 19, 2021 10:30 AM

**To:** David Ochoa <[DOchoa@lipsonneilson.com](mailto:DOchoa@lipsonneilson.com)>; Karen L. Hanks <[karen@kgelegal.com](mailto:karen@kgelegal.com)>

**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

David and Karen,

I have attached for your review and approval a draft of the order denying Wyeth Ranch's motion for reconsideration. Please review and advise if you have any comments or with approval to submit to the Court with your electronic signature. I must submit the order to the Court by **Thursday, January 21, 2021**. If I don't hear from you by noon on Thursday, I will submit it to the Court without your signature. Thank you.

--

AA 321

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841

--

David J. Merrill

David J. Merrill, P.C.

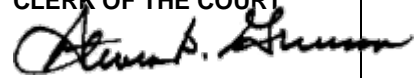
10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



**NEFF**  
David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
E-mail: david@djmerrillpc.com  
Attorney for Marchai, B.T.

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

MARCHAI, B.T., a Nevada business trust,  
  
Plaintiff,  
  
v.  
  
CRISTELA PEREZ, an individual; *et al.*  
  
Defendants.

Case No.: A-13-689461-C  
Dept. No. XI  
  
Consolidated with: A-16-742327-C

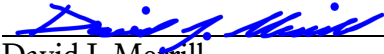
AND ALL RELATED CLAIMS AND AC-  
TIONS

**Notice of Entry of Findings of Fact, Conclusions of Law**

**Take notice** that on the 8th day of March 2021, the Court entered its Findings of Fact and Conclusions of Law, a copy of which is attached.

Dated this 11th day of March 2021.

David J. Merrill, P.C.

By:   
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

## Certificate of Service

I hereby certify that on the 11th day of March 2021, a copy of the Notice of Findings of Fact, Conclusions of Law was served electronically to the following through the Court's electronic service system:

### Kim Gilbert Ebron

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

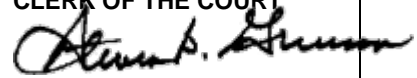
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

### Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



1 **FFCL**

2  
3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6 MARCHAI, B.T., a Nevada business trust, } Case No.: A-13-689461-C  
7 Plaintiff, } Dept. No. XI  
8 v. } Consolidated with: A-16-742327-C  
9 CRISTELA PEREZ, an individual; *et al.* }  
10 Defendants. }  
11 }  
12 **AND ALL RELATED CLAIMS AND**  
13 **ACTIONS**

14  
15 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16 This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez  
17 on February 22, 2021; Plaintiff Marchai, B.T. (“Marchai”) being represented by its counsel  
18 David J. Merrill, Esq. of the law firm David J. Merrill, P.C.; Defendant SFR Investments Pool 1,  
19 LLC (“SFR”) being represented by Karen Hanks, Esq. of the law firm Kim Gilbert Ebron; and  
20 Defendant Wyeth Ranch Community Association (“Wyeth Ranch”) being represented by David  
21 T. Ochoa, Esq. of the law firm of Lipson Neilson P.C.; and Defendant Cristela Perez (“Perez”)  
22 having been defaulted; the Court having read and considered the pleadings filed by the parties;  
23 having reviewed the evidence admitted during the trial; having heard and carefully considered  
24 the testimony of the witnesses called to testify and weighing their credibility; having considered  
25 the oral and written arguments of counsel, and with the intent of rendering a decision on all  
26  
27  
28

1 remaining issues before the Court,<sup>1</sup> pursuant to NRCP 52(a) and 58; the Court makes the  
2 following findings of fact and conclusions of law:

### 3 **PROCEDURAL HISTORY**

4 1. In A689461 the Complaint alleges Judicial Foreclosure of Deed of Trust. SFR  
5 alleges as Counterclaims & Cross Claims, Declaratory Relief/Quiet Title and Injunctive Relief.

6 2. In A742327 the Complaint alleges Declaratory Relief Under Amendment V of the  
7 United States Constitution-Takings Clause; Declaratory Relief Under the Due Process Clause of  
8 the United States and Nevada Constitutions; Wrongful Foreclosure; Violation for NRS §  
9 116.1113 et seq.; Intentional Interference with Contractual Relations; and Quiet Title.  
10

11 3. Default was entered against Perez in A689461 on April 22, 2014.

12 4. In the Order entered March 22, 2016, Judge Bell found that Marchai failed to  
13 establish the sale was commercially unreasonable, violated the takings or due process clauses, or  
14 that the statute was unconstitutionally vague.

15 5. To the extent Marchai's third through sixth cause of action related to taking, due  
16 process, or commercial reasonableness, those portions of those causes of action were resolved by  
17 the 2016 Order.  
18

19 6. In Judge Bell's Order entered January 24, 2017, Marchai's Quiet Title Claim  
20 against Wyeth Ranch was dismissed.

21 7. The October 3, 2017 Order found notice was proper, but found for Marchai based  
22 on a determination that Perez's partial payments paid off the superpriority portion of the lien.  
23  
24

---

25 <sup>1</sup> On March 18, 2019, the Nevada Supreme Court remanded this matter to the Court, after vacating this  
26 Court's prior Judgment in favor of Marchai B.T. The Nevada Supreme Court found that while Judge Bell correctly  
27 determined a homeowner's payments can cure the default of the super-priority portion of an Association's lien, an  
28 analysis of the intent of the homeowner and the Association as to whether the payments made by the homeowner in  
this case did in fact cure the super-priority default. Further, the Court directed an analysis of the factors outlined in  
*9352 Cranesbill v. Wells Fargo*, 136 NAO 8 (2020).

8. On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal, appealing the determination on the application of Perez's partial payments.

9. Marchai did not appeal the earlier orders or the determination on notice from the October 3, 2017.

10. On March 18, 2020, the Nevada Supreme Court entered its Order Vacating Judgment and Remanding.

11. The Nevada Supreme Court found and affirmed that the 2008 Notice of Delinquent Assessment was the operative notice to review superpriority.

12. The Nevada Supreme Court found that a borrower's payments could satisfy the superpriority portion of an HOA lien. However, the Court remanded on finding that under 9352 *Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5, 2020), the facts surrounding the payments needed to be analyzed to determine if the payments actually satisfied the superpriority portion of the lien.

## FINDINGS OF FACT

13. On October 4, 2002, Wyeth Ranch recorded its Declaration of Covenants, Conditions, and Restrictions (“CC&Rs”) in the Official Records of the Clark County Recorder as Instrument No. 2002100401353. Wyeth Ranch recorded various amendments.

14. On July 21, 2004, a Grant, Bargain, Sale Deed transferring the real property commonly known as 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013 (“Property”) to Perez was recorded in the Official Records of the Clark County Recorder as Instrument No. 20040721-0003728 (Exhibit 16).

15. The Property is in the Wyeth Ranch community.

16. On October 19, 2005, Perez refinanced her two prior loans by entering into an Interest First Adjustable Rate Note (“Note”) with CMG Mortgage, Inc. for \$442,000.00.

1           17.     On November 9, 2005, CMG Mortgage secured the Note by recording a Deed of  
2 Trust against the Property as Instrument No. 20051109-0001385 ("DOT").

3           18.     Eventually, the DOT was assigned to Marchai on March 12, 2013, and the  
4 assignment was recorded with the Clark County Recorder as Instrument No. 201308120002562.

5           19.     For all relevant time periods to this action, Wyeth Ranch collected association  
6 dues on the first day of each quarter.

7           20.     In 2008, Wyeth Ranch collected \$420.00 per quarter in association dues.

8           21.     Complete Association Management Company ("CAMCO") acted as the  
9 community management company for Wyeth Ranch.  
10

11          22.     Wyeth Ranch retained Alessi & Koenig, LLC ("A&K") as its collection agent,  
12 who collected delinquent assessments from Perez.

13          23.     Wyeth Ranch had no written documents outlining procedures for applying  
14 payments or partial payments to past due assessments.

15          24.     When Perez submitted payments, there is no evidence she directed how she  
16 wanted the payments applied.  
17

18          25.     Wyeth Ranch maintained two accounts for the Property, an assessment account  
19 and a violation account.

20          26.     Wyeth Ranch did not maintain separate superpriority and subpriority accounts for  
21 the Property.

22          27.     On January 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

23          28.     On January 30, 2008, Perez became delinquent in the payment of her quarterly  
24 assessments.  
25

26          29.     On April 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

27          30.     Exhibit 138 evidences a "running account" statement for the assessments at the  
28 Property. On April 16, 2008, Wyeth Ranch applied a \$507.60 payment to Perez's account.



1 Wyeth Ranch applied \$420.00 of the \$507.60 payment to the past due January 2008's association  
2 dues and the remainder (\$87.60) to the current April 2008 association dues.

3 31. Based upon Exhibit 45,<sup>2</sup> Wyeth Ranch did *not* apply payments first to late fees or  
4 interest. Instead, it applied payments first to the oldest outstanding association dues and then any  
5 remainder to the next oldest outstanding association dues.<sup>3</sup>

6 32. On July 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly assessment.

7 33. On October 1, 2008, Wyeth Ranch assessed Perez a \$420.00 quarterly  
8 assessment.  
9

10 34. On October 2, 2008, Wyeth Ranch instituted an action to enforce its lien by  
11 sending Perez a Notice of Delinquent Assessment (Lien) ("NODA").

12 35. According to the NODA, executed September 30, 2008, Perez owed Wyeth  
13 Ranch \$1,425.17, including collection costs, attorney's fees, late fees, service charges, and  
14 interest. The NODA included the superpriority portion (statutorily permitted 6 months at the  
15 time) of the lien (\$840), subpriority portion of the lien, late fees, A&K's attorney's fees (\$370)  
16 and costs (\$50).  
17

18 36. The NODA was recorded on October 8, 2008.

19 37. In 2009, Wyeth Ranch increased its assessments from \$420.00 per quarter to  
20 \$457.50 per quarter.  
21

---

22 <sup>2</sup> Exhibit 45 bears a print date of 9/17/2008, a received stamp of 9/17/2008, and handwritten notations related  
23 to late fees and what appears to be the file number for this matter (11632) from A & K, *see* Exhibit 109. The Court  
24 infers that based upon Exhibit 45, A & K executed the Notice of Delinquent Assessment (Lien) on 9/30/08, in the  
25 total amount of \$1425.17 after adding the handwritten late fee entry for 9/08 in the amount of \$11.29. The Notice of  
Delinquent Assessment (Lien) recorded on 10/8/08, included the superpriority portion (statutorily permitted 6  
months at the time) of the lien (\$840), subpriority portion of the lien, late fees, A & K's attorney's fees (\$370) and  
costs (\$50) as reflected in Exhibit 47.

26 <sup>3</sup> The testimony of Yvette Saucedo of CAMCO is inconsistent with Exhibit 45 and outlines an audit process  
27 she and her staff follow on behalf of Wyeth Ranch. The Court finds the information contained in Exhibit 45  
28 credible as it was prepared at the time of the NODA, rather than an after the fact readjustment as described by Ms.  
Saucedo. According to Ms. Saucedo, no more recent version of the report similar to Exhibit 45 was available. As a  
result, the Court's analysis is to apply the treatment of the April 16, 2008 payment for all later payments made by  
Perez.

1           38.     On January 5, 2009, A&K recorded a Notice of Default and Election to Sell  
2 Under Homeowners Association Lien (“NOD”) on behalf of Wyeth Ranch in the Official  
3 Records of the Clark County Recorder as Instrument No. 20090105-0002988. The NOD stated  
4 Perez owed Wyeth Ranch \$3,096.46 as of December 17, 2008.

5           39.     On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude  
6 Non-Judicial Foreclosure and Conduct Trustee Sale. Wyeth Ranch authorized A&K to proceed  
7 with the non-judicial foreclosure of its assessment lien.  
8

9           40.     According to Wyeth Ranch, Perez owed \$3,330.32 in assessments.

10          41.     In 2010, Wyeth Ranch increased its assessments from \$457.50 to \$478.50 per  
11 quarter.

12          42.     Under Wyeth Ranch’s authorization, on January 14, 2010, A&K recorded a  
13 Notice of Trustee’s Sale, which set a foreclosure sale for February 17, 2010.

14          43.     The Notice of Trustee’s Sale stated Wyeth Ranch’s intention to foreclose the lien  
15 recorded on October 8, 2008.  
16

17          44.     According to the notice, Perez owed Wyeth Ranch \$6,964.25 for unpaid  
18 assessments.

19          45.     On February 3, 2010, A&K sent a demand to Perez and her husband, Robert  
20 Rose, in which A&K claimed that Perez owed Wyeth Ranch \$6,977.61.

21          46.     On February 12, 2010, Perez paid A&K \$900.00. A&K deducted \$309.60 in  
22 collection costs from the \$900 payment and disbursed the remainder (\$590.40) to Wyeth Ranch.  
23

24          47.     On March 2, 2010, Wyeth Ranch applied the \$590.40 disbursement to Perez’s  
25 account.

26          48.     On March 22, 2010, Perez was provided a payment plan. The payment plan  
27 commenced on April 1, 2010, and required monthly payments of \$669.87. Perez never made a  
28 payment under the payment plan.

1           49.     On May 11, 2010, Perez paid A&K \$300.00. A&K deducted \$95.40 in collection  
2 costs from the \$300 payment and disbursed the remainder (\$204.60) to Wyeth Ranch.

3           50.     On June 8, 2010, Wyeth Ranch applied the \$204.60 disbursement to Perez's  
4 account.

5           51.     On July 2, 2010, A&K sent Perez a letter notifying her that it terminated the  
6 payment plan.

7           52.     On July 13, 2010, A&K sent Perez a Pre-Notice of Trustee Sale Notification  
8 based upon the NODA recorded on October 8, 2008, and the NOD recorded on January 5, 2009.  
9

10          53.     The Pre-Notice of Trustee's Sale demanded payment from Perez for \$19,071.21.

11          54.     On August 2, 2010, Perez paid A&K \$250.00. A&K deducted \$77.24 in  
12 collection costs from the \$250 payment and disbursed the remainder (\$172.76) to Wyeth Ranch.

13          55.     On August 20, 2010, Wyeth Ranch applied the \$172.76 disbursement to Perez's  
14 account; \$172.76 for the October 2008 association dues, which left a balance for October 2008  
15 of \$204.64.  
16

17          56.     On September 29, 2010, Perez paid A&K \$220.00. A&K deducted \$67.98 in  
18 collection costs from the \$220 payment and disbursed the remainder (\$152.02) to Wyeth Ranch.

19          57.     On October 15, 2010, Wyeth Ranch applied the \$152.02 disbursement to Perez's  
20 account.

21          58.     On November 30, 2010, Perez paid A&K \$175.00. A&K deducted \$48.82 in  
22 collection costs from the \$175 payment and disbursed the remainder (\$126.18) to Wyeth Ranch.  
23

24          59.     On December 16, 2010, Wyeth Ranch applied the \$126.18 disbursement to  
25 Perez's account.  
26  
27  
28

1           60.     On March 9, 2011, A&K recorded a Rescission of Notice of Trustee's Sale, which  
2 rescinded the notice A&K recorded on January 14, 2010.<sup>4</sup>

3           61.     On March 10, 2011, Perez paid A&K \$160.00. A&K deducted \$40.48 in  
4 collection costs from the \$160 payment and disbursed the remainder (\$119.52) to Wyeth Ranch.

5           62.     On March 22, 2011, Wyeth Ranch applied the \$119.52 disbursement to Perez's  
6 account.

7           63.     On March 29, 2011, A&K recorded another Notice of Trustee's Sale based upon  
8 the January 5, 2009 NOD.

9           64.     On June 2, 2011, Wyeth Ranch executed another authorization to allow A&K to  
10 complete the non-judicial foreclosure and conduct the trustee sale.

11           65.     The authorization stated that Perez owed Wyeth Ranch \$4,730.03 in delinquent  
12 assessments.

13           66.     On May 23, 2011, Perez paid A&K \$160.00. A&K deducted \$35.68 in collection  
14 costs from the \$160 payment and disbursed the remainder (\$124.32) to Wyeth Ranch.

15           67.     On June 16, 2011, Wyeth Ranch applied the \$124.32 disbursement to Perez's  
16 account.

17           68.     On August 4, 2011, Perez paid A&K \$165.00.

18           69.     A&K deducted \$37.29 in collection costs from the \$165 payment and disbursed  
19 the remainder (\$127.71) to Wyeth Ranch.

20           70.     On August 18, 2011, Wyeth Ranch applied the \$127.71 disbursement to Perez's  
21 account.

22  
23  
24  
25  
26  
27 <sup>4</sup> Although the notice claims to rescind the Notice of Trustee's Sale recorded on January 11, 2010, A&K did  
28 not record a Notice of Trustee's Sale on January 11, 2010. It appears that A&K meant it rescinded the notice  
recorded on January 14, 2010, as it does refer to Instrument Number 2589, which is the January 14, 2010 Notice of  
Trustee's Sale.

1           71.     On September 30, 2011, A&K notified Perez that it terminated the payment plan  
2 of April 30, 2011.

3           72.     On October 1, 2011, Perez defaulted under her loan from CMG Mortgage.

4           73.     In 2011, Wyeth Ranch assessed \$448.50 each quarter for assessments.

5           74.     On November 29, 2011, A&K sent Perez a lien letter to which A&K attached  
6 another Notice of Delinquent Assessment (Lien).

7           75.     According to the notice, Perez owed Wyeth Ranch \$9,296.56.

8           76.     On December 20, 2011, A&K recorded the second Notice of Delinquent  
9 Assessment Lien, but did not release or rescind the NODA it recorded in 2008.

10           77.     On January 25, 2012, A&K followed up the second Notice of Delinquent  
11 Assessment (Lien) by mailing Perez a Pre-Notice of Default Letter demanding that Perez pay  
12 Wyeth Ranch \$9,865.06 in past-due assessments.

13           78.     On February 28, 2012, A&K recorded another Notice of Default and Election to  
14 Sell Under Homeowners Association Lien, but did not release or rescind the NOD it recorded on  
15 January 5, 2009.

16           79.     According to the notice, as of February 14, 2012, Perez owed Wyeth Ranch  
17 \$10,625.06 in unpaid assessments.

18           80.     The February 28, 2012 notice states that Perez first defaulted on her obligations to  
19 Wyeth Ranch in January 2008.

20           81.     On March 19, 2012, Perez paid A&K \$300.00. A&K deducted \$87.30 in  
21 collection costs from the \$300 payment and disbursed the remainder (\$212.70) to Wyeth Ranch.

22           82.     On April 3, 2012, Wyeth Ranch applied the \$212.70 disbursement to Perez's  
23 account.

24           83.     On May 7, 2012, Perez paid A&K \$295.00. A&K deducted \$85.84 in collection  
25 costs from the \$295 payment and disbursed the remainder (\$209.16) to Wyeth Ranch.  
26  
27  
28

1           84.     On May 23, 2012, Wyeth Ranch applied the \$209.16 disbursement to Perez's  
2 account.

3           85.     On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the  
4 nominee for CMG Mortgage, assigned CMG Mortgage's deed of trust to CitiMortgage, Inc.  
5 CMG Mortgage endorsed the note payable to the order of CitiMortgage. On June 5, 2012,  
6 CitiMortgage recorded a Corporate Assignment of Deed of Trust.

7           86.     On July 18, 2012, A&K sent Perez a Pre-Notice of Trustee Sale Notification, in  
8 which A&K demanded that Perez pay Wyeth Ranch \$11,371.07.  
9

10          87.     Ostensibly, A&K sent the Pre-Notice of Trustee's Sale Notification according to  
11 the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the Notice of  
12 Default and Election to Sell recorded nearly three years earlier on January 5, 2009.

13          88.     On July 26, 2012, Perez paid A&K \$165.00. A&K deducted \$43.72 in collection  
14 costs from the \$165 payment and disbursed the remainder (\$121.28) to Wyeth Ranch.  
15

16          89.     On July 26, 2012, CitiMortgage assigned the deed of trust to U.S. Bank, N.A., as  
17 trustee for Stanwich Mortgage Loan Trust, Series 2012-6. CitiMortgage also signed an allonge,  
18 endorsing the note payable to U.S. Bank. On July 26, 2012, U.S. Bank recorded the Assignment  
19 of Mortgage with the Clark County Recorder.

20          90.     On August 27, 2012, Wyeth Ranch applied the \$121.28 disbursement to Perez's  
21 account.  
22

23          91.     On October 3, 2012, Carrington Mortgage Services, LLC, the servicer for the loan  
24 assigned to U.S. Bank, sent Perez a Notice of Intent to Foreclose.

25          92.     According to the notice, Perez defaulted on the loan on October 1, 2011, and  
26 owed U.S. Bank \$36,281.60.

27          93.     On October 10, 2012, A&K prepared another Notice of Trustee's Sale.  
28

1           94.     According to the notice, A&K stated its intention to sell the Property at a  
2 foreclosure sale on November 28, 2012. The notice claims that A&K will conduct the sale  
3 according to the lien recorded on December 20, 2012. According to the notice, Perez owed  
4 \$11,656.07.

5           95.     On October 31, 2012, A&K recorded the Notice of Trustee's Sale, but did not  
6 rescind the Notice of Trustee's Sale it recorded on March 29, 2011.

7           96.     On November 13, 2012, Perez made a \$300.00 payment to A&K. A&K deducted  
8 \$78.90 in collection costs from the \$300 payment and disbursed the remainder (\$221.10) to  
9 Wyeth Ranch.  
10

11          97.     On December 14, 2012, Wyeth Ranch applied the \$221.10 disbursement to  
12 Perez's account.

13          98.     On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to  
14 Marchai, which it recorded with the Clark County Recorder on August 12, 2013. U.S. Bank  
15 executed an allonge endorsing the note to Marchai.  
16

17          99.     On July 11, 2013, A&K executed another Notice of Trustee's Sale.

18          100.    The notice claimed that Perez owed \$14,090.80 in unpaid assessments.

19          101.    According to the notice, A&K intended to sell the Property at a foreclosure sale  
20 on August 28, 2013.

21          102.    On July 31, 2013, A&K recorded the notice with the Clark County Recorder, but  
22 again failed to rescind the Notice of Trustee's Sale recorded on October 31, 2012.  
23

24          103.    On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan  
25 Servicing, Marchai's servicer, learned about the sale. Peak immediately contacted A&K and  
26 asked it to postpone the sale so it could pay the lien.

27          104.    On the morning of the day of the sale (August 28, 2013), Naomi Eden at A&K  
28 emailed Brittney O'Connor, the accounting clerk at CAMCO, in which she notes that "[t]he

1 mortgage company is asking for an extension so they can get it paid off.” Eden asked O’Connor  
2 if A&K could postpone the sale.

3 105. O’Connor responded to the email asking Eden how many oral postponements  
4 Wyeth Ranch had remaining.

5 106. Eden advised O’Connor that Wyeth Ranch still had three postponements left.

6 107. O’Connor then emailed Michele Weaver, a CAMCO manager. O’Connor told  
7 Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that it could postpone the  
8 sale three times, and that “[t]he mortgage company would like an extension so they can pay off  
9 the account.”

10 108. In her email to Weaver, O’Connor said she “will use all postponements then go to  
11 sale on the 3rd sale date set,” “[u]nless otherwise directed by the board.” Unless the association  
12 directed otherwise, postponing foreclosure sales until the third sale date was CAMCO’s standard  
13 practice.

14 109. According to the last email in the chain, Weaver “received confirmation” that  
15 Wyeth Ranch did “NOT want to postpone.”

16 110. Wyeth Ranch refused to postpone the sale so Marchai could pay off the account  
17 and proceeded with the foreclosure.

18 111. On August 28, 2013, A&K conducted a foreclosure sale.

19 112. The Wyeth Ranch foreclosure sale occurred on August 28, 2013. At the  
20 foreclosure sale, SFR Investments Pool 1, LLC, submitted the winning bid of \$21,000.00.

21 113. On September 9, 2013, a Trustee’s Deed Upon Sale (“Trustee’s Deed”) was  
22 recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR.

23 114. At the time of the foreclosure, Wyeth Ranch’s assessment ledger reflected a  
24 \$10,679.12 balance. There is no differentiation between superpriority and subpriority portions of  
25 the lien.  
26  
27  
28



115. Based upon the disbursements remitted to Wyeth Ranch by A&K after the NODA, the Court finds that the following amounts were applied to the running account:

Date	Disbursement	Superpriority Balance
9/30/08		840.00
3/2/10	590.40	249.60
6/8/10	204.60	45.00
8/20/10	172.76	(-127.76)

116. The disbursements from A&K extinguished the superpriority portion of the lien in August 2010, well before the foreclosure sale.

117. Even if the Court did not find that Wyeth Ranch applied the disbursements to the oldest outstanding delinquent assessment, the principles of justice and equity in this case weigh in favor of the application of those disbursements to the oldest delinquent assessment and the extinguishment of the superpriority portion of the lien.

118. SFR as a purchaser of over 600 properties at HOA foreclosure sales was aware of the issues related to superpriority HOA liens and the risks associated with purchasing a property at this type of auction.

119. Wyeth Ranch received payment in full (\$10,679.12) of its assessment lien.

120. The Declaration of Value asserts that the Property has a "Transfer Tax Value" of \$307,403.00.

121. The Property's fair market value on August 28, 2013, was \$360,000.00.

122. If any of the preceding findings of fact are more appropriately deemed conclusions of law, then they shall be considered conclusions of law.

## CONCLUSIONS OF LAW

123. The analysis made in this bench trial is limited to the matters on remand to the Court which includes:

a. Whether Perez's payments actually cured the superpriority default, based upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the District Court's assessment of justice and equity.

b. SFR's purported status as a bona fide purchaser.

124. Additionally, the Court evaluates the dispute between Wyeth Ranch and Marchai related to the conduct of the foreclosure sale and issues related to application and remittance of the proceeds of the sale.

125. NRS 40.010 provides that "an action may be brought by any person against another who claims an estate or interest in real property adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS § 40.010.

126. "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

127. NRS 116.3116 grants an association "a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.31035, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due." NRS § 116.3116(1) (2011).<sup>5</sup>

128. An association's lien "is prior to all other liens and encumbrances on a unit except:"

---

<sup>5</sup> The Legislature has amended NRS 116 several times in the time between when Wyeth Ranch initiated the foreclosure process and ultimately completed the foreclosure.

1 (a) Liens and encumbrances recorded before the recordation of the declaration  
...;

2 (b) A first security interest on the unit recorded before the date on which the  
assessment sought to be enforced became delinquent . . . ; and

3 (c) Liens for real estate taxes and other governmental assessments or charges  
4 against the unit . . . .

NRS § 116.3116(2) (2011).

5  
6 129. NRS 116.3116(2) also provided:

7 The lien is also prior to all security interests described in paragraph (b) to the  
8 extent of the assessments for common expenses based on the periodic budget  
9 adopted by the association pursuant to NRS 116.3115 which would have become  
due in the absence of acceleration during the 6 months *immediately preceding*  
*institution of an action to enforce the lien* . . . .

10 NRS § 116.3116 (2003) (emphasis added).<sup>6</sup>

11  
12 130. Although the association’s lien includes all “assessments,” the lien has two parts:  
13 a superpriority piece, “consisting of the last nine months of HOA dues,” and a subpriority piece  
14 consisting of all other “assessments.” *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. 742,  
15 745, 334 P.3d 408, 411 (2014).

16 131. The “superpriority” piece of the association’s lien has priority over the first deed  
17 of trust, but the “subpriority” part is subordinate. *SFR*, 130 Nev. at 745, 334 P.3d at 411.

18 132. In 2008, NRS 116 limited the superpriority portion of an association’s lien to the  
19 “6 months immediately preceding institution of an action to enforce the lien.” NRS §  
20 116.3116(2).  
21

22 133. An association institutes an action to enforce the lien through the service of a  
23 notice of delinquent assessment. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP*  
24 *Morgan Chase Bank, N.A.*, 133 Nev. 21, 26, 388 P.3d 226, 231 (2017).  
25  
26

27 <sup>6</sup> When Wyeth Ranch sent Perez the NODA in October 2008, the statute granted association’s superpriority  
28 of only six, not nine, months of dues. *See* NRS § 116.3116(2) (2003). The Legislature amended the section to grant a  
superpriority lien of nine months in October 2009. *See* NRS § 116.3116(2) (2009).

1           134. The lien's superpriority portion does not include collection fees, late fees, interest,  
2 or foreclosure costs. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132  
3 Nev. 362, 371, 373 P.3d 66, 70 (2016).

4           135. Wyeth Ranch instituted an action to enforce its lien on October 8, 2008, when it  
5 served and recorded the NODA.

6           136. Only those association dues that came due between April 1, 2008, and September  
7 30, 2008 - the six months before Wyeth Ranch instituted an action to enforce its lien - had  
8 superpriority status.<sup>7</sup> See NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*,  
9 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. at 371,  
10 373 P.3d at 70.

11           137. Wyeth Ranch assessed two quarterly charges of \$420.00 in dues during the six  
12 months preceding its institution of an action to enforce its lien: April 1, 2008 and July 1, 2008.

13           138. Wyeth Ranch had a superpriority lien for \$840.00.

14           139. After Wyeth Ranch instituted an action to enforce its lien, Perez made payments  
15 totaling \$3,390.00.

16           140. Perez did not direct the application of those payments to any particular expenses.

17           141. A&K applied the first fruits of those payments, totaling \$1,008.25, to collection  
18 costs.

19           142. A&K then disbursed to Wyeth Ranch the remainder, totaling \$2,381.75. The  
20 Court finds that Wyeth Ranch applied those disbursements to the oldest delinquent association  
21 dues.

22  
23  
24  
25  
26 <sup>7</sup> Before Judge Bell and the Nevada Supreme Court, SFR argued that the November 29, 2011 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. But Judge Bell previously rejected that argument and the Nevada Supreme Court affirmed that the September 2008 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. See *SFR Invs. Pool 1, LLC v. Marchai, B.T.*, No. 74416, Order Vacating J. & Remanding at 1–2 (Mar. 18, 2020).

1           143.    The payments by Perez more than satisfied the superpriority portion of Wyeth  
2 Ranch's lien prior to foreclosure.

3           144.    If the Court were to conduct an analysis of the basic principles of justice and  
4 equity so that a fair result can be achieved," *9352 Cranesbill Tr.*, 136 Nev. at 80, 459 P.3d at  
5 231, that analysis would militate in favor of the satisfaction of the superpriority portion of the  
6 lien through the payments made by Perez.

7           145.    Although Wyeth Ranch had one lien, it maintained two accounts: a violation  
8 account and an assessment account.

9           146.    A&K also maintained an account for collection costs.

10          147.    When Perez made a payment to A&K after Wyeth Ranch instituted an action to  
11 enforce the lien, it first applied a portion of those payments (totaling \$1,008.25) to its collection  
12 account before remitting the balance to Wyeth Ranch. None of the \$2,381.75 A&K disbursed to  
13 Wyeth Ranch went to collection costs.

14          148.    When Wyeth Ranch received the \$2,381.75 disbursements from A&K, it applied  
15 all payments to its assessment account. Wyeth Ranch applied none of those payments to the  
16 violation account.

17          149.    Wyeth Ranch applied the \$2,381.75 to one running account: the assessment  
18 account. Because payments to one running account are applied to the oldest amounts due,  
19 Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.

20          150.    This conclusion is also in the interests of justice and equity. Under this analysis,  
21 Perez, who did not abandon the Property but for five years made payments to Wyeth Ranch  
22 totaling \$3,390.00, receives the benefit of having any deficiency reduced by the fair market value  
23 of the Property at the time Marchai forecloses. SFR, who paid a mere \$21,000.00 for its interest  
24 in the Property, takes the Property subject to the DOT and has rented the property for the last  
25 seven years and may be entitled to excess proceeds of sale.

1           151. As SFR is in the business of purchasing properties at HOA foreclosures it is not a  
2 bona fide purchaser but is well aware of the risks associated with superpriority issues.

3           152. When Wyeth Ranch foreclosed, it foreclosed upon a subpriority lien, and  
4 Marchai's DOT survived Wyeth Ranch's foreclosure.

5           153. The Court rules for Marchai on its claim for quiet title and against SFR on its  
6 claim for declaratory relief/quiet title.

7           154. As SFR's declaratory relief/quiet title claim fails, the Court must also dismiss  
8 SFR's request for injunctive relief seeking to enjoin Marchai from foreclosing on its deed of  
9 trust.

10           155. A wrongful foreclosure occurs when "no breach of condition or failure of  
11 performance existed . . . which would have authorized the foreclosure." *Collins v. Union Fed.*  
12 *Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983).

13           156. "[T]he material issue of fact in a wrongful foreclosure claim is whether the trustor  
14 was in default when the power of sale was exercised." *Id.*

15           157. It is indisputable that Perez defaulted on subpriority amounts of Wyeth Ranch's  
16 lien.

17           158. As Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim for  
18 wrongful foreclosure.

19           159. The only "duties" owed to Marchai are outlined in Sections 116.3116 through  
20 116.31168. Wyeth Ranch satisfied these duties by complying with all notice and recording  
21 requirements.

22           160. NRS 116.1113 does not impose extra-statutory duties on an HOA; it only governs  
23 existing contracts and duties.

24           161. Here, the notice requirements of Sections 116.3116 through 116.31168 have  
25 already been reviewed on appeal, and the HOA has complied with the notice requirements.  
26

1 Similarly, it has already been determined on appeal that the HOA was not required to postpone  
2 the sale to provide Marchai additional time pay.

3 162. Plaintiff never mentions in its Complaint a misapplication of proceeds, excess  
4 proceeds, or NRS 116.31164(3)(c)'s payment breakdown.

5 163. An interpleader action was filed by A&K (A-13-690586-C) regarding excess  
6 proceeds. It would be unduly prejudicial to direct a misapplication of proceeds claim against the  
7 HOA after A&K has filed bankruptcy and preventing the HOA from seeking any redress it may  
8 have against A&K, if A&K misapplied the proceeds from the sale.  
9

10 164. Plaintiff did not file an unjust enrichment claim or establish at trial that Wyeth  
11 Ranch was unjustly enriched.

12 165. NRS § 116.1113 imposes an obligation of good faith in the performance or  
13 enforcement of every contract or duty governed by NRS Chapter 116.

14 166. Wyeth Ranch has not violated NRS 116.1113.\

15 167. Marchai's claim for bad faith against Wyeth Ranch is dismissed.

16 168. Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

17 169. Because Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim  
18 against Wyeth Ranch for breach of its obligations under NRS § 116.1113.  
19

20 170. Marchai's claim under NRS § 116.1113 is dismissed.

21 171. To establish a claim for intentional interference with a contract, a plaintiff must  
22 prove it entered into a valid and existing contract, the defendant knew of the contract, the  
23 defendant engaged in intentional acts intended or designed to disrupt the contractual relationship,  
24 the contract was disrupted, and the plaintiff suffered damages. *J.J. Indus., LLC v. Bennett*, 119  
25 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).  
26

27 172. The Note and DOT evidenced a valid and existing contract between Marchai and  
28 Perez.

1           173.   Wyeth Ranch and SFR knew of Marchai's contract with Perez, because the  
2 recorded DOT and assignments are matters of public record.

3           174.   The foreclosure was not intended to disrupt, nor did it disrupt, the contract that  
4 contemplates the foreclosure.

5           175.   As Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien,  
6 Marchai's contract with Perez was not disrupted, and Marchai suffered no damages.

7           176.   Marchai's claim for intentional interference with contractual relations is  
8 dismissed.  
9

10          177.   It is not disputed that a portion of the assessment lien remained after Perez's  
11 payments were applied, and Perez was in default at the time of the sale.

12          178.   It is irrelevant to the wrongful foreclosure claim whether the remaining portion  
13 was superpriority or subpriority, because the HOA never made an affirmative representation at  
14 the time of the sale that it was foreclosing on a superpriority portion of lien.  
15

16          179.   Wyeth Ranch was not required to make an announcement regarding superpriority  
17 at the time of the foreclosure sale.

18          180.   NRS 40.430 *et seq.* provides the statutory framework for judicial actions for  
19 foreclosure of real mortgages in Nevada and "must be construed to permit a secured creditor to  
20 realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor  
21 when the debt or other obligation was incurred." NRS § 40.230 (2).  
22

23          181.   In an action for judicial foreclosure, "the judgment must be rendered for the  
24 amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the  
25 encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as  
26 provided in NRS 40.462." NRS § 40.430(1).  
27  
28



182. “[A] creditor of a note secured by real property must first pursue judicial foreclosure before recovering from the debtor directly.” *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005).

183. To enforce a deed of trust through foreclosure, the same party must hold the deed of trust and underlying promissory note. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 512, 286 P.3d 249, 254 (2012) (citing *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011)).

184. Separation of the note and deed of trust does not preclude enforcement when the documents are ultimately unified in the same holder. *Edelstein*, 128 Nev. at 520, 286 P.3d at 259 (citing *In re Tucker*, 441 B.R. 638, 644 (Bankr. W.D. Mo. 2010)).

185. “To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing.” *Edelstein*, 128 Nev. at 522, 286 P.3d at 260 (citing *Leyva v. Nat’l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1279 (2011)).

186. This requirement parallels the requirements for assignment of an interest in lands generally, which “must be in writing, subscribed by the party creating, granting, assigning, or declaring the same, or by the party’s lawful agent thereunto authorized in writing.” NRS §111.205(1).

187. An assignment of a beneficial interest in a deed of trust must further be recorded in the recorder’s office of the county where the property is located. NRS § 106.210 (2015).

188. Through MERS, CMG Mortgage assigned the Deed of Trust to CitiMortgage, who assigned it to U.S. Bank, who ultimately assigned it to Marchai.

189. The assignments satisfy the above requirements: they are in writing, subscribed to by the agent of the prior beneficiary, and recorded in Clark County where the Property is located.

190. Marchai, as the beneficiary of the DOT, may enforce it.

1           191. For a subsequent lender to establish it may enforce a note, it must “present  
2 evidence showing endorsement of the note either in its favor or in favor of [its servicer].”  
3 *Edelstein*, 128 Nev. at 522, 286 P.3d at 261 (citing *In re Veal*, 250 B.R. 897, 921 (9th Cir. BAP  
4 2011)); *see also Leyva*, 255 P.3d at 1279.

5           192. When a promissory note is endorsed to another party, the UCC permits a note to  
6 “be made payable to bearer or payable to order,” depending on the endorsement. *Leyva*, 255 P.3d  
7 at 1280 (citing NRS § 104.3109).

8           193. The Note is payable to the order of Marchai. CMG Mortgage endorsed the Note  
9 payable to the order of CitiMortgage. CitiMortgage then executed an allonge making the Note  
10 payable to U.S. Bank, who then executed another allonge making the Note payable to Marchai.

11           194. Marchai may enforce the Note.

12           195. Perez must pay the principal and interest on the debt evidenced by the Note, and  
13 failure to make such payments constitutes default and breach of the Note and DOT.  
14

15           196. Upon default, the DOT’s beneficiary must notify Perez of the breach and provide  
16 30 days to cure.  
17

18           197. If Perez fails to cure, the beneficiary may accelerate the Note’s full payment and  
19 invoke the power of sale and any other remedies permitted by law.

20           198. Perez failed to make the October 1, 2011 payment on the Note and all payments  
21 due after that, resulting in default under the Note and DOT.

22           199. On October 3, 2012, the loan servicer gave notice of the breach to Perez.

23           200. Perez failed to cure the breach within 30 days, and Marchai elected to accelerate  
24 the amounts owed.  
25

26           201. Marchai is entitled to a judgment of this Court ordering the Property sold at  
27 foreclosure to satisfy the amounts due under the Note.  
28

1           202. Based upon the Court's conclusion related to the satisfaction of the superpriority  
2 portion of the lien, prior to the sale SFR took subject to the Note and DOT. SFR as a successor  
3 in interest to Perez, is entitled to all notices related to any sale of the Property by Marchai.

4           203. If any of the above conclusions of law are more appropriately characterized as  
5 findings of fact, then they shall be deemed findings of fact.

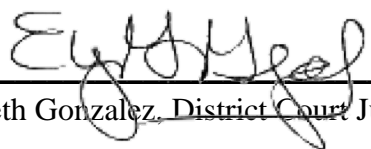
6                       Based upon the foregoing Findings of Fact and Conclusions of Law, and other  
7 good cause appearing:  
8

9                       **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to  
10 Plaintiff's Claim for Declaratory Relief/Quiet Title, the Court finds in favor of Marchai that the  
11 Deed of Trust was not extinguished by the HOA foreclosure as the superpriority portion of the  
12 HOA lien was extinguished by Perez's payments;

13                       **IT IS FURTHER ORDERED** that SFR's interest in the Property is subordinate  
14 and subject to the interest of Marchai.

15                       **IT IS FURTHER ORDERED** that Marchai's claim for judicial foreclosure of  
16 the Property is granted.  
17

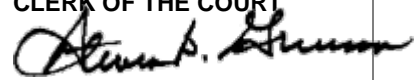
18   Dated this 5<sup>th</sup> day of March, 2021  
19

20  
21     
22   Elizabeth Gonzalez, District Court Judge

23   **CERTIFICATE OF SERVICE**

24                       I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of  
25 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judi-  
26 cial District Court Electronic Filing Program.

27   /s/ Dan Kutinac  
28   Dan Kutinac, JEA



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
VERIFIED MEMORANDUM OF  
FEES AND COSTS**

AND ALL RELATED CLAIMS AND ACTIONS.

COMES NOW, Defendant WYETH RANCH COMMUNITY ASSOCIATION  
("HOA"), by and through its counsel of record, LIPSON NEILSON P.C., and hereby  
submits its Memorandum of Fees and Costs.

///

///

///

///

///

///

///

///

DESCRIPTION	AMOUNT	NRS AUTHORIZED
Court Online Filing Fees (Clark County, District Court, Online Filing)	\$694.19	NRS 116.4117, NRS 17.115 (and NRCP 68)
Nationwide Legal – Runner Services	\$564.00	NRS 116.4117, NRS 17.115 (and NRCP 68)
Deposition Transcript of Yvette Saucedo	\$265.95	NRS 116.4117, NRS 17.115 (and NRCP 68)
<b>SUBTOTAL COSTS</b>	<b>\$1524.14</b>	
<b><u>LEGAL FEES</u></b>		
	<b>\$63,069.00</b>	NRS 116.4117, NRS 17.115 (and NRCP 68)
<b>TOTAL LEGAL FEES AND COSTS:</b>	<b>\$64,593.14</b>	

DATED this 1<sup>st</sup> day of April, 2021.

LIPSON NEILSON P.C.

*/s/ David T. Ochoa*

By: \_\_\_\_\_

KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant  
Wyeth Ranch Community Association*

**DECLARATION OF DAVID OCHOA, ESQ. IN SUPPORT OF VERIFIED  
MEMORANDUM OF FEES AND COSTS**

I, David T. Ochoa, Esq., hereby declare and state as follows:

1. I am an attorney in good standing, duly licensed to practice law in Nevada. I am an associate at Lipson Neilson P.C., and legal counsel for Wyeth Ranch Community Association (“HOA”).

2. I make this declaration in support of Defendant’s Verified Memorandum of Fees of Costs, and I have personal knowledge of the facts stated in this declaration and am competent to testify as to those facts stated herein in a court of law and will so testify if called upon.

3. Filed contemporaneously is Defendant’s Motion for Fees and Costs with **Exhibit 1** being true and correct copies of the bills sent or in process of being sent to HOA for legal fees incurred from the period of Sept 2016 through February, 2021. Additionally, included in Exhibit A is an Spreadsheet corresponding to the billing statements organized by date and double checking the calculations.

4. During a majority of the work Partner Kaleb Anderson billed the client at a rate of \$200/hour which increased in late 2020 to \$205/hour. Associate attorneys working on the case billed at a rate of \$175/hour which increased in late 2020 to \$180/hour.

5. I personally worked on the case from the period of October 2020 to present, which was a majority of the billing that included summary judgment briefing, as well as preparing for and attending trial.

6. Lipson Neilson P.C. has a national reputation with offices in Nevada, Michigan, Arizona, and Colorado.

7. The legal services billed to the file totals \$63,069.00 not including costs.

8. The separately requested costs billed to the file total of \$1524.14.

9. Each and every legal service my firm performed as listed above was necessary to defend this case. They were all done at reasonable rates of time and at

1 extremely low billing rates. These billing rates are well below the average litigation  
2 rates in Southern Nevada and even below other insurance defense rates.

3 10. My hourly rates for other insurance defense work range from \$165/hour to  
4 \$195/hour. My hourly rates for non-insurance company engagements range between  
5 \$200 and \$300/hour depending on the complexity of the matter and other factors.  
6 Partner rates at Lipson Neilson for non-insurance engagements can exceed \$300/hour.  
7 These rates are all reasonable for the Southern Nevada area.

8 11. In law school I externed with the Honorable William O. Voy of the Eighth  
9 Judicial District Court and received an Eighth Judicial District Court Service Award for  
10 research and drafting of juvenile Probation Review Report submitted to the Annie E.  
11 Casey Foundation.

12 12. I am an attorney in good standing. I have been licensed in the State of  
13 Nevada since 2007. I was Law Clerk to Honorable Cynthia Diana Steel in the Eighth  
14 Judicial District Court. I have prior experience in personal injury firms, assisting in  
15 discovery and preparing cases for trial with estimated values exceeding a million  
16 dollars.

17 13. Since 2016, I have defended officer and directors, along with defending  
18 homeowner associations. Throughout that time, I have briefed NRS 116 foreclosure  
19 issues, similar to the issues in this case, in Clark County, Washoe County, the Federal  
20 District of Nevada, the Ninth Circuit Court of Appeals, and the Nevada Supreme Court,  
21 and received favorable decisions in all of the above courts.

22 14. The attorney's fees requested in this litigation are reasonable and  
23 necessary in light of the amount of work required to defend the case over a period of  
24 approximately 5 years.

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

26 Executed this 1<sup>st</sup> day of April, 2021 in the State of Nevada.

27 /s/ David Ochoa

28 DAVID T. OCHOA, ESQ.

**CERTIFICATE OF SERVICE**

I certify that on the 1<sup>st</sup> day of April, 2021, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S VERIFIED MEMORANDUM OF FEES AND COSTS** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerillpc.com](mailto:david@djmerillpc.com)

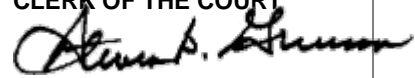
*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1, LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.





LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

**(HEARING DATE NOT REQUESTED)**

AND ALL RELATED CLAIMS AND ACTIONS.

COMES NOW, Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record, LIPSON NEILSON P.C., AND hereby submits its Motion for Attorney's Fees and Costs

This Motion is supported by the following Memorandum of Points and Authorities, the Memorandum of Fees and Costs, pleadings and papers on file, and oral argument.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND BACKGROUND**

This matter arises from a non-judicial foreclosure sale conducted on real property 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 ("Property"). The sale occurred on August 28, 2013. At that time, the senior deed of trust securing the Property was assigned to Marchai, B.T. ("Marchai").

1 In 2016, Marchai filed an Amended Complaint with claims against multiple  
2 defendants including the HOA. On March 18, 2020, the Nevada Supreme Court entered  
3 its Order Vacating Judgment and Remanding. The HOA served an Offer of Judgment  
4 on October 29, 2020. On March 11, 2021, a Notice of Entry of Findings of Fact and  
5 Conclusions of Law was filed that resolved all claims by Plaintiff Marchai against the  
6 HOA, in the HOA's favor. This Motion seeks an award of \$64,593.14 in favor of  
7 Defendant HOA, under the prevailing party statute NRS 116.4117 or alternatively in an  
8 amount of \$29,467.00 pursuant to NRS 17.117 and NRCP 68 for a rejected offer of  
9 judgment.

10 **II. ARGUMENT**

11 **A. This Court has Authority to Award the HOA its Attorneys Fees and Costs Pursuant to NRS 116.4117 as a Prevailing Party.**

12 NRS 116.4117 provides that any person may bring a civil action for damages or  
13 other appropriate believe for the failure to comply with NRS Chapter 116 or the HOA  
14 CC&Rs. NRS 116.4117(1). It further states that "[t]he Court may award reasonable  
15 attorney's fees to the prevailing party."

16 While there is no published case law interpreting NRS 116.4117, there is a case  
17 law interpreting NRS 18.010(2)(a) and who is a prevailing party. Recently, the Nevada  
18 Supreme Court analyzed whether a defendant who successfully obtains a dismissal  
19 with prejudice can seek attorney fees and costs as a prevailing party under NRS  
20 18.010(2). *145 East Harmon II Trust v. Residences at MGM Grand*, 136 Nev. Adv. Rep.  
21 14, \_\_, 460 P.3d 455, \_\_, 2020 Nev. LEXIS 13, \*8 (2020). The Court held that even a  
22 voluntary dismissal with prejudice can arise to a judgment on the merits, conferring  
23 prevailing party status upon a defendant. *145 East Harmon II Trust v. Residences at*  
24 *MGM Grand*, 136 Nev. Adv. Rep. 14, \_\_, 460 P.3d 455, \_\_, 2020 Nev. LEXIS 13, \*11-  
25 12 (2020). The Court further held that while, not all voluntary dismissals of prejudice  
26 may warrant an award of fees, when the merits of the case were litigated or the  
27 defendant would have likely prevailed on a dispositive motion, a voluntary dismissal  
28 serves as a substantive judgment on the merits, triggering fees under NRS 18.010(2)

1 and costs under NRS 18.020. *145 East Harmon II Trust v. Residences at MGM Grand*,  
2 136 Nev. Adv. Rep. 14, \_\_, 460 P.3d 455, \_\_, 2020 Nev. LEXIS 13, \*12-13 (2020).  
3 There is no reason to believe prevailing party under NRS 116.4117 means anything  
4 different than how it is used in NRS 18.010(2). Here, half of Marchai claims were  
5 dismissed throughout the litigation and the other half were decided at trial, also in the  
6 HOA's favor. The HOA is thus the prevailing party under NRS 116.4117 on Marchai's  
7 claims that included violation of the statute.

8 **B. This Court also has Authority to Award HOA its Attorneys Fees and Costs**  
9 **Pursuant to NRCP 68 and NRS 17.115 (Offer of Judgment).**

10 Marchai had claims against multiple parties. On October 29, 2020, the HOA served  
11 its own Offer of Judgment to Marchai, offering to pay Marchai \$15,000.00. See **Exhibit**  
12 **B** attached hereto. Marchai rejected the offer by not accepting it within 14 days from  
13 service, nor did it subsequently attempt to accept the offer. See NRCP 68(e).

14 Both NRCP 68 and NRS 17.117 allow for an award of attorney fees to a party that  
15 makes an offer of judgment that is refused by the other party, and then subsequently  
16 obtains a more favorable judgment. See *RTTC Communs., LLC v. The Saratoga Flier*,  
17 *Inc.*, 121 Nev. 34, 40-41, 110 P.3d 24, 28, 2005 Nev. LEXIS 6, \*13, 22 I.E.R. Cas.  
18 (BNA) 1319, 121 Nev. Adv. Rep. 6. “[W]hen exercising discretion to award attorney  
19 fees based on such an offer, a court must consider the four factors articulated in *Beattie*  
20 *v. Thomas*: (1) whether the plaintiff's claim was brought in good faith; (2) whether  
21 the defendants' offer of judgment was reasonable and in good faith in both its timing and  
22 amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was  
23 grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are  
24 reasonable and justified in amount.” *Id.*

25 Here, when the offer of Judgment was made the case was remanded from the  
26 Nevada Supreme Court on the limited issue of how the prior owner's partial payments  
27  
28

1 were applied and how that impacted superpriority. Even with the limited issue Marchai  
2 continued to seek hundreds of thousands of dollars in damages against the HOA on  
3 alternative theories of liability under breach of statute and breach of good faith.  
4 However, no specific provision of the statute or the statute's good faith provision  
5 generally required the HOA to apply the prior owner's payments a certain way.  
6 Additionally, under Marchai's theory going into to trial, payments were applied to the  
7 superpriority portion of the lien by the HOA, which would lead to its deed of trust being  
8 protected from the foreclosure. Given the limited issue, there was a high degree of  
9 probability that either Marchai was going to be able to keep its deed of trust, or  
10 otherwise be unable to attach the loss of its deed of trust to any wrong doing by the  
11 HOA.  
12

13 Additionally, the HOA argued that Marchai raised a misapplication of proceeds claim  
14 on the eve of trial, but even with the new claim Marchai was only seeking around  
15 \$9,000. See Marchai's Opposition to the HOA's Motion for Summary Judgment and  
16 Reply thereto. Thus, the HOA's offer to pay Marchai \$15,000 to dismiss the claims  
17 against the HOA and allow the HOA to avoid trial fees and costs, was reasonable given  
18 that its was likely that Marchai would not receive a judgment against the HOA, and the  
19 HOA's dismissal did not impact its claims against other defendants.  
20

21 Although Marchai's claims may have been made in good faith initially, the remaining  
22 claims still were primarily based on notice originally, which was no longer an issue after  
23 remand. The HOA's offer of judgment was reasonable coming back after remand on  
24 the limited issue and prior to trial. The amount of the offer was also reasonable at  
25 \$15,000 given that it became clear after remand that Marchai would not likely receive a  
26 judgment against the HOA. Marchai's decision to reject the \$15,000 offer was in bad  
27 faith given the likely outcome it would not receive a judgment against the HOA, and  
28

only force the HOA to incur trial fees and costs. For the reasons stated below the Fees and Costs sought by the HOA are reasonable and justified in amount.

**C. The Attorneys Fees Incurred by HOA were Reasonable.**

The total sum of attorney's fees sought by HOA through February 2021 is \$63,069.00. District courts have sound discretion to award attorney's fees and costs. *In re Estate of Miller*, 125 Nev. 42 (2009). The primary method for determining the reasonableness of fees in Nevada is set forth in *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 35 (Nev. 1969). In *Brunzell* the Court stated:

[I]n determining the reasonable value of an attorney's services...such factors may be classified under four general headings (1) *the qualities of the advocate*: his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work; (4) *the result*: whether the attorney was successful and what benefits were derived.....

...good judgment would dictate that each of these factors must be given consideration by the trier of fact and that no one element should predominate or be given undue weight.

*Id.* at 349-350.

Here, the requested attorney's fees are reasonable and justified. As demonstrated in the declaration of David Ochoa Esq. a fine advocate, having been licensed in the year 2007. Mr. Ochoa has practiced in director and officer liability and homeowner association cases since 2016. See Declaration attached hereto.

The work performed was reasonable, given Plaintiff's Complaint and theories of liability with factual allegations spanning years prior to initiation, and litigation having taken approximately 5 years. Mr. Ochoa performed a majority of the work after the case was remanded and set for trial. The requested attorney's fees were justified based on the results achieved and were reasonable in time and amount. See Exhibit A. For Lipson Neilson hours billed were at rates of \$175-\$180 per hour for associate attorneys,

1 \$200-\$205 per hour for partner attorneys and \$95 per hour for paralegals. See  
2 Declaration.

3         Given the history of this case, the efforts of HOA's counsel were justified. The  
4 case included the HOA in 2016, and HOA filed a motion a motion to dismiss, two  
5 motions for summary judgment, and attended trial over the course of his case. These  
6 fees were expended in good faith and were only incurred as a result of Plaintiff's  
7 initiation of this case.

8  
9         Alternatively, to the HOA's \$64,593.14 in total fees, it would still be entitled to  
10 \$29,467.00 (its total fees and costs after the offer of judgment) pursuant to NRS 17.117  
11 or NRCP 68; because of the rejected offered of judgment and Marchai's failure to  
12 obtain a more favorable judgment against the HOA. See Exhibits A and B attached  
13 hereto.

14  
15 **III. CONCLUSION**

16         Based on the foregoing, Defendant Wyeth Ranch Community Association  
17 respectfully requests this Court to enter an award in its favor and against Plaintiff  
18 Marchai in amount of \$63,089.00 for fees and \$1524.14 in costs for a total of  
19 \$64,593.14 pursuant to NRS 116.4117.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

///

1 Alternatively, Wyeth Ranch Community Association respectfully requests this  
2 Court to enter an award in its favor and against Plaintiff Marchai in amount of  
3 \$29,449.50 for fees and \$17.50 in costs for a total of \$29,467.00 pursuant to NRS  
4 17.117 and NRCP 68.

5  
6 DATED this 1<sup>st</sup> day of April, 2021.

7 LIPSON NEILSON P.C.

8 /s/ David T. Ochoa

9 By: \_\_\_\_\_

10 KALEB D. ANDERSON, ESQ.  
11 Nevada Bar No. 7582  
12 DAVID T. OCHOA, ESQ.  
13 Nevada Bar No. 10414  
14 9900 Covington Cross Drive, Suite 120  
15 Las Vegas, Nevada 89144

16 *Attorneys for Defendant*  
17 *Wyeth Ranch Community Association*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that on the 1<sup>st</sup> day of April, 2021, I electronically transmitted the foregoing  
**DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION’S MOTION FOR FEES  
AND COSTS** to the Clerk’s Office using the Odyssey eFileNV & Serve system for filing  
and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerrillpc.com](mailto:david@djmerrillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1,  
LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.



**DECLARATION OF DAVID OCHOA, ESQ. IN SUPPORT OF WYETH RANCH  
COMMUNITY ASSOCIATION'S MOTION FOR FEES AND COSTS**

I, David T. Ochoa, Esq., hereby declare and state as follows:

1. I am an attorney in good standing, duly licensed to practice law in Nevada. I am an associate at Lipson Neilson P.C., and legal counsel for Wyeth Ranch Community Association ("HOA").

2. I make this declaration in support of Defendant's Motion for Fees of Costs, and I have personal knowledge of the facts stated in this declaration and am competent to testify as to those facts stated herein in a court of law and will so testify if called upon.

3. I further attest to the accuracy of the Fees and Costs set forth in the Memorandum of Fees and Costs, and the accuracy of the same as described in the spreadsheet that is part of **Exhibit A**.

4. Attached as past of **Exhibit A** are true and correct copies of the bills sent or in the process of being sent to the HOA for legal fees and costs incurred from Lipson Neilson representation in 2016 through February 2021.

5. During a majority of the work Partner Kaleb Anderson billed the client at a rate of \$200/hour which increased in late 2020 to \$205/hour. Associate attorneys working on the case billed at a rate of \$175/hour which increased in late 2020 to \$180/hour.

6. I personally worked on the case from the period of October 2020 to present, which was a majority of the billing that included summary judgment briefing, as well as preparing for and attending trial.

7. Lipson Neilson P.C. has a national reputation with offices in Nevada, Michigan, Arizona, and Colorado.

8. The legal services billed to the file totals \$63,069.00 not including costs.

9. The separately requested costs billed to the file total of \$1524.14.

10. Wyeth Ranch has made an alternative claims for Fees and Costs pursuant to NRS 17.117 and NRCP 68 based on a rejected offer of Judgment (**Exhibit B**) ; and

1 the "Alternative Fees and Costs After Offer of Judgment" are true and correct as  
2 described in the spreadsheet in **Exhibit A**.

3 11. Each and every legal service my firm performed as listed above was  
4 necessary to defend this case. They were all done at reasonable rates of time and at  
5 extremely low billing rates. These billing rates are well below the average litigation  
6 rates in Southern Nevada and even below other insurance defense rates.

7 12. My hourly rates for other insurance defense work range from \$165/hour to  
8 \$195/hour. My hourly rates for non-insurance company engagements range between  
9 \$200 and \$300/hour depending on the complexity of the matter and other factors.  
10 Partner rates at Lipson Neilson for non-insurance engagements can exceed \$300/hour.  
11 These rates are all reasonable for the Southern Nevada area.

12 13. In law school I externed with the Honorable William O. Voy of the Eighth  
13 Judicial District Court and received an Eighth Judicial District Court Service Award for  
14 research and drafting of juvenile Probation Review Report submitted to the Annie E.  
15 Casey Foundation.

16 14. I am an attorney in good standing. I have been licensed in the State of  
17 Nevada since 2007. I was Law Clerk to Honorable Cynthia Diana Steel in the Eighth  
18 Judicial District Court. I have prior experience in personal injury firms, assisting in  
19 discovery and preparing cases for trial with estimated values exceeding a million  
20 dollars.

21 15. Since 2016, I have defended officer and directors, along with defending  
22 homeowner associations. Throughout that time, I have briefed NRS 116 foreclosure  
23 issues, similar to the issues in this case, in Clark County, Washoe County, the Federal  
24 District of Nevada, the Ninth Circuit Court of Appeals, and the Nevada Supreme Court,  
25 and received favorable decisions in all of the above courts.

**Lipson Neilson P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512

16. The attorney's fees requested in this litigation are reasonable and necessary in light of the amount of work required to defend the case over a period of approximately 5 years.

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

Executed this 1<sup>st</sup> day of April, 2021 in the State of Nevada.

/s/ David Ochoa

DAVID T. OCHOA, ESQ.

**EXHIBIT “A”**

**EXHIBIT “A”**

Wyeth Ranch

DATE	FEES	COSTS	NOT REQUESTED
March 2021			
Jan – Feb 2021	13,995.5	Court Fees 3.50	
Oct – Dec 2020	17,979	Depo Transcript 265.95 Court fees 14	
July – Sept 2020	9,830	Court Fees 213	
April – June 2020	560		
Jan – March 2020	140		
Oct – Dec 2019	402.50		
July – Sept 2019	35		
May – June 2019	0		
Jan – April 2019	122.50		
Oct – Dec 2018	52.50		
July- Sept 2018	1072		
April – June 2018	1,097.50		
Jan – March 2018	194		
Oct – Dec 2017	647.50		
Aug – Sept 2017	4,072	Court Fees 7.00 Nationwide Legal 529	
July 2017	2,887.50	Court Fees 209.50	
June 2017	1337.50 Minus NRED amounts = 1,005	Nationwide Legal 35	Subtract 175 for work on NRED Subtract 157.50 for work on NRED
Feb – May 2017	1,866		NRED FEE (NOT REQUESTED) 250
Jan 2017	1,440	Court Fee 7	NRED FEE (NOT REQUESTED) 60
Dec 2016	757.50	Court Fee 3.50	
Sept 27 – Nov 2016	4,148		
Sept 1 – Sept 26 2016	765	Court Fees 236.69	
TOTALS			
		COST CATEGORY TOTALS	
		Depo Transcript 265.95 Nationwide Legal Runner Services 564 Court Fees 694.19	
	TOTAL FEES	TOTAL COSTS	COMBINED TOTAL
	63,069	1524.14	64,593.14

ALTERNATIVE FEES AND COSTS AFTER OFFER OF JUDGMENT

DATE	FEES	COSTS	NOT REQUESTED
March 2021			
Jan – Feb 2021	13,995.5	Court Fees 3.50	
Oct – Dec 2020	17,979 total, minus fees prior to October 29, 2020 = 15,454	Depo Transcript 265.95 Court fees 14	Offer served October 29, 2020 – Fees Prior to Offer of Judgment  Cost prior to Offer of Judgment
	Total Fees after Offer of Judgment = \$29,449.5	Total Costs After Offer of Judgment \$17.50	

TOTALS AFTER OFFER OF JUDGMENT		
TOTAL FEES	TOTAL COSTS	COMBINED TOTAL
\$29,449.5	\$17.5	\$29,467.00

WYETH RANCH COMMUNITY ASSOCIATION adv. MARCHAI B.T.  
CASE NO. A-13-689461 consolidated with A-16-742327  
DEPT NO. XI

WORK - IN-PROGRESS

Date	Timekeeper	Hours	Rate	Amount	Narrative
01/04/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL REGARDING JOINT TRIAL EXHIBITS
01/04/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM HOA TRIAL WITNESS [REDACTED]
01/06/2021	DO	0.30	\$180.00	\$ 54.00	REVIEW EMAILS FROM OPPOSING COUNSEL AND COURT REGARDING TRIAL
01/06/2021	DO	1.50	\$180.00	\$ 270.00	DRAFT/JUDT JOINT STIPULATED FACTS FOR TRIAL
01/07/2021	KA	0.20	\$205.00	\$ 41.00	CORRESPONDENCE WITH COURT RE UPCOMING TRIAL AND EXHIBITS TO BE USED
01/07/2021	DO	0.30	\$180.00	\$ 54.00	REVIEW EMAILS FROM OPPOSING COUNSEL AND COURT REGARDING TRIAL AND TRIAL EXHIBITS
01/11/2021	KA	0.30	\$205.00	\$ 61.50	REVIEW AND ANALYSIS OF MINUTE ORDER RE MOTION FOR RECONSIDERATION AND MOTION IN LIMINE
01/11/2021	DO	4.00	\$180.00	\$ 720.00	PREPARE FOR TRIAL BY ORGANIZING KEY EXHIBITS FROM THE STIPULATED JOINT EXHIBIT LIST AND START TO REVIEW WITNESS DEPOSITION TRANSCRIPT
01/11/2021	DO	0.70	\$180.00	\$ 126.00	DRAFT STATUS UPDATE TO CARRIER
01/11/2021	DO	0.30	\$180.00	\$ 54.00	DRAFT EMAILS TO SFRS COUNSEL REGARDING TRIAL
01/11/2021	DO	0.20	\$180.00	\$ 36.00	REVIEW EMAILS FROM SFRS COUNSEL REGARDING TRIAL
01/11/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW MINUTE ORDER VACATING TRIAL AND SETTING CALENDAR CALL DATE
01/12/2021	DO	1.00	\$180.00	\$ 180.00	CALL WITH SFRS COUNSEL REGARDING TRIAL ISSUES AND EXHIBITS
01/12/2021	DO	4.00	\$180.00	\$ 720.00	START TO DRAFT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
01/12/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM HOA TRIAL WITNESS [REDACTED]
01/12/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM CARRIER [REDACTED]
01/12/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO SFRS COUNSEL REGARDING TRIAL
01/12/2021	DO	0.20	\$180.00	\$ 36.00	DRAFT STATUS UPDATE TO HOA WITNESS [REDACTED]
01/14/2021	DO	4.00	\$180.00	\$ 720.00	ANALYZE VIOLATION OF GOOD FAITH/MISAPPLICATION OF PROCEEDS CLAIM AND DRAFT TRIAL STATUS UPDATE
01/18/2021	DO	4.00	\$180.00	\$ 720.00	CHART OUT PARTIAL PAYMENT ISSUE AND SUPPORTING EVIDENCE TO PREPARE FOR TRIAL
01/19/2021	DO	0.20	\$180.00	\$ 36.00	REVIEW EMAIL FROM OPPOSING COUNSEL AND SFRS COUNSEL REGARDING ORDER
01/19/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING PROPOSED ORDER
01/19/2021	DO	0.30	\$180.00	\$ 54.00	REVIEW EMAIL FROM OPPOSING COUNSEL AND REVIEW ATTACHED PROPOSED ORDER
01/22/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING POTENTIAL TRIAL DATES
01/22/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM SFRS COUNSEL REGARDING POTENTIAL DATES FOR TRIAL
01/25/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING POSSIBLE TRIAL DATES
01/25/2021	DO	0.20	\$180.00	\$ 36.00	DRAFT EMAILS TO HOA WITNESS [REDACTED]
01/25/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM HOA WITNESS [REDACTED]
02/02/2021	DO	3.00	\$180.00	\$ 540.00	CONTINUE TO ANALYZE SUPERPRIORITY ISSUE AND SERVICE OF NOTICE OF DELINQUENT ASSESSMENT LIEN TO PREPARE FOR TRIAL
02/02/2021	DO	0.50	\$180.00	\$ 90.00	ATTEND CALENDAR CALL SETTING NEW TRIAL DATE
02/02/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO SFRS COUNSEL REGARDING TRIAL EXHIBITS
02/02/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM SFRS COUNSEL REGARDING TRIAL EXHIBITS
02/04/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO HOA WITNESS [REDACTED]
02/04/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO HOA WITNESS [REDACTED]
02/06/2021	DO	0.10	\$180.00	\$ 18.00	DRAFT EMAIL TO HOA WITNESS [REDACTED]
02/06/2021	DO	0.10	\$180.00	\$ 18.00	REVIEW EMAIL FROM HOA WITNESS [REDACTED]
02/06/2021	DO	6.00	\$180.00	\$1,080.00	START TO DRAFT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR TRIAL
02/17/2021	DO	0.50	\$180.00	\$ 90.00	REVIEW EMAILS FROM MARCHAI'S COUNSEL AND SFRS COUNSEL REGARDING TRIAL
02/17/2021	DO	0.70	\$180.00	\$ 126.00	DRAFT/PREPARE FORMS FOR REMOTE APPEARANCE OF WITNESS AT TRIAL
02/17/2021	DO	6.00	\$180.00	\$1,080.00	CONTINUE TO DRAFT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR TRIAL
02/18/2021	KA	0.40	\$205.00	\$ 82.00	REVIEW AND FINALIZE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN PREPARATION FOR UPCOMING TRIAL
02/18/2021	DO	0.20	\$180.00	\$ 36.00	DRAFT EMAILS TO COURT REGARDING REMOTE APPEARANCE AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
02/18/2021	DO	0.20	\$180.00	\$ 36.00	REVIEW EMAILS FROM COURT REGARDING TRIAL
02/18/2021	DO	7.00	\$180.00	\$1,260.00	ANALYZE TRIAL ISSUES AND PRIOR DEPOSITION TESTIMONY AND DRAFT TRIAL QUESTIONS FOR HOA WITNESS TO PREPARE FOR TRIAL
02/19/2021	KA	0.00	\$ 1.00	\$ 3.50	FILE FEE (NV DISTRICT COURT)
02/19/2021	DO	0.50	\$180.00	\$ 90.00	DRAFT EMAILS TO SFRS COUNSEL REGARDING TRIAL
02/19/2021	DO	0.70	\$180.00	\$ 126.00	DRAFT EMAILS TO HOA WITNESS [REDACTED]
02/19/2021	DO	0.20	\$180.00	\$ 36.00	REVIEW EMAILS FROM COMMUNITY/HOA WITNESS REGARDING [REDACTED]
02/19/2021	DO	3.00	\$180.00	\$ 540.00	ANALYZE POTENTIAL CROSS-EXAMINATION OF MARCHAI AND SFR WITNESSES TO PREPARE FOR TRIAL
02/19/2021	DO	2.00	\$180.00	\$ 360.00	REVIEW AND ANALYZE MARCHAI AND SFRS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW TO PREPARE FOR TRIAL
02/19/2021	DO	2.00	\$180.00	\$ 360.00	DRAFT AND REVIEW CLOSING ARGUMENT TO PREPARE FOR TRIAL

total Fees 10,138.50

total  
685  
350

Date	Timekeeper	Hours	Rate	Amount	Narrative
02/19/2021	DO	0.50	\$ 180.00	\$ 90.00	CALL WITH WITNESS [REDACTED]
02/20/2021	KA	4.80	\$205.00	\$ 984.00	PREPARATION FOR UPCOMING TRIAL
02/22/2021	KA	6.20	\$205.00	\$ 1,271.00	ATTEND TRIAL
02/22/2021	DO	0.50	\$ 180.00	\$ 90.00	DRAFT UPDATE TO CARRIER AND COMMUNITY [REDACTED]
02/22/2021	DO	7.00	\$ 180.00	\$ 1,260.00	ATTEND TRIAL
02/22/2021	DO	0.50	\$ 180.00	\$ 90.00	CONTINUE TO PREPARE FOR TRIAL - ORGANIZE DOCUMENTS AND NOTES TO BRING TO TRIAL
02/23/2021	DO	0.40	\$ 180.00	\$ 72.00	CALL WITH CARRIER [REDACTED]

total fees 3,857

10,138.50

+ 3,857

= 13,995.50



# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

January 25, 2021  
Invoice # 115875 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through December 31, 2020

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

PROFESSIONAL SERVICES

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/01/2020	DO	REVIEW EMAIL FROM COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/01/2020	DO	DRAFT EMAIL TO COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/01/2020	DO	DRAFT EMAILS TO CARRIER REGARDING [REDACTED] [REDACTED]	0.30 hrs	175.00 /hr	52.50
10/02/2020	DO	REVIEW EMAIL FROM REPORTER REGARDING HOA DEPOSITION TRANSCRIPT	0.10 hrs	175.00 /hr	17.50
10/02/2020	DO	REVIEW DEPOSITION TRANSCRIPT OF HOA WITNESS AND PREPARE FOR TRIAL BY ANALYZING APPLICATION OF PARTIAL PAYMENTS ISSUE	3.00 hrs	175.00 /hr	525.00
10/05/2020	DO	REVIEW EMAIL FROM LENDER'S COUNSEL REGARDING [REDACTED]	0.20 hrs	175.00 /hr	35.00
10/05/2020	DO	REVIEW EMAIL FROM LENDER'S COUNSEL [REDACTED]	0.20 hrs	175.00 /hr	35.00

January 25, 2021  
Invoice # 115875

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/06/2020	DO	DRAFT UPDATE TO CARRIER	0.20 hrs	175.00 /hr	35.00
10/13/2020	KA	REVIEW AND ANALYSIS OF FILE AND RECENT PLEADINGS TO DETERMINE SETTLEMENT AND OFFER OF JUDGMENT STRATEGY	0.90 hrs	200.00 /hr	180.00
10/14/2020	DO	REVIEW EMAIL FROM OPPOSING COUNSEL REGARDING MOTION FOR SUMMARY JUDGMENT AND SETTLEMENT DISCUSSIONS	0.20 hrs	175.00 /hr	35.00
10/14/2020	DO	DRAFT EMAIL TO LENDER'S COUNSEL REGARDING THEIR EXTENSION	0.10 hrs	175.00 /hr	17.50
10/15/2020	DO	DRAFT EMAIL TO CARRIER REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/15/2020	DO	DRAFT PRETRIAL DISCLOSURES	3.00 hrs	175.00 /hr	525.00
10/19/2020	DO	REVIEW EMAIL FROM CARRIER REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/19/2020	DO	REVIEW LENDER'S PRETRIAL DISCLOSURE	0.20 hrs	175.00 /hr	35.00
10/22/2020	DO	REVIEW MARCHAI/LENDER'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	0.50 hrs	175.00 /hr	87.50
10/27/2020	DO	REVIEW EMAILS FROM OPPOSING COUNSEL REGARDING PRETRIAL CONFERENCE	0.50 hrs	175.00 /hr	87.50
10/27/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING PRETRIAL CONFERENCE	0.20 hrs	175.00 /hr	35.00
10/28/2020	DO	REVIEW CASE BACKGROUND TO DETERMINE IF LENDER EVERY PREVIOUSLY ARGUED PROCEEDS AFTER THE SALE WERE MISAPPLIED TO PREPARE FOR ARGUMENT ON FAILURE TO AMEND AND FAILURE TO DISCLOSE COMPUTATION OF DAMAGES	1.00 hrs	175.00 /hr	175.00
10/28/2020	DO	DRAFT OFFER OF JUDGMENT TO LENDER	0.80 hrs	175.00 /hr	140.00
10/28/2020	DO	DRAFT STATUS UPDATE TO CARRIER	3.00 hrs	175.00 /hr	525.00
10/29/2020	DO	REVIEW OFFER OF JUDGMENT MADE FROM SFR TO MARCHAI	0.10 hrs	175.00 /hr	17.50
10/29/2020	DO	DRAFT EMAIL TO CARRIER REGARDING [REDACTED]	1.00 hrs	175.00 /hr	175.00
10/29/2020	DO	START TO DRAFT REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	5.00 hrs	175.00 /hr	875.00
10/29/2020	KA	CORRESPONDENCE WITH CARRIER RE [REDACTED]	0.40 hrs	200.00 /hr	80.00

January 25, 2021  
Invoice # 115875

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/30/2020	DO	CONTINUE TO DRAFT REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	7.00 hrs	175.00 /hr	1,225.00
11/02/2020	DO	REVIEW EMAIL FROM COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/02/2020	DO	REVIEW PROPOSED EXHIBIT LIST FOR TRIAL AND DRAFT CHANGES	3.00 hrs	175.00 /hr	525.00
11/02/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING PRE-TRIAL CONFERENCE AND EXHIBIT LIST	0.20 hrs	175.00 /hr	35.00
11/02/2020	DO	REVIEW EMAIL FROM PURCHASER'S COUNSEL REGARDING PRE-TRIAL CONFERENCE AND EXHIBIT LIST	0.10 hrs	175.00 /hr	17.50
11/02/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING TRIAL SUBPOENA OF HOA'S WITNESS	0.30 hrs	175.00 /hr	52.50
11/02/2020	DO	DRAFT OBJECTIONS TO PRE-TRIAL DISCLOSURES	1.50 hrs	180.00 /hr	270.00
11/02/2020	DO	DRAFT EMAIL TO YVETTE SAUCEDA REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/02/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING TRIAL SUBPOENA	0.10 hrs	175.00 /hr	17.50
11/03/2020	DO	REVIEW SFR'S OBJECTIONS TO MARCHAI'S PRE-TRIAL DISCLOSURES	0.30 hrs	180.00 /hr	54.00
11/03/2020	DO	REVIEW MARCHAI'S OBJECTIONS TO PRE-TRIAL DISCLOSURES	0.20 hrs	180.00 /hr	36.00
11/03/2020	DO	REVIEW EMAIL FROM OPPOSING COUNSEL REGARDING TRIAL SUBPOENA	0.10 hrs	180.00 /hr	18.00
11/03/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING TRIAL SUBPOENA	0.10 hrs	180.00 /hr	18.00
11/04/2020	DO	REVIEW EMAILS FROM PURCHASER'S COUNSEL REGARDING EXHIBIT LIST	0.50 hrs	175.00 /hr	87.50
11/04/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING EXHIBIT LIST	0.40 hrs	175.00 /hr	70.00
11/05/2020	DO	REVIEW NOTICE FROM COURT REGARDING UPCOMING CALENDAR CALL PROCEDURE	0.10 hrs	180.00 /hr	18.00
11/05/2020	DO	REVIEW EMAILS FROM OPPOSING COUNSEL REGARDING POTENTIAL TRIAL DATES	0.20 hrs	175.00 /hr	35.00
11/05/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING UPDATES/EDITS TO EXHIBIT LIST	0.30 hrs	175.00 /hr	52.50

January 25, 2021  
Invoice # 115875

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
11/05/2020	DO	REVIEW EMAIL FROM YVETTE SAUCEDA [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/05/2020	DO	DRAFT EMAIL TO YVETTE SAUCEDA REGARDING [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/05/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING TRIAL DATES	0.10 hrs	175.00 /hr	17.50
11/05/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING EXHIBIT LIST	0.10 hrs	175.00 /hr	17.50
11/05/2020	DO	DRAFT HOA SECTIONS FOR JOINT PRE-TRIAL MEMORANDUM	4.00 hrs	180.00 /hr	720.00
11/06/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING JOINT PRE-TRIAL MEMORANDUM	0.80 hrs	175.00 /hr	140.00
11/06/2020	DO	REVIEW EMAILS FROM PURCHASER'S COUNSEL REGARDING JOINT PRE-TRIAL MEMORANDUM	0.50 hrs	175.00 /hr	87.50
11/06/2020	DO	DRAFT EMAILS TO OPPOSING COUNSEL REGARDING JOINT PRE-TRIAL MEMORANDUM	0.40 hrs	175.00 /hr	70.00
11/06/2020	DO	EDIT/FINALIZE JOINT PRE-TRIAL MEMORANDUM	1.00 hrs	180.00 /hr	180.00
11/06/2020	KA	REVIEW AND ANALYSIS OF FILE AND RECENT PLEADING TO PLAN STRATEGY FOR DISPOSITIVE MOTIONS AND TRIAL	1.90 hrs	205.00 /hr	389.50
11/09/2020	DO	ANALYZE PLEADINGS AND OUTLINE AND REVIEW ORAL ARGUMENT TO PREPARE FOR HEARING ON MOTION FOR SUMMARY JUDGMENT	2.00 hrs	175.00 /hr	350.00
11/10/2020	DO	REVIEW EMAILS FROM COURT REGARDING TRIAL	0.20 hrs	175.00 /hr	35.00
11/10/2020	DO	DRAFT STATUS UPDATE TO CARRIER	0.80 hrs	175.00 /hr	140.00
11/10/2020	DO	DRAFT EMAIL TO YVETTE SAUCEDA [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/10/2020	DO	ATTEND HEARING FOR MOTION FOR SUMMARY JUDGMENT AND CALENDAR CALL	1.50 hrs	180.00 /hr	270.00
11/11/2020	DO	DRAFT MEMORANDUM TO FILE REGARDING TRIAL ISSUES	0.50 hrs	180.00 /hr	90.00
11/13/2020	DO	REVIEW MINUTE ORDER FROM THE COURT VACATING TRIAL AND SETTING STATUS CHECK IN RESPONSE TO NEW COVID RESTRICTIONS/NEW ADMIN ORDER	0.20 hrs	175.00 /hr	35.00
11/13/2020	DO	DRAFT EMAIL TO YVETTE SAUCEDA REGARDING [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00

January 25, 2021  
Invoice # 115875

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
11/16/2020	DO	DRAFT STATUS UPDATE TO COMMUNITY [REDACTED]	0.70 hrs	175.00 /hr	122.50
11/17/2020	DO	REVIEW EMAIL FROM YVETTE SAUCEDA [REDACTED]	0.10 hrs	175.00 /hr	17.50
11/18/2020	DO	REVIEW EMAIL FROM OPPOSING COUNSEL REGARDING ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REVIEW ATTACHED ORDER	0.20 hrs	175.00 /hr	35.00
11/18/2020	DO	DRAFT EDITS TO ORDER DENYING MOTION FOR SUMMARY JUDGMENT	0.50 hrs	175.00 /hr	87.50
11/18/2020	DO	REVIEW FILED SERVICE OF TRIAL SUBPOENA	0.10 hrs	175.00 /hr	17.50
11/18/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING DRAFT ORDER	1.00 hrs	175.00 /hr	175.00
11/18/2020	DO	REVIEW EMAIL FROM PURCHASER'S COUNSEL REGARDING TRIAL SUBPOENA	0.10 hrs	175.00 /hr	17.50
11/18/2020	DO	ANALYZE THE NEED FOR COMPETING ORDERS, ANALYZE NEED FOR POTENTIAL MOTION TO CLARIFY, AND DRAFT EMAILS TO LENDER'S COUNSEL REGARDING OPPOSING ORDERS	3.00 hrs	180.00 /hr	540.00
11/18/2020	DO	DRAFT EMAIL TO THE COURT REGARDING OPPOSING DRAFT ORDERS	0.20 hrs	175.00 /hr	35.00
11/18/2020	KA	REVIEW AND ANALYSIS OF PROPOSED ORDER FROM LENDER'S COUNSEL ON MOTION FOR SUMMARY JUDGMENT, TO DETERMINE LANGUAGE RELATED TO NEW CLAIMS	0.40 hrs	205.00 /hr	82.00
11/23/2020	DO	OUTLINE PARTIAL PAYMENT HISTORY AND ORGANIZE SUPPORTING EVIDENCE TO PREPARE FOR FACT WITNESSES	7.00 hrs	175.00 /hr	1,225.00
11/24/2020	DO	REVIEW ORDER DENYING MOTION FOR SUMMARY JUDGMENT	0.10 hrs	175.00 /hr	17.50
11/24/2020	DO	DRAFT MOTION FOR RECONSIDERATION/MOTION IN LIMINE	7.00 hrs	180.00 /hr	1,260.00
11/25/2020	DO	CONTINUE TO DRAFT MOTION FOR RECONSIDERATION/MOTION IN LIMINE, DRAFT DECLARATION FOR MOTION, FINALIZE EXHIBITS AND CITATIONS TO EXHIBITS	7.00 hrs	180.00 /hr	1,260.00
12/04/2020	DO	DRAFT UPDATE TO CARRIER REGARDING [REDACTED]	0.10 hrs	180.00 /hr	18.00

January 25, 2021  
Invoice # 115875

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
12/04/2020	KA	FINALIZE MOTION FOR RECONSIDERATION/MOTION IN LIMINE	1.80 hrs	205.00 /hr	369.00
12/07/2020	DO	REVIEW NOTICE OF HEARING FROM THE COURT	0.10 hrs	180.00 /hr	18.00
12/08/2020	DO	REVIEW MINUTE ORDER REGARDING STATUS CHECK ON TRIAL	0.10 hrs	180.00 /hr	18.00
12/08/2020	DO	DRAFT UPDATE TO CARRIER REGARDING STATUS CHECK ON TRIAL BEING CONTINUED TWO WEEKS	0.10 hrs	180.00 /hr	18.00
12/15/2020	DO	REVIEW EMAIL FROM OPPOSING COUNSEL REGARDING EXTENSION TO RESPOND TO MOTION	0.10 hrs	180.00 /hr	18.00
12/15/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING EXTENSION TO RESPOND TO MOTION	0.10 hrs	180.00 /hr	18.00
12/18/2020	DO	REVIEW NOTICE FROM THE COURT SETTING STATUS CHECK ON TRIAL	0.10 hrs	180.00 /hr	18.00
12/21/2020	DO	RESEARCH CASE LAW ON DISCOVERY PREJUDICE, GOOD CAUSE, AND FAILURE TO DISCLOSE DAMAGES TO PREPARE FOR REPLY DRAFT	3.00 hrs	180.00 /hr	540.00
12/21/2020	DO	DRAFT EMAIL TO CARRIER REGARDING TELEPHONIC STATUS CHECK ON TRIAL BEING SET	0.10 hrs	180.00 /hr	18.00
12/21/2020	DO	DRAFT EMAIL TO HOA WITNESS REGARDING [REDACTED]	0.10 hrs	180.00 /hr	18.00
12/22/2020	DO	START TO DRAFT REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION/MOTION IN LIMINE	4.00 hrs	180.00 /hr	720.00
12/22/2020	DO	REVIEW OPPOSITION TO MOTION FOR RECONSIDERATION/MOTION IN LIMINE TO PREPARE FOR REPLY	0.50 hrs	180.00 /hr	90.00
12/22/2020	DO	ATTEND STATUS CHECK REGARDING TRIAL	0.40 hrs	180.00 /hr	72.00
12/22/2020	DO	DRAFT EMAIL TO HOA WITNESS REGARDING [REDACTED]	0.10 hrs	180.00 /hr	18.00
12/29/2020	DO	CONTINUE TO DRAFT REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION/MOTION IN LIMINE	7.00 hrs	180.00 /hr	1,260.00
12/30/2020	DO	CONTINUE TO DRAFT/EDIT REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION/MOTION IN LIMINE	5.00 hrs	180.00 /hr	900.00
TOTAL PROFESSIONAL SERVICES			100.50 hrs		\$17,979.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	4.10	4.10	205.00	\$840.50

January 25, 2021  
Invoice # 115875

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	1.30	1.30	200.00	\$260.00
OCHOA, DAVID	47.20	47.20	180.00	\$8,496.00
OCHOA, DAVID	47.90	47.90	175.00	\$8,382.50
TOTALS	100.50	100.50		\$17,979.00

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
10/04/2020	DEPOSITION TRANSCRIPT OF YVETTE SAUCEDA (WORLDWIDE LITIGATION SERVICES)	265.95
11/02/2020	COURT FEES	3.50
11/03/2020	COURT FEES	3.50
12/05/2020	COURT FEES	3.50
12/31/2020	COURT FEES	3.50
	TOTAL EXPENSES	\$279.95

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$17,979.00
TOTAL EXPENSES	\$279.95
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$18,258.95</b>
NET BALANCE FORWARD	\$10,043.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$10,043.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$18,258.95</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

October 23, 2020  
Invoice # 108027 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through September 30, 2020

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/21/2020	MH	REVIEW CORRESPONDENCE FROM SFR REGARDING NOTICE OF ACCOUNTING ON JUNCTION FOR APPEAL (JULY 2020)	0.20 hrs	175.00 /hr	35.00
07/27/2020	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
07/28/2020	MH	REVIEW TRANSCRIPTS FROM FROM FEBRUARY 16, 2016 AND AUGUST 23, 2017 HEARINGS ON MOTIONS FOR SUMMARY JUDGMENT, IN PREPARATION FOR DRAFTING PRE-TRIAL REPORT AND BUDGET	0.60 hrs	175.00 /hr	105.00
07/28/2020	MH	REVIEW AND ANALYZE ALESSI & KOENIG RESIDENTIAL TRANSACTION REPORTS ON BORROWER'S PAYMENTS FROM 2007 THROUGH 2012, IN PREPARATION FOR DRAFTING PRE-TRIAL REPORT AND BUDGET	0.90 hrs	175.00 /hr	157.50



October 23, 2020  
Invoice # 108027

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/28/2020	MH	REVIEW AND ANALYZE SFR'S OPENING BRIEF ON APPEAL, MARCHAI'S ANSWERING BRIEF, AND SFR'S REPLY, IN PREPARATION FOR DRAFTING PRE-TRIAL REPORT AND BUDGET	1.40 hrs	175.00 /hr	245.00
07/28/2020	MH	REVIEW DISTRICT COURT DECISIONS APPLYING 9352 CRANESBILL, IN PREPARATION FOR DRAFTING PRE-TRIAL REPORT AND BUDGET	0.40 hrs	175.00 /hr	70.00
07/28/2020	MH	REVIEW AMERICAN JURISPRUDENCE, SECTION 70 (RUNNING ACCOUNTS)	0.10 hrs	175.00 /hr	17.50
07/28/2020	MH	REVIEW OCTOBER 2017 ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF MARCHAI	0.20 hrs	175.00 /hr	35.00
07/28/2020	MH	REVIEW AND ANALYZE COMPLAINT IN INTERPLEADER [REDACTED] [REDACTED] [REDACTED]	0.40 hrs	175.00 /hr	70.00
07/28/2020	MH	DRAFT PRE-TRIAL REPORT AND BUDGET FOR CARRIER	3.50 hrs	175.00 /hr	612.50
07/28/2020	MH	DRAFT CORRESPONDENCE TO SFR REGARDING POTENTIAL SETTLEMENT OF CLAIMS	0.20 hrs	175.00 /hr	35.00
08/06/2020	DO	REVIEW EMAILS FROM OPPOSING COUNSEL REGARDING DISCOVERY AFTER REMAND	0.20 hrs	175.00 /hr	35.00
08/06/2020	DO	REVIEW PRETRIAL REPORT AND ANALYZE DISCOVERY ISSUES AFTER REMAND	0.30 hrs	175.00 /hr	52.50
08/06/2020	KA	REVIEW AND FINALIZE STATUS REPORT TO CLIENT AND CARRIER	0.40 hrs	200.00 /hr	80.00
08/07/2020	DO	REVIEW EMAILS FROM OPPOSING COUNSEL REGARDING DISCOVERY AFTER REMAND	0.20 hrs	175.00 /hr	35.00
08/07/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING DISCOVERY AFTER REMAND	0.10 hrs	175.00 /hr	17.50
08/07/2020	DO	REVIEW STATUS AND ANALYZE POSSIBLE DISCOVERY AFTER REMAND	1.50 hrs	175.00 /hr	262.50
08/10/2020	DO	CALL FROM OPPOSING COUNSEL REGARDING DISCOVERY	0.20 hrs	175.00 /hr	35.00
08/10/2020	DO	CONTINUE TO ANALYZE ISSUES AFTER REMAND AND DISCOVERY FOR TRIAL, AND DRAFT STATUS UPDATE TO CARRIER	3.00 hrs	175.00 /hr	525.00
08/11/2020	DO	REVIEW EMAIL FROM COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50

October 23, 2020  
Invoice # 108027

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/11/2020	DO	DRAFT EMAILS TO COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/12/2020	DO	REVIEW MOTION TO REOPEN DISCOVERY AFTER REMAND	0.40 hrs	175.00 /hr	70.00
08/13/2020	DO	REVIEW EMAIL FROM COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/13/2020	DO	CALL WITH COMMUNITY REGARDING [REDACTED]	0.30 hrs	175.00 /hr	52.50
08/13/2020	DO	REVIEW PAST DISCOVERY/DISCLOSURES TO PREPARE FOR NEW DISCOVERY AFTER REMAND AND TRIAL ISSUES	4.00 hrs	175.00 /hr	700.00
08/17/2020	DO	DRAFT OPPOSITION TO MOTION TO REOPEN DISCOVERY AND COUNTERMOTION FOR SUMMARY JUDGMENT BRIEFING	4.00 hrs	175.00 /hr	700.00
08/18/2020	DO	REVIEW EMAIL FROM COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/18/2020	DO	REVIEW EMAIL FROM OPPOSING COUNSEL REGARDING REOPENING DISCOVERY/DEPOSITION	0.10 hrs	175.00 /hr	17.50
08/18/2020	DO	DRAFT EMAIL TO COMMUNITY REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/19/2020	DO	REVIEW EMAILS FROM PURCHASER'S COUNSEL AND LENDER'S COUNSEL REGARDING REOPENING DISCOVERY AND DEPOSITION OF HOA	1.00 hrs	175.00 /hr	175.00
08/19/2020	DO	CALL WITH CLIENT/[REDACTED] [REDACTED] [REDACTED] [REDACTED]	0.80 hrs	175.00 /hr	140.00
08/19/2020	DO	REVIEW EMAIL FROM COURT REGARDING HEARING TO REOPEN DISCOVERY	0.10 hrs	175.00 /hr	17.50
08/19/2020	DO	DRAFT EMAIL TO OPPOSING COUNSEL REGARDING HEARING TO REOPEN DISCOVERY	0.10 hrs	175.00 /hr	17.50
08/19/2020	DO	DRAFT EMAILS TO COMMUNITY REGARDING [REDACTED]	0.40 hrs	175.00 /hr	70.00
08/19/2020	DO	REVIEW COLLECTION FILE TO PREPARE FOR CALL [REDACTED] [REDACTED]	0.50 hrs	175.00 /hr	87.50

October 23, 2020  
Invoice # 108027

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/20/2020	DO	OUTLINE ORAL ARGUMENT AND REVIEW TO PREPARE FOR HEARING ON MOTION TO REOPEN DISCOVERY AFTER REMAND	0.60 hrs	175.00 /hr	105.00
08/20/2020	DO	ATTEND HEARING ON MOTION TO REOPEN DISCOVERY AFTER REMAND	0.30 hrs	175.00 /hr	52.50
08/20/2020	DO	DRAFT EMAILS TO OPPOSING COUNSEL REGARDING DISCOVERY AND DEPOSITION OF HOA	0.20 hrs	175.00 /hr	35.00
08/20/2020	DO	CONTINUE TO ANALYZE FUTURE DEPOSITION OF HOA AND [REDACTED] [REDACTED]	0.50 hrs	175.00 /hr	87.50
08/20/2020	DO	REVIEW EMAILS FROM MANAGEMENT COMPANY [REDACTED]	0.20 hrs	175.00 /hr	35.00
08/20/2020	DO	DRAFT STATUS UPDATE TO CARRIER	0.70 hrs	175.00 /hr	122.50
08/25/2020	DO	REVIEW NOTICE OF TAKING DEPOSITION OF WYETH RANCH AND ANALYZE DEPOSITION TOPICS	0.80 hrs	175.00 /hr	140.00
08/25/2020	DO	DRAFT EMAIL TO COMMUNITY [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/09/2020	DO	DRAFT EMAILS TO YVETTE [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/09/2020	DO	REVIEW EMAILS FROM YVETTE [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/10/2020	DO	CALL WITH CARRIER REGARDING [REDACTED] [REDACTED]	0.50 hrs	175.00 /hr	87.50
09/10/2020	DO	DRAFT EMAIL TO CARRIER [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/10/2020	DO	DRAFT STATUS UPDATE TO COMMUNITY	0.50 hrs	175.00 /hr	87.50
09/10/2020	DO	REVIEW LEDGERS AND PAYMENT HISTORY TO ANALYZE ISSUE ON WHETHER PARTIAL PAYMENTS WOULD HAVE PAID DOWN SUPERPRIORITY (ISSUE ON REMAND)	2.00 hrs	175.00 /hr	350.00
09/11/2020	DO	REVIEW EMAILS FROM YVETTE [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/11/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING DEPOSITION	0.20 hrs	175.00 /hr	35.00
09/11/2020	DO	REVIEW EMAIL FROM PURCHASER'S COUNSEL REGARDING DEPOSITION	0.10 hrs	175.00 /hr	17.50
09/11/2020	DO	DRAFT EMAILS [REDACTED] [REDACTED]	0.40 hrs	175.00 /hr	70.00

October 23, 2020  
Invoice # 108027

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/11/2020	DO	DRAFT EMAIL TO CARRIER [REDACTED] [REDACTED]	0.30 hrs	175.00 /hr	52.50
09/14/2020	DO	REVIEW EMAILS FROM OPPOSING COUNSEL REGARDING DEPOSITION	0.20 hrs	175.00 /hr	35.00
09/15/2020	DO	REVIEW EMAILS FROM LENDER'S COUNSEL REGARDING DEPOSITION	0.20 hrs	175.00 /hr	35.00
09/15/2020	DO	REVIEW AMENDED NOTICE OF TAKING DEPOSITION OF HOA	0.10 hrs	175.00 /hr	17.50
09/15/2020	DO	DRAFT EMAILS TO OPPOSING COUNSEL REGARDING DEPOSITION	0.30 hrs	175.00 /hr	52.50
09/15/2020	DO	DRAFT EMAIL TO COMMUNITY [REDACTED] [REDACTED] NOTICE OF DEPOSITION	0.10 hrs	175.00 /hr	17.50
09/15/2020	KA	REVIEW AND ANALYSIS OF ALL PLEADING AND DISCOVERY ON FILE TO DETERMINE STATUS OF THE CASE AND PLAN FOR RESOLUTION	0.80 hrs	200.00 /hr	160.00
09/16/2020	DO	DRAFT EMAIL TO CARRIER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
09/16/2020	DO	REVIEW EMAIL FROM CARRIER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
09/17/2020	DO	OUTLINE DEPOSITION QUESTIONS AND ORGANIZE RELATED DOCUMENTS TO PREPARE FOR DEPOSITION	2.00 hrs	175.00 /hr	350.00
09/18/2020	DO	ATTEND DEPOSITION OF WYETH RANCH	1.50 hrs	175.00 /hr	262.50
09/18/2020	DO	[REDACTED] EMAIL TO COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
09/18/2020	DO	REVIEW OUTLINE TO PREPARE FOR DEPOSITION OF WYETH RANCH	0.30 hrs	175.00 /hr	52.50
09/21/2020	DO	REVIEW EMAIL FROM COMMUNITY [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
09/22/2020	DO	START TO DRAFT MOTION FOR SUMMARY JUDGMENT	4.00 hrs	175.00 /hr	700.00
09/23/2020	DO	REVIEW EMAIL FORM COMMUNITY [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
09/23/2020	DO	[REDACTED] MAIL TO COMMUNITY [REDACTED] [REDACTED]	1.00 hrs	175.00 /hr	175.00
09/24/2020	DO	CONTINUE TO DRAFT MOTION FOR SUMMARY JUDGMENT	5.00 hrs	175.00 /hr	875.00
09/25/2020	DO	ORGANIZE EXHIBITS AND FINALIZE CITATIONS TO EXHIBITS FOR MOTION FOR SUMMARY JUDGMENT	1.50 hrs	175.00 /hr	262.50

October 23, 2020  
Invoice # 108027

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/25/2020	DO	CONTINUE TO DRAFT MOTION FOR SUMMARY JUDGMENT	4.00 hrs	175.00 /hr	700.00
TOTAL PROFESSIONAL SERVICES			56.00 hrs		\$9,830.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	1.20	1.20	200.00	\$240.00
HUMMEL, MEGAN	8.00	8.00	175.00	\$1,400.00
OCHOA, DAVID	46.80	46.80	175.00	\$8,190.00
TOTALS	56.00	56.00		\$9,830.00

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
08/17/2020	COURT FEES	3.50
09/25/2020	COURT FEES	209.50
TOTAL EXPENSES		\$213.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$9,830.00
TOTAL EXPENSES	\$213.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$10,043.00</b>
NET BALANCE FORWARD	\$560.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$560.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$10,043.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

July 16, 2020

Invoice # 106122 KA

Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through June 30, 2020

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
04/15/2020	MH	REVIEW SFR'S ACCOUNTING FOR INJUNCTION PENDING APPEAL	0.20 hrs	175.00 /hr	35.00
04/21/2020	MH	REVIEW ORDER REVERSING AND REMANDING DISTRICT COURT ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF LENDER	0.30 hrs	175.00 /hr	52.50
04/21/2020	MH	REVIEW AND ANALYZE 9352 CRANESBILL TRUST V. WELLS FARGO BANK, N.A., IN ONGOING EVALUATION OF ORDER REVERSING AND REMANDING DISTRICT COURT ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF LENDER	0.40 hrs	175.00 /hr	70.00
04/21/2020	MH	REVIEW AND ANALYZE DISTRICT COURT ORDER SETTING CIVIL BENCH TRIAL AND CALENDAR CALL	0.30 hrs	175.00 /hr	52.50
04/21/2020	MH	REVIEW MARCHAI'S COMPLAINT AND EXISTING ORDERS ON DISPOSITIVE MOTIONS IN ORDER TO ASCERTAIN WHICH CLAIMS SURVIVE FOR NOVEMBER 2020 TRIAL	0.60 hrs	175.00 /hr	105.00

July 16, 2020  
Invoice # 106122

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
04/22/2020	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.30 hrs	175.00 /hr	52.50
04/22/2020	MH	DRAFT CORRESPONDENCE TO CLIENT [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
04/24/2020	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.20 hrs	175.00 /hr	35.00
04/28/2020	MH	REVIEW LENDER AND SFR STIPULATION ON CONTINUATION OF INJUNCTION PENDING FURTHER COURT ORDER	0.10 hrs	175.00 /hr	17.50
04/28/2020	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.20 hrs	175.00 /hr	35.00
05/14/2020	MH	REVIEW SFR'S PROPERTY ACCOUNTING FOR INJUNCTION FOR APRIL 2020	0.20 hrs	175.00 /hr	35.00
06/19/2020	MH	REVIEW SFR'S MAY 2020 ACCOUNTING FOR THE CONTINUED INJUNCTION DURING THE PENDENCY OF LITIGATION	0.20 hrs	175.00 /hr	35.00
TOTAL PROFESSIONAL SERVICES			3.20 hrs		\$560.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	3.20	3.20	175.00	\$560.00
TOTALS	3.20	3.20		\$560.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$560.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$560.00</b>
NET BALANCE FORWARD	\$140.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$140.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$560.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. 38-2574325

April 8, 2020

Invoice # 104574 KA

Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through March 31, 2020

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
01/29/2020	MH	REVIEW ORDER ON MOTION TO STAY PENDING APPEAL	0.10 hrs	175.00 /hr	17.50
02/18/2020	MH	REVIEW SUPREME COURT DOCKET TO ASCERTAIN STATUS OF PURCHASER'S APPEAL	0.10 hrs	175.00 /hr	17.50
02/18/2020	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
03/03/2020	MH	REVIEW CORRESPONDENCE FROM MARCHAI TO SFR REGARDING FAILURE TO COMPLY WITH COURT ORDER	0.20 hrs	175.00 /hr	35.00
03/03/2020	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER REGARDING STATUS OF LITIGATION	0.10 hrs	175.00 /hr	17.50
03/05/2020	MH	REVIEW SFR'S ACCOUNTING FOR INJUNCTION PENDING APPEAL, JANUARY THROUGH FEBRUARY, 2020	0.20 hrs	175.00 /hr	35.00
TOTAL PROFESSIONAL SERVICES			0.80 hrs		\$140.00



April 8, 2020  
Invoice # 104574

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	0.80	0.80	175.00	\$140.00
TOTALS	0.80	0.80		\$140.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$140.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$140.00</b>
NET BALANCE FORWARD	\$402.50
TOTAL PAYMENTS AND ADJUSTMENTS	(\$402.50)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$140.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

January 21, 2020  
Invoice # 103173 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through December 31, 2019

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/14/2019	MH	REVIEW SUPREME COURT DOCKET TO ASCERTAIN STATUS OF SFR APPEAL	0.10 hrs	175.00 /hr	17.50
10/14/2019	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/14/2019	MH	DRAFT CORRESPONDENCE TO CLIENT [REDACTED]	0.20 hrs	175.00 /hr	35.00
12/13/2019	MH	REVIEW AND ANALYZE SFR'S MOTION TO STAY LITIGATION PENDING APPEAL AND REQUEST FOR INJUNCTION	0.40 hrs	175.00 /hr	70.00
12/16/2019	MH	REVIEW AND ANALYZE MARCHAI'S OPPOSITION TO SFR'S MOTION FOR STAY OF LITIGATION, REQUEST FOR INJUNCTION	0.70 hrs	175.00 /hr	122.50
12/16/2019	MH	REVIEW SFR'S AMENDED REPLY IN SUPPORT OF MOTION FOR STAY OF LITIGATION, REQUEST FOR INJUNCTION	0.30 hrs	175.00 /hr	52.50

January 21, 2020  
Invoice # 103173

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
12/16/2019	MH	DRAFT STATUS UPDATE TO ADJUSTER	0.10 hrs	175.00 /hr	17.50
12/16/2019	MH	REVIEW SFR'S REPLY IN SUPPORT OF MOTION TO STAY LITIGATION, REQUEST FOR INJUNCTION ON AN OST	0.20 hrs	175.00 /hr	35.00
12/27/2019	MH	REVIEW COURT ORDER GRANTING IN PART SFR MOTION TO STAY	0.20 hrs	175.00 /hr	35.00
TOTAL PROFESSIONAL SERVICES			2.30 hrs		\$402.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	2.30	2.30	175.00	\$402.50
TOTALS	2.30	2.30		\$402.50

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$402.50
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$402.50</b>
NET BALANCE FORWARD	\$35.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$35.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$402.50</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. 38-2574325

October 11, 2019  
Invoice # 101497 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through September 30, 2019

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/26/2019	MH	REVIEW SUPREME COURT DOCKET TO ASCERTAIN STATUS OF PURCHASER'S APPEAL	0.10 hrs	175.00 /hr	17.50
07/26/2019	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
TOTAL PROFESSIONAL SERVICES			0.20 hrs		\$35.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	0.20	0.20	175.00	\$35.00
TOTALS	0.20	0.20		\$35.00

October 11, 2019  
Invoice # 101497

**Lipson | Neilson**  
Attorneys and Counselors at Law

**SUMMARY**

TOTAL PROFESSIONAL SERVICES	\$35.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$35.00</b>
NET BALANCE FORWARD	\$122.50
TOTAL PAYMENTS AND ADJUSTMENTS	(\$122.50)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$35.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
 9900 COVINGTON CROSS DR #120  
 LAS VEGAS, NV 89144  
 TELEPHONE (702) 382-1500  
 WWW.LIPSONNEILSON.COM  
 TAX I.D. 38-2574325

May 16, 2019  
 Invoice # 99041 KA  
 Client # [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

For Professional Services Rendered Through April 30, 2019

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
 (7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
 POLICY #: 0250795593  
 CLAIM #: NPA06211  
 DEDUCTIBLE: \$1,000.00 - PAID  
 DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
02/19/2019	MH	REVIEW SUPREME COURT DOCKET TO ASCERTAIN STATUS OF APPEAL	0.20 hrs	175.00 /hr	35.00
02/19/2019	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
02/19/2019	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
04/02/2019	MH	REVIEW SUPREME COURT DOCKET IN ORDER TO ASSESS STATUS OF SFR'S APPEAL	0.20 hrs	175.00 /hr	35.00
04/02/2019	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
TOTAL PROFESSIONAL SERVICES			0.70 hrs		\$122.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	0.70	0.70	175.00	\$122.50

May 16, 2019  
Invoice # 99041

**Lipson | Neilson**  
*Attorneys and Counselors at Law*

TOTALS	<u>0.70</u>	<u>0.70</u>	<u>\$122.50</u>
--------	-------------	-------------	-----------------

SUMMARY

TOTAL PROFESSIONAL SERVICES	<u>\$122.50</u>
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b><u>\$122.50</u></b>
NET BALANCE FORWARD	\$52.50
TOTAL PAYMENTS AND ADJUSTMENTS	<u>(\$52.50)</u>
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u><u>\$122.50</u></u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
 9900 COVINGTON CROSS DR #120  
 LAS VEGAS, NV 89144  
 TELEPHONE (702) 382-1500  
 WWW.LIPSONNEILSON.COM  
 TAX I.D. 38-2574325

January 22, 2019  
 Invoice # 96823 KA  
 Client # [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

For Professional Services Rendered Through December 31, 2018

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
 (7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
 POLICY #: 0250795593  
 CLAIM #: NPA06211  
 DEDUCTIBLE: \$1,000.00 - PAID  
 DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/02/2018	MH	REVIEW ORDER GRANTING MARCHAI'S MOTION FOR ATTORNEY'S FEES AGAINST CRISTELA PEREZ	0.10 hrs	175.00 /hr	17.50
10/12/2018	MH	REVIEW AND ANALYZE COURT ORDER TO STATISTICALLY CLOSE CASE	0.10 hrs	175.00 /hr	17.50
11/01/2018	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
TOTAL PROFESSIONAL SERVICES			0.30 hrs		\$52.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	0.30	0.30	175.00	\$52.50
TOTALS	0.30	0.30		\$52.50



January 22, 2019  
Invoice # 96823

**Lipson | Neilson**  
Attorneys and Counselors at Law

**SUMMARY**

TOTAL PROFESSIONAL SERVICES	\$52.50
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$52.50</b>
NET BALANCE FORWARD	\$1,072.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$1,072.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$52.50</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

October 17, 2018  
Invoice # 95047 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through September 30, 2018

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

PROFESSIONAL SERVICES

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/18/2018	MH	PLAN AND PREPARE FOR STATUS CHECK ON MARCHAI'S APPLICATION FOR DEFAULT JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/18/2018	MH	REVIEW MARCHAI'S APPLICATION FOR DEFAULT JUDGMENT ON AN ORDER SHORTENING TIME, IN PREPARATION FOR AUGUST 6, 2018 PROVE UP HEARING	0.30 hrs	175.00 /hr	52.50
07/19/2018	MH	APPEAR FOR STATUS CHECK ON MARCHAI'S APPLICATION FOR DEFAULT JUDGMENT (NO TRAVEL INCLUDED)	0.90 hrs	175.00 /hr	157.50
07/28/2018	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/03/2018	MH	REVIEW CORRESPONDENCE FROM MARCHAI REGARDING WITNESS FOR PROVE UP HEARING	0.10 hrs	175.00 /hr	17.50

October 17, 2018  
Invoice # 95047

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/03/2018	RR	ANALYZE FILE DOCUMENTS TO DETERMINE PROCEDURAL STATUS, INCLUDING STATUS OF ONGOING DISCOVERY MATTERS, POSSIBLE NEED FOR WRITTEN DISCOVERY TO OTHER PARTIES AND/OR DISCLOSURES/SUPPLEMENTATION	0.60 hrs	95.00 /hr	57.00
08/06/2018	MH	REVIEW PROPOSED ORDER FOR ENTRY OF FINAL JUDGMENT AND EXHIBITS FOR PROVE UP HEARING, IN PREPARATION FOR ATTENDANCE AT THE SAME	0.60 hrs	175.00 /hr	105.00
08/06/2018	MH	APPEAR FOR PROVE UP HEARING [NO TRAVEL INCLUDED]	2.60 hrs	175.00 /hr	455.00
08/10/2018	MH	REVIEW SFR'S AMENDED NOTICE OF APPEAL	0.10 hrs	175.00 /hr	17.50
08/10/2018	MH	REVIEW JUDGMENT ENTERED IN FAVOR OF MARCHAI TRUST, IN PREPARATION FOR [REDACTED]	0.30 hrs	175.00 /hr	52.50
08/10/2018	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/10/2018	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/27/2018	MH	REVIEW MARCHAI'S MOTION FOR ATTORNEY'S FEES TO DETERMINE ANY CLAIMS AGAINST CLIENT	0.30 hrs	175.00 /hr	52.50
TOTAL PROFESSIONAL SERVICES			6.40 hrs		\$1,072.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	5.80	5.80	175.00	\$1,015.00
RITTENHOUSE, RENEE	0.60	0.60	95.00	\$57.00
TOTALS	6.40	6.40		\$1,072.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$1,072.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$1,072.00</b>
NET BALANCE FORWARD	\$1,097.50
TOTAL PAYMENTS AND ADJUSTMENTS	(\$1,097.50)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$1,072.00</u></b>

October 17, 2018  
Invoice # 95047

Lipson | Neilson  
*Attorneys and Counselors at Law*

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
 9900 COVINGTON CROSS DR #120  
 LAS VEGAS, NV 89144  
 TELEPHONE (702) 382-1500  
 WWW.LIPSONNEILSON.COM  
 TAX I.D. [REDACTED]

July 19, 2018  
 Invoice # 93342 KA  
 Client # [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

For Professional Services Rendered Through June 30, 2018

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
 (7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
 POLICY #: 0250795593  
 CLAIM #: NPA06211  
 DEDUCTIBLE: \$1,000.00 - PAID  
 DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
04/16/2018	MH	REVIEW SFR'S MOTION FOR APPLICATION OF DEFAULT JUDGMENT AGAINST BORROWERS ON AN ORDER SHORTENING TIME	0.30 hrs	175.00 /hr	52.50
04/16/2018	MH	REVIEW SUPREME COURT DOCKET, IN PREPARATION FOR DRAFTING STATUS UPDATE TO CARRIER	0.10 hrs	175.00 /hr	17.50
04/16/2018	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM CARRIER RE: [REDACTED]	0.20 hrs	175.00 /hr	35.00
04/26/2018	MH	REVIEW JUDGMENT BY DEFAULT ENTERED AGAINST BORROWERS IN FAVOR OF SFR	0.10 hrs	175.00 /hr	17.50
05/24/2018	LJZ	ATTEND COURT MANDATED STATUS CHECK REGARDING APPEAL.	3.30 hrs	200.00 /hr	660.00
05/29/2018	MH	REVIEW COURT MINUTE ORDER REGARDING JUNE 2018 STATUS CHECK	0.10 hrs	175.00 /hr	17.50
06/20/2018	DAM	PLAN AND PREPARE FOR COURT STATUS CHECK	0.40 hrs	175.00 /hr	70.00
06/21/2018	DAM	APPEAR/ATTEND COURT STATUS CHECK RE: APPEAL	1.30 hrs	175.00 /hr	227.50

July 19, 2018  
Invoice # 93342

**Lipson Neilson**  
Attorneys and Counselors at Law

TOTAL PROFESSIONAL SERVICES

5.80 hrs

\$1,097.50

TIMEKEEPER RECAP

WORKED HRS

HRS TO BILL

RATE

FEES

ZASTROW, LISA J

3.30

3.30

200.00

\$660.00

HUMMEL, MEGAN

0.80

0.80

175.00

\$140.00

MARKMAN, DAVID

1.70

1.70

175.00

\$297.50

TOTALS

5.80

5.80

\$1,097.50

SUMMARY

TOTAL PROFESSIONAL SERVICES

\$1,097.50

TOTAL NEW CHARGES FOR THIS INVOICE

\$1,097.50

NET BALANCE FORWARD

\$213.43

TOTAL PAYMENTS AND ADJUSTMENTS

(\$213.43)

**TOTAL BALANCE NOW DUE (If Not Previously Paid)**

**\$1,097.50**

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

April 26, 2018  
Invoice # 91887 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through March 31, 2018

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
01/04/2018	MH	REVIEW SUPREME COURT DOCKET FOR SFR APPEAL, [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
01/04/2018	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
01/04/2018	MH	COMMUNICATE WITH SFR REGARDING JANUARY 18, 2018 MSC	0.30 hrs	175.00 /hr	52.50
01/17/2018	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
01/24/2018	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
02/07/2018	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED] [REDACTED]	0.30 hrs	175.00 /hr	52.50

April 26, 2018  
Invoice # 91887

**Lipson | Neilson**  
*Attorneys and Counselors at Law*

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
03/08/2018	RR	CONTINUE ANALYZING FILE DOCUMENTS TO DETERMINE FUTURE DISCOVERY MATTERS, INCLUDING POSSIBLE NEED FOR [SUPPLEMENTAL] DISCLOSURE OF ADDITIONAL DOCUMENTS AND/OR WITNESSES; POSSIBLE NEED FOR [ADDITIONAL] WRITTEN DISCOVERY AND OTHER ONGOING DISCOVERY MATTERS	0.20 hrs	95.00 /hr	19.00
TOTAL PROFESSIONAL SERVICES			1.20 hrs		\$194.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	1.00	1.00	175.00	\$175.00
RITTENHOUSE, RENEE	0.20	0.20	95.00	\$19.00
TOTALS	1.20	1.20		\$194.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$194.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$194.00</b>
NET BALANCE FORWARD	\$647.50
TOTAL PAYMENTS AND ADJUSTMENTS	(\$628.07)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$213.43</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>



# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

January 30, 2018  
Invoice # 90272 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through December 31, 2017

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
10/06/2017	MH	REVIEW DECISION AND ORDER ON MSJ, IN PREPARATION FOR [REDACTED] [REDACTED]	0.70 hrs	175.00 /hr	122.50
10/10/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/19/2017	MH	APPEAR FOR TELECONFERENCE [REDACTED] [REDACTED]	0.60 hrs	175.00 /hr	105.00
10/19/2017	MH	REVIEW AND ANALYZE MARCHAI'S MEMORANDUM OF COSTS AND DISBURSEMENTS	0.30 hrs	175.00 /hr	52.50
10/27/2017	MH	REVIEW AND ANALYZE SFR MOTION TO RETAX COSTS	0.30 hrs	175.00 /hr	52.50
11/06/2017	MH	REVIEW AND ANALYZE SFR'S NOTICE OF APPEAL	0.10 hrs	175.00 /hr	17.50
11/06/2017	MH	REVIEW SFR CASE APPEAL STATEMENT	0.20 hrs	175.00 /hr	35.00
11/06/2017	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50

January 30, 2018  
Invoice # 90272

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
11/06/2017	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED]	0.20 hrs	175.00 /hr	35.00
11/10/2017	MH	REVIEW MARCHAI'S REPLY IN SUPPORT OF MEMORANDUM OF FEES AND COSTS, IN PREPARATION FOR APPEARANCE AT HEARING ON THE SAME	0.40 hrs	175.00 /hr	70.00
11/13/2017	MH	REVIEW SFR'S REPLY IN SUPPORT OF MOTION TO RETAX, IN PREPARATION FOR ATTENDANCE AT HEARING ON THE SAME	0.20 hrs	175.00 /hr	35.00
11/17/2017	MH	REVIEW AND RESPOND TO MULTIPLE CORRESPONDENCE FROM COUNSEL REGARDING ORDER DENYING SFR'S MOTION TO RETAX	0.30 hrs	175.00 /hr	52.50
11/20/2017	MH	COMMUNICATE WITH COURT REGARDING STATUS OF NOVEMBER 21, 2017 HEARING ON MOTION TO RETAX	0.20 hrs	175.00 /hr	35.00
TOTAL PROFESSIONAL SERVICES			3.70 hrs		\$647.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	3.70	3.70	175.00	\$647.50
TOTALS	3.70	3.70		\$647.50

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$647.50
TOTAL NEW CHARGES FOR THIS INVOICE	\$647.50
NET BALANCE FORWARD	\$1,073.59
TOTAL PAYMENTS AND ADJUSTMENTS	(\$1,073.59)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b>\$647.50</b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

October 25, 2017  
Invoice # 88400 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through September 30, 2017

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**EXPENSES**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
08/24/2017	LITIGATION SUPPORT VENDORS (NATIONWIDE LEGAL)	141.00
08/24/2017	LITIGATION SUPPORT VENDORS (NATIONWIDE LEGAL)	112.00
08/25/2017	LITIGATION SUPPORT VENDORS (NATIONWIDE LEGAL)	134.00
08/29/2017	LITIGATION SUPPORT VENDORS (NATIONWIDE LEGAL)	142.00
	TOTAL EXPENSES	<u>\$529.00</u>

October 25, 2017  
Invoice # 88400

Lipson | Neilson  
Attorneys and Counselors at Law

SUMMARY

TOTAL EXPENSES	\$529.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$529.00</b>
NET BALANCE FORWARD	\$4,079.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$3,534.41)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$1,073.59</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

## Attorneys and Counselors at Law

TAX I.D. [REDACTED]

Client # [REDACTED]

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

POLICY #: 0250795593

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/04/2017	MH	REVIEW MARCHAI'S INITIAL AND SUPPLEMENTAL LISTS OF DOCUMENTS AND WITNESSES, IN PREPARATION FOR DRAFTING PRETRIAL DISCLOSURES	0.40 hrs	175.00 /hr	70.00
08/04/2017	MH	DRAFT SFR'S INITIAL AND SUPPLEMENTAL LISTS OF DOCUMENTS AND WITNESSES, IN PREPARATION FOR DRAFTING PRETRIAL DISCLOSURES	0.30 hrs	175.00 /hr	52.50
08/04/2017	MH	DRAFT PRETRIAL DISCLOSURES	1.90 hrs	175.00 /hr	332.50
08/04/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM PLAINTIFF'S COUNSEL REGARDING STATUS OF PRETRIAL DISCLOSURES	0.20 hrs	175.00 /hr	35.00
08/07/2017	MH	COMMUNICATE WITH ALL COUNSEL REGARDING STIPULATION TO EXTEND DEADLINE TO OPPOSE MOTIONS AND CONTINUE AUGUST 29, 2017 HEARING	0.30 hrs	175.00 /hr	52.50
08/10/2017	MH	REVIEW AND ANALYZE MARCHAI BT'S PRETRIAL DISCLOSURES, IN ORDER TO ASSESS POTENTIAL OBJECTIONS	0.40 hrs	175.00 /hr	70.00

September 21, 2017  
Invoice # 87734

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/11/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.20 hrs	175.00 /hr	35.00
08/15/2017	JST	PREPARE TRIAL SUBPOENA TO WITNESS SCOTT DUGAN	0.40 hrs	95.00 /hr	38.00
08/15/2017	JST	PREPARE TRIAL SUBPOENA TO WITNESS PMK OF SFR INVESTMENTS POOL 1, LLC	0.40 hrs	95.00 /hr	38.00
08/15/2017	JST	PREPARE TRIAL SUBPOENA TO WITNESS PMK OF ALESSI & KOENIG, LLC	0.40 hrs	95.00 /hr	38.00
08/15/2017	JST	PREPARE TRIAL SUBPOENA TO WITNESS CHAIM FREEMAN	0.40 hrs	95.00 /hr	38.00
08/16/2017	MH	REVIEW AND ANALYZE MARCHAI'S OPPOSITION TO MSJ	0.90 hrs	175.00 /hr	157.50
08/16/2017	MH	REVIEW LEGAL ARGUMENTS SET FORTH IN MARCHAI'S JANUARY 2016 MSJ AND DOCUMENTS ATTACHED THERETO	1.20 hrs	175.00 /hr	210.00
08/16/2017	MH	REVIEW PAYMENT RECORDS ATTACHED TO SFR'S MSJ	0.20 hrs	175.00 /hr	35.00
08/16/2017	MH	REVIEW DEFICIENCY LANGUAGE IN 2011 AND 2012 NOTICES OF DEFAULT AND ELECTIONS TO SELL	0.30 hrs	175.00 /hr	52.50
08/16/2017	MH	REVIEW AND ANALYZE CASE LAW RE: WILLINGNESS TO PAY INSUFFICIENT TO SATISFY LIEN	0.60 hrs	175.00 /hr	105.00
08/16/2017	MH	DRAFT INTRODUCTION TO REPLY BRIEF	1.30 hrs	175.00 /hr	227.50
08/16/2017	MH	DRAFT LEGAL ARGUMENT RE: NO ADMISSIBLE EVIDENCE [REDACTED]	0.80 hrs	175.00 /hr	140.00
08/16/2017	MH	DRAFT LEGAL ARGUMENT RE: NO ADMISSIBLE [REDACTED]	0.40 hrs	175.00 /hr	70.00
08/17/2017	MH	DRAFT LEGAL ARGUMENTS RE: NO ADMISSIBLE EVIDENCE [REDACTED]	2.70 hrs	175.00 /hr	472.50
08/17/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM MARCHAI'S COUNSEL REGARDING STIPULATIONS AND ORDERS ON PRETRIAL MEMORANDUM AND HEARINGS ON MILS AND MSJS	0.30 hrs	175.00 /hr	52.50
08/21/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50

September 21, 2017  
Invoice # 87734

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
08/21/2017	MH	COMMUNICATE WITH COURT REGARDING CHANGE IN SCOPE OF HEARING ON MSJS	0.20 hrs	175.00 /hr	35.00
08/21/2017	MH	COMMUNICATE WITH ALL COUNSEL REGARDING CHANGE IN SCOPE OF HEARING ON MSJS	0.30 hrs	175.00 /hr	52.50
08/21/2017	MH	REVIEW AND REVISE TRIAL SUBPOENAS	0.20 hrs	175.00 /hr	35.00
08/21/2017	MH	REVIEW MARCHAI'S OBJECTIONS TO PRETRIAL DISCLOSURES	0.20 hrs	175.00 /hr	35.00
08/21/2017	MH	PLAN AND PREPARE FOR SUMMARY JUDGMENT HEARING	2.20 hrs	175.00 /hr	385.00
08/22/2017	MH	ROUND TRIP PRIVATE TRAVEL TO HEARING ON SUMMARY JUDGMENT MOTIONS	1.30 hrs	175.00 /hr	227.50
08/22/2017	MH	APPEAR FOR HEARING ON SUMMARY JUDGMENT MOTIONS [NO TRAVEL INCLUDED]	2.40 hrs	175.00 /hr	420.00
08/22/2017	MH	COMMUNICATE WITH COUNSEL REGARDING PROPOSED JOINT TRIAL EXHIBITS AND OTHER TRIAL PREPARATION	0.40 hrs	175.00 /hr	70.00
08/22/2017	MH	COMMUNICATE WITH ADJUSTER REGARDING [REDACTED]	0.10 hrs	175.00 /hr	17.50
08/28/2017	MH	REVIEW AND ANALYZE SFR'S PRETRIAL DISCLOSURES	0.20 hrs	175.00 /hr	35.00
08/28/2017	MH	REVIEW SFR'S OBJECTIONS TO MARCHAI'S PRETRIAL DISCLOSURES	0.10 hrs	175.00 /hr	17.50
08/29/2017	MH	ROUND TRIP PRIVATE TRAVEL TO CALENDAR CALL	0.70 hrs	175.00 /hr	122.50
08/29/2017	MH	APPEAR FOR CALENDAR CALL [NO TRAVEL INCLUDED]	1.60 hrs	175.00 /hr	280.00
TOTAL PROFESSIONAL SERVICES			24.00 hrs		\$4,072.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	22.40	22.40	175.00	\$3,920.00
SINENENG-TEJADA, JOSEPHINE	1.60	1.60	95.00	\$152.00
TOTALS	24.00	24.00		\$4,072.00

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
08/21/2017	COURT FEES	3.50
08/22/2017	COURT FEES	3.50

September 21, 2017  
Invoice # 87734

TOTAL EXPENSES	\$7.00
<u>SUMMARY</u>	
TOTAL PROFESSIONAL SERVICES	\$4,072.00
TOTAL EXPENSES	\$7.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$4,079.00</b>
NET BALANCE FORWARD	\$3,097.00
TOTAL PAYMENTS AND ADJUSTMENTS	(\$3,097.00)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$4,079.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>



# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

August 18, 2017  
Invoice # 86993 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through July 31, 2017

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/05/2017	MH	DRAFT PRETRIAL REPORT	2.20 hrs	175.00 /hr	385.00
07/05/2017	MH	DRAFT TRIAL BUDGET	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	REVIEW MARCHAI'S COMPLAINT, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	REVIEW ALESSI & KOENIG'S COLLECTION FILE, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	2.80 hrs	175.00 /hr	490.00
07/05/2017	MH	REVIEW AND ANALYZE MARCHAI'S LISTS OF DOCUMENTS AND WITNESSES, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	REVIEW CC&RS, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	REVIEW NOTICE REQUIREMENTS SET FORTH IN OLD VERSION OF NRS 116, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	0.60 hrs	175.00 /hr	105.00

August 18, 2017  
Invoice # 86993

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/05/2017	MH	REVIEW BRIEFING IN RELATED CASES REGARDING DEFICIENCY IN PAYMENT UNDER SECTION 116.31162, IN PREPARATION FOR DRAFTING MOTION FOR SUMMARY JUDGMENT	0.90 hrs	175.00 /hr	157.50
07/05/2017	MH	DRAFT INTRODUCTION TO MOTION FOR SUMMARY JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	DRAFT STATEMENT OF UNDISPUTED FACTS IN MOTION FOR SUMMARY JUDGMENT	1.40 hrs	175.00 /hr	245.00
07/05/2017	MH	DRAFT STANDARD OF REVIEW IN MOTION FOR SUMMARY JUDGMENT	0.30 hrs	175.00 /hr	52.50
07/05/2017	MH	DRAFT LEGAL ARGUMENT REGARDING DUE PROCESS VIOLATIONS AND REGULATORY TAKINGS UNDER SATICOY BAY	0.60 hrs	175.00 /hr	105.00
07/06/2017	MH	DRAFT LEGAL ARGUMENT REGARDING ADEQUACY OF RECORDED NOTICES, COMMERCIAL REASONABLENESS, AND BORROWER SATISFACTION OF LIEN	2.40 hrs	175.00 /hr	420.00
07/06/2017	MH	DRAFT LEGAL ARGUMENT REGARDING TORTIOUS INTERFERENCE WITH CONTRACT	0.90 hrs	175.00 /hr	157.50
07/10/2017	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
07/11/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
07/12/2017	MH	APPEAR FOR TELECONFERENCE [REDACTED] [REDACTED]	0.40 hrs	175.00 /hr	70.00
07/21/2017	MH	DRAFT FINAL REVISIONS TO MOTION FOR SUMMARY JUDGMENT	1.30 hrs	175.00 /hr	227.50
07/27/2017	MH	REVIEW AND ANALYZE SFR'S MOTION FOR SUMMARY JUDGMENT TO DETERMINE NECESSITY OF FILING OPPOSITION	0.40 hrs	175.00 /hr	70.00
07/27/2017	MH	REVIEW AND ANALYZE MARCHAI'S MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY	0.60 hrs	175.00 /hr	105.00
TOTAL PROFESSIONAL SERVICES			16.50 hrs		\$2,887.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
HUMMEL, MEGAN	16.50	16.50	175.00	\$2,887.50
TOTALS	16.50	16.50		\$2,887.50

August 18, 2017  
Invoice # 86993

**Lipson | Neilson**  
Attorneys and Counselors at Law

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
07/25/2017	COURT FEES	209.50
	TOTAL EXPENSES	<u>\$209.50</u>

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$2,887.50
TOTAL EXPENSES	<u>\$209.50</u>
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$3,097.00</b>
NET BALANCE FORWARD	\$3,488.50
TOTAL PAYMENTS AND ADJUSTMENTS	<u>(\$3,488.50)</u>
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$3,097.00</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

July 21, 2017  
Invoice # 86402 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through June 30, 2017

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
06/01/2017	KA	TELEPHONE CONFERENCE [REDACTED] [REDACTED]	0.20 hrs	200.00 /hr	40.00
06/06/2017	MH	DRAFT CONFIDENTIAL MEDIATION BRIEF	0.90 hrs	175.00 /hr	157.50
06/06/2017	MH	DRAFT CORRESPONDENCE TO MARCHAI'S COUNSEL REGARDING NRED MEDIATION AND SETTLEMENT DEMAND	0.20 hrs	175.00 /hr	35.00
06/06/2017	MH	REVIEW AND REVISE DRAFT INITIAL LIST OF DOCUMENTS AND WITNESSES, IN PREPARATION FOR DISCLOSURE OF THE SAME	0.20 hrs	175.00 /hr	35.00
06/07/2017	MH	COMMUNICATE WITH BANK'S COUNSEL REGARDING SETTLEMENT DEMAND AND GLOBAL SETTLEMENT POTENTIAL	0.40 hrs	175.00 /hr	70.00
06/07/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE TO COUNSEL FOR SFR REGARDING NRED MEDIATION AND GLOBAL SETTLEMENT POTENTIAL	0.30 hrs	175.00 /hr	52.50

July 21, 2017  
Invoice # 86402

Lipson Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
06/08/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM ADJUSTER [REDACTED] [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
06/09/2017	MH	DRAFT CORRESPONDENCE TO CLIENT [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
06/09/2017	MH	COMMUNICATE WITH COUNSEL FOR SFR REGARDING SFR APPEARANCE AT NRED MEDIATION	0.30 hrs	175.00 /hr	52.50
06/12/2017	MH	PREPARE FOR NRED MEDIATION	0.30 hrs	175.00 /hr	52.50
06/12/2017	MH	APPEAR FOR NRED MEDIATION [NO TRAVEL INCLUDED]	0.40 hrs	175.00 /hr	70.00
06/12/2017	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
06/12/2017	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
06/21/2017	NC	ANALYZE FILE DOCUMENTS AS FACT INVESTIGATION REGARDING IMPLICATIONS TOWARD HOA, CLAIMS OF IMPROPER NOTICE, TENDER ISSUES AND DELIQUENCY OF PAYMENTS TOWARD FIRST DEED TO TRUST BY HOMEOWNER FOR ANTICIPATED FURTHER PROCEEDINGS.	1.50 hrs	95.00 /hr	142.50
06/21/2017	MH	COMMUNICATE WITH MARCHAI'S COUNSEL REGARDING DEMAND FOR PRIOR DISCOVERY	0.20 hrs	175.00 /hr	35.00
06/21/2017	MH	REVIEW MARCHAI'S THIRD SUPPLEMENTAL DISCLOSURE, IN ONGOING ASSESSMENT OF POTENTIAL LIABILITY AND EXPOSURE	0.10 hrs	175.00 /hr	17.50
06/21/2017	MH	REVIEW SFR'S SCEOND SUPPLEMENTAL NRCP 16.1 DISCLOSURE, IN ONGOING ASSESSMENT OF POTENTIAL LIABILITY AND EXPOSURE	0.20 hrs	175.00 /hr	35.00
06/22/2017	MH	ROUNDTRIP PRIVATE TRAVEL TO STATUS CONFERENCE	0.70 hrs	175.00 /hr	122.50
06/22/2017	MH	APPEAR FOR STATUS CONFERENCE [NO TRAVEL INCLUDED]	1.10 hrs	175.00 /hr	192.50
06/28/2017	MH	REVIEW AND ANALYZE MARCHAI'S RESPONSES TO HOA'S WRITTEN DISCOVERY REQUESTS	0.60 hrs	175.00 /hr	105.00
TOTAL PROFESSIONAL SERVICES			8.30 hrs		\$1,337.50

July 21, 2017  
Invoice # 86402

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	0.20	0.20	200.00	\$40.00
HUMMEL, MEGAN	6.60	6.60	175.00	\$1,155.00
COOPER, NANCY	1.50	1.50	95.00	\$142.50
TOTALS	8.30	8.30		\$1,337.50

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
05/31/2017	DELIVERY TO KIM GILBERT EBRON (NATIONWIDE LEGAL)	35.00
	TOTAL EXPENSES	\$35.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$1,337.50
TOTAL EXPENSES	\$35.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$1,372.50</b>
NET BALANCE FORWARD	\$2,116.00
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$3,488.50</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>



June 26, 2017  
Invoice # 85761

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
02/06/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
02/06/2017	MH	DRAFT CORRESPONDENCE TO PLAINTIFF'S COUNSEL REGARDING HOA POSITION ON NON-BINDING MEDIATION	0.20 hrs	175.00 /hr	35.00
02/06/2017	MH	COMMUNICATE WITH PLAINTIFF'S COUNSEL REGARDING AGREEMENT TO AN MSC RATHER THAN A PRIVATE MEDIATOR	0.30 hrs	175.00 /hr	52.50
02/08/2017	MH	REVIEW SFR'S ANSWER AND AFFIRMATIVE DEFENSES TO WYETH RANCH'S COMPLAINT, IN ONGOING ASSESSMENT OF POTENTIAL LIABILITY AND EXPOSURE	0.20 hrs	175.00 /hr	35.00
03/22/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM CARRIER [REDACTED]	0.20 hrs	200.00 /hr	40.00
04/03/2017	KA	ATTEND EARLY CASE CONFERENCE WITH ALL COUNSEL	0.90 hrs	200.00 /hr	180.00
04/25/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM OPPOSING COUNSEL RE SUPPLEMENTAL JOINT CASE CONFERENCE REPORT, INCLUDING REVIEW OF SAME	0.40 hrs	200.00 /hr	80.00
05/08/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM CARRIER [REDACTED]	0.20 hrs	200.00 /hr	40.00
05/09/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM OPPOSING COUNSEL RE PROPOSED CONFERENCE REPORT	0.20 hrs	200.00 /hr	40.00
05/09/2017	KA	PREPARATION OF CORRESPONDENCE TO OPPOSING COUNSEL APPROVING PROPOSED JOINT CASE CONFERENCE REPORT	0.20 hrs	200.00 /hr	40.00
05/11/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM OPPOSING COUNSEL RE JOINT CASE CONFERENCE REPORT FOR SIGNATURE BY ALL COUNSEL	0.20 hrs	200.00 /hr	40.00
05/13/2017	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM OPPOSING COUNSEL RE REQUEST TO PICK UP A WET SIGNATURE AT OUR OFFICE	0.20 hrs	200.00 /hr	40.00
05/22/2017	NC	PREPARE WYETH RANCH HOA'S FIRST SET OF INTERROGATORIES TO MARCHAI BT.	0.50 hrs	95.00 /hr	47.50
05/22/2017	NC	PREPARE WYETH RANCH HOA'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO MARCHAI BT	0.60 hrs	95.00 /hr	57.00



June 26, 2017  
Invoice # 85761

Lipson | Neilson  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
05/22/2017	NC	PREPARE WYETH RANCH HOA'S FIRST SET OF REQUESTS FOR ADMISSIONS TO MARCHAI BT.	0.50 hrs	95.00 /hr	47.50
05/22/2017	NC	ANALYZE HOA DOCUMENTS FOR RELEVANCE, CONFIDENTIAL AND/OR PRIVILEGED INFORMATION PRIOR TO DISCLOSURE OF SAME.	1.30 hrs	95.00 /hr	123.50
05/22/2017	MH	REVIEW CORRESPONDENCE FROM CHRISTOPHER MCCULLOUGH REGARDING JUNE 12, 2017 NRED MEDIATION, IN PREPARATION FOR ATTENDANCE AT THE SAME	0.20 hrs	175.00 /hr	35.00
05/22/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COUNSEL FOR MARCHAI BT REGARDING PROPOSED CHANGE IN SCOPE OF JUNE 12, 2017 NRED MEDIATION	0.10 hrs	175.00 /hr	17.50
05/22/2017	MH	REVIEW EXPERT REPORT DISCLOSED BY MARCHAI, IN PREPARATION FOR DRAFTING SUPPLEMENTAL STATUS REPORT	0.40 hrs	175.00 /hr	70.00
05/22/2017	MH	REVIEW ACCOUNTING LEDGERS TO DETERMINE STATUS OF BORROWERS' PAYMENT PLAN DURING FORECLOSURE PROCEEDINGS, [REDACTED] [REDACTED] [REDACTED]	0.60 hrs	175.00 /hr	105.00
05/22/2017	MH	DRAFT SUPPLEMENTAL STATUS REPORT TO CARRIER	0.80 hrs	175.00 /hr	140.00
05/22/2017	MH	DRAFT CORRESPONDENCE TO EXPERT MIKE BRUNSON [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
05/22/2017	MH	REVIEW CORRESPONDENCE FROM MIKE BRUNSON [REDACTED] [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
05/22/2017	MH	DRAFT REVISIONS TO WRITTEN DISCOVERY RESPONSES TO MARCHAI BT	0.30 hrs	175.00 /hr	52.50
05/23/2017	NC	PREPARE WYETH RANCH HOA'S INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS.	0.70 hrs	95.00 /hr	66.50
05/23/2017	NC	PREPARE PRIVILEGE LOG.	0.30 hrs	95.00 /hr	28.50
05/23/2017	NC	ANALYZE COMPLAINT AS FACT INVESTIGATION TO IDENTIFY POTENTIAL WITNESSES AND DOCUMENTS FOR INITIAL DISCLOSURE.	0.30 hrs	95.00 /hr	28.50

June 26, 2017  
Invoice # 85761

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
05/24/2017	MH	REVIEW CORRESPONDENCE FROM ADJUSTER [REDACTED]	0.10 hrs	175.00 /hr	17.50
05/24/2017	MH	COMMUNICATE WITH SFR REGARDING [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
05/30/2017	MH	REVIEW SFR'S REBUTTAL EXPERT DISCLOSURE AND ATTACHED REPORT, IN PREPARATION FOR FILING JOINDER TO THE SAME	0.40 hrs	175.00 /hr	70.00
05/30/2017	NC	PREPARE JOINDER IN SFR INVESTMENTS POOL 1 LLC'S REBUTTAL EXPERT DISCLOSURE.	0.40 hrs	95.00 /hr	38.00
05/30/2017	NC	ANALYZE SFR INVESTMENTS POOL 1 LLC'S REBUTTAL EXPERT DISCLOSURE AS FACT INVESTIGATION FOR POSSIBLE JOINDER.	0.20 hrs	95.00 /hr	19.00
TOTAL PROFESSIONAL SERVICES			12.50 hrs		\$1,866.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	2.50	2.50	200.00	\$500.00
HUMMEL, MEGAN	5.20	5.20	175.00	\$910.00
COOPER, NANCY	4.80	4.80	95.00	\$456.00
TOTALS	12.50	12.50		\$1,866.00

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
05/26/2017	ARBITRATION/MEDIATION	250.00
	TOTAL EXPENSES	\$250.00

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$1,866.00
TOTAL EXPENSES	\$250.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$2,116.00</b>
NET BALANCE FORWARD	\$2,539.50
TOTAL PAYMENTS AND ADJUSTMENTS	(\$2,539.50)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$2,116.00</u></b>

June 26, 2017  
Invoice # 85761

Lipson | Neilson  
*Attorneys and Counselors at Law*

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

**LIPSON NEILSON P.C.**  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

February 24, 2017  
Invoice # 83317 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through January 31, 2017

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
01/03/2017	JWF	PREPARATION FOR HEARING RE MOTION TO DISMISS	0.30 hrs	175.00 /hr	52.50
01/03/2017	JWF	ATTEND HEARING RE MOTION TO DISMISS	0.40 hrs	175.00 /hr	70.00
01/04/2017	JWF	ANALYZE AND EVALUATE PROPOSED ORDER RE WYETH MOTION TO DISMISS	0.20 hrs	175.00 /hr	35.00
01/04/2017	JWF	ANALYZE AND EVALUATE PROPOSED ORDER RE SFR MOTION TO DISMISS/AMEND	0.20 hrs	175.00 /hr	35.00
01/04/2017	MH	DRAFT CORRESPONDENCE TO PLAINTIFF'S COUNSEL REGARDING STATUS OF NRED RESPONSE	0.10 hrs	175.00 /hr	17.50
01/04/2017	MH	DRAFT RESPONSE TO NRED CLAIM 17-99	0.20 hrs	175.00 /hr	35.00
01/04/2017	MH	DRAFT CORRESPONDENCE TO ADJUSTER [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
01/04/2017	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50

February 24, 2017  
Invoice # 83317

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
01/05/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COUNSEL REGARDING STATUS OF SETTLEMENT DISCUSSIONS WITH SFR	0.20 hrs	175.00 /hr	35.00
01/24/2017	MH	DRAFT CORRESPONDENCE TO COUNSEL REGARDING STATUS OF ORDER ON MOTION TO DISMISS	0.10 hrs	175.00 /hr	17.50
01/24/2017	MH	REVIEW ACCOUNTING LEDGERS IN ORDER TO ASSESS MARCHAI CLAIM REGARDING BORROWER PAYMENT OF SUPER PRIORITY LIEN, [REDACTED] [REDACTED] [REDACTED]	1.30 hrs	175.00 /hr	227.50
01/24/2017	MH	DRAFT SUPPLEMENTAL STATUS REPORT	0.90 hrs	175.00 /hr	157.50
01/26/2017	MH	DRAFT REVISIONS TO SUPPLEMENTAL STATUS REPORT [REDACTED] [REDACTED]	0.20 hrs	175.00 /hr	35.00
01/26/2017	MH	DRAFT ANSWER AND AFFIRMATIVE DEFENSES TO MARCHAI'S COMPLAINT	1.90 hrs	175.00 /hr	332.50
01/26/2017	KA	REVIEW AND FINALIZE STATUS REPORT TO CARRIER	0.20 hrs	200.00 /hr	40.00
01/27/2017	MH	REVIEW AFFIDAVIT OF SERVICE ON ALESSI & KOENIG, IN PREPARATION FOR DRAFTING SUGGESTION OF BANKRUPTCY	0.10 hrs	175.00 /hr	17.50
01/27/2017	MH	REVIEW AND ANALYZE 11 USC 362(A)(1), IN PREPARATION FOR DRAFTING SUGGESTION OF BANKRUPTCY	0.30 hrs	175.00 /hr	52.50
01/27/2017	MH	REVIEW AND ANALYZE IN RE BLOOM, IN PREPARATION FOR DRAFTING SUGGESTION OF BANKRUPTCY	0.40 hrs	175.00 /hr	70.00
01/27/2017	MH	DRAFT SUGGESTION OF BANKRUPTCY	0.70 hrs	175.00 /hr	122.50
01/30/2017	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED] [REDACTED]	0.30 hrs	175.00 /hr	52.50
TOTAL PROFESSIONAL SERVICES			8.20 hrs		\$1,440.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	0.20	0.20	200.00	\$40.00
HUMMEL, MEGAN	6.90	6.90	175.00	\$1,207.50
FUNAI, JULIE	1.10	1.10	175.00	\$192.50
TOTALS	8.20	8.20		\$1,440.00

February 24, 2017  
Invoice # 83317

**Lipson | Neilson**  
Attorneys and Counselors at Law

**EXPENSES**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
01/06/2017	COURT FEES (NRED)	50.00
01/31/2017	COURT FEES	7.00
01/31/2017	LITIGATION SUPPORT VENDORS (NATIONWIDE LEGAL)	10.00
	TOTAL EXPENSES	<u>\$67.00</u>

**SUMMARY**

TOTAL PROFESSIONAL SERVICES	\$1,440.00
TOTAL EXPENSES	<u>\$67.00</u>
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$1,507.00</b>
NET BALANCE FORWARD	\$4,736.50
TOTAL PAYMENTS AND ADJUSTMENTS	<u>(\$3,704.00)</u>
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u><u>\$2,539.50</u></u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

January 27, 2017  
Invoice # 82751 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through December 31, 2016

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

PROFESSIONAL SERVICES

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
12/05/2016	MH	PLAN AND PREPARE FOR HEARING ON MOTION TO DISMISS	0.80 hrs	175.00 /hr	140.00
12/06/2016	MH	ROUNDRIP PRIVATE TRAVEL TO HEARING ON MOTION TO DISMISS	0.60 hrs	175.00 /hr	105.00
12/06/2016	MH	APPEAR FOR HEARING ON MOTION TO DISMISS [NO TRAVEL INCLUDED]	2.20 hrs	175.00 /hr	385.00
12/06/2016	MH	DRAFT CORRESPONDENCE TO ADJUSTER AND COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
12/07/2016	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
12/08/2016	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.20 hrs	175.00 /hr	35.00

January 27, 2017  
Invoice # 82751

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
12/08/2016	MH	REVIEW SFR'S OFFER OF JUDGMENT TO MARCHAI BT	0.10 hrs	175.00 /hr	17.50
12/14/2016	KA	RECEIPT AND REVIEW OF CORRESPONDENCE FROM CLIENT [REDACTED]	0.20 hrs	200.00 /hr	40.00
TOTAL PROFESSIONAL SERVICES			4.30 hrs		\$757.50

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	0.20	0.20	200.00	\$40.00
HUMMEL, MEGAN	4.10	4.10	175.00	\$717.50
TOTALS	4.30	4.30		\$757.50

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
11/15/2016	COURT FEES	3.50
TOTAL EXPENSES		\$3.50

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$757.50
TOTAL EXPENSES	\$3.50
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$761.00</b>
NET BALANCE FORWARD	\$5,149.69
TOTAL PAYMENTS AND ADJUSTMENTS	(\$1,174.19)
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$4,736.50</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>



# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

December 21, 2016  
Invoice # 82154 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through November 30, 2016

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/26/2016	MH	REVIEW AND ANALYZE NEVADA CASE LAW DISCUSSING THE ELEMENTS OF A CLAIM FOR QUIET TITLE AND THE REQUIREMENT FOR A JUSTICIABLE CONTROVERSY, IN PREPARATION FOR DRAFTING MOTION TO DISMISS	1.10 hrs	175.00 /hr	192.50
09/26/2016	MH	DRAFT STATEMENT OF FACTS IN MOTION TO DISMISS	0.80 hrs	175.00 /hr	140.00
09/26/2016	MH	DRAFT LEGAL ARGUMENT REGARDING PLAINTIFF'S FAILURE TO MEDIATE UNDER NRS CHAPTER 38	0.60 hrs	175.00 /hr	105.00
09/26/2016	MH	DRAFT LEGAL ARGUMENT REGARDING PLAINTIFF'S FAILURE TO ESTABLISH ELEMENTS OF CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT	0.90 hrs	175.00 /hr	157.50
09/26/2016	MH	DRAFT LEGAL ARGUMENT REGARDING PLAINTIFF'S FAILURE TO ESTABLISH A PRESENT CONTROVERSY OVER SUPERIOR TITLE	1.40 hrs	175.00 /hr	245.00
09/27/2016	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50

December 21, 2016  
Invoice # 82154

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/27/2016	MH	DRAFT INITIAL STATUS REPORT	0.80 hrs	175.00 /hr	140.00
09/27/2016	MH	DRAFT PRELIMINARY LITIGATION BUDGET	0.20 hrs	175.00 /hr	35.00
09/28/2016	KA	REVIEW AND FINALIZE MOTION TO DISMISS	0.50 hrs	200.00 /hr	100.00
09/28/2016	KA	REVIEW AND FINALIZE INITIAL REPORT AND BUDGET	0.20 hrs	200.00 /hr	40.00
09/29/2016	MH	REVIEW FORECLOSURE DOCUMENTS, CORRESPONDENCE, CONTRACTS, AND LEDGERS [REDACTED] [REDACTED] [REDACTED]	1.90 hrs	175.00 /hr	332.50
10/05/2016	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY NATIONAL BANK [REDACTED] [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/06/2016	MH	DRAFT LITIGATION DISCLOSURE [REDACTED] [REDACTED]	0.70 hrs	175.00 /hr	122.50
10/06/2016	MH	DRAFT CORRESPONDENCE TO COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
10/06/2016	MH	REVIEW SFR'S MOTION TO DISMISS MARCHAI BT'S COMPLAINT	0.70 hrs	175.00 /hr	122.50
10/06/2016	KA	[REDACTED] LETTER FROM CARRIER	0.20 hrs	200.00 /hr	40.00
10/11/2016	JST	PREPARE JOINDER TO SFR INVESTMENTS POOL 1, LLC'S MOTION TO DISMISS WITH PREJUDICE PLAINTIFF'S COMPLAINT AND MOTION TO STRIKE PLEADING	0.40 hrs	95.00 /hr	38.00
10/11/2016	MH	REVIEW PLEADINGS FILED IN RELATED CASE A-16-742327-C	0.80 hrs	175.00 /hr	140.00
10/24/2016	MH	REVIEW AND RESPOND TO MULTIPLE CORRESPONDENCE BETWEEN COUNSEL REGARDING STATUS OF OPPOSITION AND REPLY TO SFR'S MOTION TO DISMISS	0.30 hrs	175.00 /hr	52.50
11/01/2016	MH	PLAN AND PREPARE FOR HEARING ON MOTION TO DISMISS	1.10 hrs	175.00 /hr	192.50
11/01/2016	MH	APPEAR FOR HEARING ON MOTION TO DISMISS [NO TRAVEL INCLUDED]	2.30 hrs	175.00 /hr	402.50
11/01/2016	MH	DRAFT CORRESPONDENCE TO MARCHAI BT CONFIRMING SERVICE OF MOTION TO DISMISS	0.10 hrs	175.00 /hr	17.50

December 21, 2016  
Invoice # 82154

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
11/01/2016	MH	ROUNDTrip PRIVATE TRAVEL TO HEARING ON MOTION TO DISMISS	0.60 hrs	175.00 /hr	105.00
11/09/2016	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM PLAINTIFF REGARDING OPPOSITION TO MOTION TO DISMISS	0.10 hrs	175.00 /hr	17.50
11/14/2016	SLG	REVIEW AND ANALYZE OPPOSITION IN PREPARATION FOR DRAFTING REPLY	0.60 hrs	175.00 /hr	105.00
11/14/2016	SLG	REVIEW SFR'S MOTION TO DISMISS IN PREPARATION FOR HEARING AND IN DRAFTING REPLY IN SUPPORT OF MOTION TO DISMISS	0.40 hrs	175.00 /hr	70.00
11/14/2016	SLG	DRAFT REPLY IN SUPPORT OF MOTION TO DISMISS	1.80 hrs	175.00 /hr	315.00
11/15/2016	KA	REVIEW AND FINALIZE REPLY IN SUPPORT OF MOTION TO DISMISS	0.40 hrs	200.00 /hr	80.00
11/21/2016	MH	PLAN AND PREPARE FOR MEETING WITH BOARD	1.30 hrs	175.00 /hr	227.50
11/21/2016	MH	APPEAR FOR MEETING WITH BOARD [NO TRAVEL]	0.80 hrs	175.00 /hr	140.00
11/22/2016	SLG	REVIEW ALL PLEADINGS IN PREPARATION FOR HEARING	0.80 hrs	175.00 /hr	140.00
11/22/2016	SLG	ATTEND HEARING ON MOTION TO DISMISS AND SFR'S MOTION TO DISMISS DUE TO LACK OF JURISDICTION	1.50 hrs	175.00 /hr	262.50
11/28/2016	MH	REVIEW AND RESPOND TO CORRESPONDENCE FROM COMMUNITY [REDACTED]	0.10 hrs	175.00 /hr	17.50
TOTAL PROFESSIONAL SERVICES			23.70 hrs		\$4,148.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	1.30	1.30	200.00	\$260.00
HUMMEL, MEGAN	16.90	16.90	175.00	\$2,957.50
GUTIERREZ, SIRIA	5.10	5.10	175.00	\$892.50
SINENENG-TEJADA, JOSEPHINE	0.40	0.40	95.00	\$38.00
TOTALS	23.70	23.70		\$4,148.00

December 21, 2016  
Invoice # 82154

Lipson | Neilson  
Attorneys and Counselors at Law

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$4,148.00
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$4,148.00</b>
NET BALANCE FORWARD	\$1,001.69
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$5,149.69</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

# Lipson | Neilson

Attorneys and Counselors at Law

LIPSON NEILSON P.C.  
9900 COVINGTON CROSS DR #120  
LAS VEGAS, NV 89144  
TELEPHONE (702) 382-1500  
WWW.LIPSONNEILSON.COM  
TAX I.D. [REDACTED]

November 23, 2016  
Invoice # 81538 KA  
Client # [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For Professional Services Rendered Through October 31, 2016

**Matter: 000587 - WYETH RANCH adv MARCHAI, B.T.**

WYETH RANCH COMMUNITY ASSOCIATION adv MARCHAI, B.T.  
(7119 WOLF RIVERS AVE) A742327 AND NRED 17-99  
POLICY #: 0250795593  
CLAIM #: NPA06211  
DEDUCTIBLE: \$1,000.00 - PAID  
DISP-16014592

**PROFESSIONAL SERVICES**

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/16/2016	KA	CORRESPONDENCE WITH CARRIER [REDACTED] [REDACTED]	0.20 hrs	200.00 /hr	40.00
09/16/2016	KA	REVIEW AND ANALYSIS OF CLAIMS DOCUMENTS, ADR FORM, AND ALL PLEADINGS ON FILE TO DETERMINE APPROPRIATE CASE STRATEGY AND PROPER RESPONSE TO ADR CLAIM AND DISTRICT COURT COMPLAINT	1.80 hrs	200.00 /hr	360.00
09/19/2016	KA	REVIEW AND ANALYSIS OF NEW MATTER TASK ASSIGNMENT	0.20 hrs	200.00 /hr	40.00
09/19/2016	KA	[REDACTED] LETTER TO CARRIER	0.20 hrs	200.00 /hr	40.00
09/19/2016	KA	[REDACTED] LETTER TO CLIENT	0.20 hrs	200.00 /hr	40.00
09/26/2016	MH	REVIEW MARCHAI'S SUMMONS AND COMPLAINT, IN PREPARATION FOR DRAFTING RESPONSE TO THE SAME	0.90 hrs	175.00 /hr	157.50

November 23, 2016  
Invoice # 81538

**Lipson | Neilson**  
Attorneys and Counselors at Law

<u>DATE</u>	<u>INIT</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
09/26/2016	MH	DRAFT INTRODUCTION TO MOTION TO DISMISS	0.20 hrs	175.00 /hr	35.00
09/26/2016	MH	DRAFT STANDARD OF REVIEW FOR RULE 12(B)(1) AND 12(B)(5) MOTIONS	0.30 hrs	175.00 /hr	52.50
TOTAL PROFESSIONAL SERVICES			4.00 hrs		\$765.00

<u>TIMEKEEPER RECAP</u>	<u>WORKED HRS</u>	<u>HRS TO BILL</u>	<u>RATE</u>	<u>FEES</u>
ANDERSON, KALEB	2.60	2.60	200.00	\$520.00
HUMMEL, MEGAN	1.40	1.40	175.00	\$245.00
TOTALS	4.00	4.00		\$765.00

EXPENSES

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
09/28/2016	COURT FEES	3.50
09/28/2016	COURT FEES	233.19
TOTAL EXPENSES		\$236.69

SUMMARY

TOTAL PROFESSIONAL SERVICES	\$765.00
TOTAL EXPENSES	\$236.69
<b>TOTAL NEW CHARGES FOR THIS INVOICE</b>	<b>\$1,001.69</b>
<b><u>TOTAL BALANCE NOW DUE (If Not Previously Paid)</u></b>	<b><u>\$1,001.69</u></b>

To pay by credit card: Please feel free to call or visit:  
<https://secure.lawpay.com/pages/lipsonneilson/operating>

**EXHIBIT “B”**

**EXHIBIT “B”**

**Lipson Neilson P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512

LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**OFFER OF JUDGMENT  
PURSUANT TO NEVADA RULE  
OF CIVIL PROCEDURE 68**

AND ALL RELATED CLAIMS AND ACTIONS.

TO PLAINTIFF MARCHAI, B.T., AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT, Defendant, Wyeth Ranch Community Association ("HOA"), hereby offers to allow entry of judgment pursuant to Nev. R. Civ Pro. 68, as follows:

HOA offers to pay Marchai, B.T. ("Marchai"), **\$15,000.00** in full satisfaction of all claims, costs, expenses, interest and attorney fees. Within 14 days after service of this offer, Marchai may accept by serving written notice that the offer is accepted.

If Marchai does not accept this offer, they may become obligated to pay HOA fees and costs incurred after the making of this offer in the event that they do not recover a judgment that is more favorable than this offer of judgment pursuant to Nev. R. Civ. Pro. 68.



1 This offer is not to be construed in any way as an admission of liability by HOA,  
2 but rather is made solely for the purpose of compromising a disputed claim.

3 Within 21 days after service of written notice that the offer is accepted, the HOA  
4 may pay the amount of the offer and obtain dismissal of the claims, rather than entry of  
5 a judgment.

6 DATED this 29<sup>th</sup> day of October, 2020.

7 LIPSON NEILSON P.C.

8 /s/ David Ochoa

9 By: \_\_\_\_\_  
10 KALEB D. ANDERSON, ESQ.  
11 Nevada Bar No. 7582  
12 DAVID T. OCHOA, ESQ.  
13 Nevada Bar No. 10414  
14 9900 Covington Cross Drive, Suite 120  
15 Las Vegas, Nevada 89144  
16 (702) 382-1500  
17 *Attorneys for Defendant*  
18 *Wyeth Ranch Community Association*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

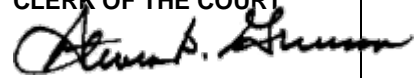
Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 29<sup>th</sup> day of October, 2020, I electronically transmitted the foregoing **OFFER OF JUDGMENT PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 68** to the Clerk's Office using the Odyssey E-File & Serve system for service and transmittal to the following Odyssey E-File & Serve registrants addressed to:

David J. Merrill, Esq.  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerrillpc.com](mailto:david@djmerrillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

/s/ Juan Cerezo

\_\_\_\_\_  
An employee of LIPSON NEILSON P.C.



**MRTX**  
David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
E-mail: david@djmerillpc.com  
Attorney for Marchai, B.T.

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

MARCHAI, B.T., a Nevada business trust,  
Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*  
Defendants.

Case No.: A-13-689461-C  
Dept. No. XI

Consolidated with: A-16-742327-C

**Hearing Requested**

AND ALL RELATED CLAIMS AND AC-  
TIONS

**Marchai, B.T.'s Motion to Retax and Settle the Costs**

Marchai, B.T. moves this Court under NRS § 18.110(4) for an order retaxing and settling  
the costs requested in Defendant Wyeth Ranch Community Association's Verified


DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

Memorandum of Fees and Costs. Marchai bases this application on the following memorandum of points authorities, the pleadings and papers on file, and any argument heard by the Court.

Dated this 5th day of April 2021.

David J. Merrill, P.C.

By:

  
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

## Memorandum of Points and Authorities

### Introduction

Wyeth Ranch's memorandum of costs asks this Court to tax \$1,524.14 in costs and \$64,593.14 in attorney's fees against Marchai. Marchai asks this Court to award Wyeth Ranch nothing.

First, Wyeth Ranch cannot include attorney's fees in its memorandum of costs and then shift the burden upon Marchai to move to challenge its fees. Attorney's fees are not "costs" under Nevada law.

Second, Wyeth Ranch is not the prevailing party. NRS 18 allows an award of costs to "*the* prevailing party." Persuasive case law from the Federal Circuit that interpreted the identical language in the Federal Rules of Civil Procedure concluded that the Rule's reference to "*the* prevailing party" means that only one side—plaintiff or defendant—can be *the* prevailing party. Because Marchai, not Wyeth Ranch, prevailed on the central issue, Marchai, not Wyeth Ranch, is the prevailing party.

Third, even if this Court decides that both Marchai and Wyeth Ranch are "prevailing parties," Wyeth Ranch has not provided its invoices for the funds it alleges it paid for a copy of a

1 deposition transcript or runner's service. Without the invoices, this Court lacks the justifying  
2 documentation needed to award those costs to Wyeth Ranch.

3 Fourth, if this Court awards any costs to Wyeth Ranch, Marchai asks this Court to tax the  
4 costs against SFR Investments Pool 1, LLC and Cristela Perez because Marchai prevailed against  
5 both SFR and Perez.

### 6 Argument

7 **A. Wyeth Ranch cannot improperly bootstrap a request for attorney's fees and shift the burden**  
8 **to Marchai to move to challenge those fees by including attorney's fees in its memorandum**  
9 **of costs.**

10 Under certain circumstances, "[c]osts must be allowed of course to the prevailing party  
11 against any adverse party against whom judgment is rendered." NRS § 18.020. But the statute  
12 defines "costs," and it does not include attorney's fees. *See* NRS § 18.005. The procedure re-  
13 quires the prevailing party to file a memorandum of costs. NRS § 18.110 (1). The burden then  
14 shifts to the party against whom judgment was rendered to file a motion to retax and settle the  
15 costs. NRS § 18.110(4).

16 Here, Wyeth Ranch filed a memorandum seeking costs *and* attorney's fees, which the  
17 statute does not contemplate. *See id.* § 18.110(1). Wyeth Ranch is improperly attempting to shift  
18 its burden to demonstrate a basis for attorney's fees and the amount of attorney's fees upon Mar-  
19 chai. *See id.* § 18.110(4). Hence, Marchai asks this Court to reject Wyeth Ranch's request for at-  
20 torney's fees in its memorandum of costs.<sup>1</sup>

21 **B. Wyeth Ranch cannot recover its costs because it is not the prevailing party under NRS**  
22 **18.020.**

23 Under certain circumstances, Nevada law grants costs as a matter of right to "*the* prevail-  
24 ing party." NRS § 18.020 (emphasis added). When a party seeks costs, the district court faces a  
25 two-fold inquiry: (1) is the party requesting costs the "prevailing party"; and (2) if so, how much  
26 should the court award. *Shum v. Intel Corp.*, 629 F.3d 1360, 1366 (Fed. Cir. 2010). The prevailing  
27 party need not prevail on all its claims. *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131

28 <sup>1</sup> Wyeth Ranch filed a motion for attorney's fees. In its opposition to that motion Marchai will address both  
the legitimacy of Wyeth Ranch's request and the amount sought.

1 Nev. 80, 90, 343 P.3d 608, 615 (2015). The difficulty arises when, as here, no party prevailed on  
2 every claim, and multiple parties won some claims and lost others. *See Shum*, 629 F.3d at 1363.

3 In *Shum v. Intel Corp.*, the Federal Circuit considered this precise issue under Federal  
4 Rule of Civil Procedure 54(d). In *Shum*, the plaintiff sought to obtain joint ownership of patents  
5 and \$409 million in damages. The district court denied the damages claims but awarded the  
6 plaintiff joint ownership of some patents. Under Rule 54, the district court concluded both sides  
7 “prevailed” and awarded both parties’ costs. But the district court also decided, in the alterna-  
8 tive, that the defendants were the prevailing party since money damages was the central issue.  
9 The plaintiff appealed, arguing there can be only one prevailing party and that he was the prevail-  
10 ing party. The Federal Circuit agreed, in part.

11 The court agreed that Rule 54(d) provides that only one side can prevail: either plaintiffs  
12 or defendants. The court reasoned that Rule 54(d), which provides for costs to “*the* prevailing  
13 party,” unambiguously limits the number of parties to one: either plaintiffs or defendants. *Id.* at  
14 1367 (emphasis in the original). But the court agreed with the district court’s conclusion that the  
15 defendants, not the plaintiff, prevailed. *Id.* at 1368–69.

16 Here, like Rule 54(d), NRS 18.020 limits costs to “*the* prevailing party.” Both Marchai  
17 and Wyeth Ranch “prevailed,” but Marchai is “*the* prevailing party.” *See id.* The central issue  
18 was whether Wyeth Ranch’s foreclosure extinguished Marchai’s deed of trust. This Court ruled  
19 that Perez’s payment satisfied the superpriority portion of Wyeth Ranch’s lien and, thus, Wyeth  
20 Ranch foreclosed upon a junior lien. Hence, Marchai’s deed of trust survived the foreclosure. As  
21 *the* prevailing party, NRS 18.020 grants Marchai the right to costs. And Wyeth Ranch should re-  
22 ceive nothing. *See id.*<sup>2</sup>

23  
24  
25  
26 <sup>2</sup> Marchai is aware that the Nevada Supreme Court has affirmed fee awards to both plaintiff and defendant  
27 when the plaintiff prevails on some claims and the defendant prevails on some claims. *See, e.g., Schouweiler v. Yance*  
28 *Co.*, 101 Nev. 827, 832–32, 712 P.2d 786, 789 (1985). But Marchai is unaware of any case in which the Nevada Su-  
preme Court expressly considered Marchai’s argument that the plain language of NRS § 18.020 limits an award of  
costs to only one prevailing party: plaintiffs or defendants.

1 **C. Even if Wyeth Ranch can recover its costs under NRS § 18.020, it failed to provide this**  
2 **Court with documentation justifying its request.**

3 “To support an award of costs, justifying documentation must be provided to the district  
4 court to ‘demonstrate how such [claimed costs] were necessary to and incurred in the present ac-  
5 tion.’” *In re DISH Network Litig.*, 133 Nev. 438, 452, 401 P.3d 1081, 1093 (2017) (citing *Bobby*  
6 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352–53, 971 P.2d 383, 386 (1998)). “Justifying documen-  
7 tation means ‘something more than a memorandum of costs.’” *Id.* (citing *Cadle Co. v. Woods &*  
8 *Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015)). Here, Wyeth Ranch provided no  
justifying documentation for its claimed runner services or deposition transcript costs.

9 In its memorandum of costs, Wyeth Ranch seeks \$564.00 paid to Nationwide Legal for  
10 “Runner Services” and \$265.95 for a copy of Yvette Saucedo’s deposition transcript. (Memo. of  
11 Costs at 2:4–6.) But Wyeth Ranch attached no invoices from Nationwide Legal or the court re-  
12 porter. Although Wyeth Ranch also moved for attorney’s fees and attached its attorney’s in-  
13 voices to the motion for attorney’s fees, it did not provide the invoices from Nationwide Legal or  
14 the court reporter. (See Ex. A. to Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Att’s Fees & Costs.)  
15 And the information it did provide is suspect. For example, Wyeth Ranch claims it incurred \$529  
16 of the \$564 in expenses paid to Nationwide Legal for Runner Services in just two months: August  
17 and September 2017. (See *id.*) Without an invoice and an explanation for the run, this Court does  
18 not have sufficient justifying documentation to award Wyeth Ranch its costs. See *In re DISH Net-*  
19 *work Litig.*, 133 Nev. at 452, 401 P.3d at 1093. Hence, Marchai asks this Court to deny Wyeth  
20 Ranch’s request for the deposition transcript and the runner services. See *id.*

21 **D. If this Court awards costs to Wyeth Ranch, it should tax those costs against SFR and Perez**  
22 **since Marchai prevailed on its claims against them.**

23 Marchai believes this Court should deny Wyeth Ranch’s claim for costs since it was not  
24 the prevailing party. But if this Court awards Wyeth Ranch any of its costs, Marchai asks this  
25 Court to tax those costs against SFR and Perez. In *Schouweiler v. Yance Co.*, condominium owners  
26 sued six defendants for negligent design and construction. The plaintiffs prevailed against three  
27 defendants but lost against the other three. The district court taxed costs for the three prevailing  
28 defendants and against the plaintiff. But the Nevada Supreme Court concluded that the plaintiff

1 could recover the prevailing defendants' costs from the losing defendants. 101 Nev. 827, 832, 712  
2 P.2d 786, 789 (1985).

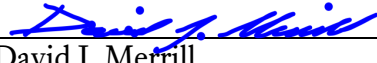
3 If this Court taxes some of Wyeth Ranch's costs against Marchai, then Marchai asks this  
4 Court to tax those costs against SFR. *See id.*

5 **Conclusion**

6 Marchai asks this Court to ignore Wyeth Ranch's improper inclusion of attorney's fees in  
7 its memorandum of costs. Also, Marchai asks this Court to refuse to award any costs to Wyeth  
8 Ranch because it was not *the* prevailing party. But if the Court grants Wyeth Ranch's costs, Mar-  
9 chai asks this Court to exclude Wyeth Ranch's claimed runner's service and deposition expenses  
10 because it did not provide justifying documentation. Any costs this Court awards to Wyeth  
11 Ranch, Marchai asks this Court to tax those costs against SFR and Perez.

12 Dated this 5th day of April 2021.

13 David J. Merrill, P.C.

14  
15 By:   
16 David J. Merrill  
17 Nevada Bar No. 6060  
18 10161 Park Run Drive, Suite 150  
19 Las Vegas, Nevada 89145  
20 (702) 566-1935  
21 Attorney for Marchai, B.T.  
22  
23  
24  
25  
26  
27  
28



## Certificate of Service

I certify that on the 5th day of April 2021, a copy of Marchai, B.T.'s Motion to Retax and Settle Costs was served electronically to the following through the Court's electronic service system:

### Kim Gilbert Ebron

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

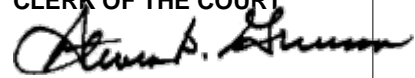
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

### Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

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

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR  
INVESTMENTS POOL 1, LLC, a limited  
liability company; U.S. BANK NATIONAL  
ASSOCIATION, N.A., a national association;  
DOES I through X; and ROE CORPORATIONS  
I through 10, inclusive,

Defendants.

Case No. A-13-689461-C  
Consolidated with: A-16-742327-C

Dept. No. XI

**SFR INVESTMENTS POOL 1, LLC'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO RETAX AND SETTLE  
MEMORANDUM OF COSTS AND  
DISBURSEMENTS**

AND ALL RELATED CLAIMS

SFR Investments Pool 1, LLC, by and through its counsel of record, Kim Gilbert Ebron, hereby Opposes Marchai B.T.'s ("Plaintiff") Motion to Retax and Settle Costs filed in relation to Wyeth Ranch Community Association's ("Association") Verified Memorandum of Fees and Costs.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff relies on *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985) for the position that Plaintiff should be able to offset the **penalties** assessed against Plaintiff for rejecting the Association's offer of judgment by recovering said penalties from SFR and Perez. *Yancey* does not support that in the slightest.

1 In *Yancey*, the Prevailing Defendants could recover costs from Homeowners (plaintiffs)  
2 under NRS 18.020, which is mandatory. As a result, the *Yancey* court held that the Prevailing  
3 Defendants costs taxed against the Homeowners pursuant to NRS 18.020 “bec[a]me costs  
4 incurred by the Homeowners,” such that Homeowners could now recover same from the Losing  
5 Defendants pursuant to NRS 18.020. *Yancey*, 712 P.2d at 789. That is not the scenario here.

6 In contrast, here, the Association only sought to recover costs from Plaintiff based on  
7 NRCP 68 because Plaintiff rejected a more favorable offer of judgment. As a result of Plaintiff’s  
8 rejection of the Association’s offer of judgment, Plaintiff is assessed **penalties for rejection of**  
9 **the offer**;<sup>1</sup> thus, unlike *Yancey*, these do not “become costs incurred,” but rather are penalties  
10 assessed. There is no basis under Nevada law to then transfer those penalties to SFR. In other  
11 words, neither *Yancey*, nor any other case or statute supports Plaintiff offsetting the penalties it  
12 will be assessed under NRCP 68 because it rejected one defendant’s offer of judgment, by  
13 imposing those penalties against another defendant. Not only is it unsupported, it defies the whole  
14 motive behind NRCP 68 imposing the penalties in the first place. No one other than Plaintiff can  
15 bear the penalties.

### 16 **CONCLUSION**

17 Based thereon, SFR should not be responsible for the penalty incurred by Plaintiff for  
18 rejecting the Association’s offer of judgment.

19 DATED this 19<sup>th</sup> day of April 2021.

**KIM GILBERT EBRON**

/s/ Jason G. Martinez  
JASON G. MARTINEZ, ESQ.  
Nevada Bar No. 13375  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

20  
21  
22  
23  
24  
25  
26  
27  
28 

---

<sup>1</sup> See NRCP 68(f).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of April 2021, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS** to the following parties:

David J. Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

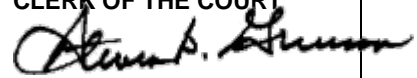
Juan Cerezo - jcerezo@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

David Ochoa - dochoa@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jason G. Martinez  
an employee of Kim Gilbert Ebron



**OPPM**

David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
E-mail: david@djmerillpc.com  
Attorney for Marchai, B.T.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-  
TIONS

**Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community As-  
sociation's Motion for Attorney's Fees and Costs**

**Introduction**

Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs asks this Court to award attorney's fees up to \$63,089.00 or, at a minimum, \$29,449.50. Marchai asks this Court to deny the motion and award Wyeth Ranch nothing.

Wyeth Ranch claims that NRS 116.4117 gives this Court authority to award attorney's fees to Wyeth Ranch as the prevailing party. It doesn't. NRS 116.4117 applies only to claims filed by an association, a homeowner, or a class of homeowners. Marchai is none of those. Hence, NRS 116.4117 does not apply. But even if NRS 116.4117 applies, Marchai, not Wyeth Ranch, is the prevailing party because Marchai prevailed on the principal issue. Further, if NRS 116.4117

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

1 applies, Marchai asks this Court to exercise its discretion and refuse to award fees because Mar-  
2 chai won on the central issue, and Wyeth Ranch's conduct significantly contributed to the need  
3 for this litigation.

4 Wyeth Ranch also asks for attorney fees under a \$15,000 offer of judgment it served in  
5 October 2020. But the *Beattie v. Thomas* factors support refusing to grant any fees. Marchai  
6 brought its claims in good faith; it survived two motions for summary judgment and one motion  
7 for reconsideration. Wyeth Ranch's offer of judgment was not reasonable, and Marchai reasona-  
8 bly rejected the offer because if Marchai accepted the offer, it would have a preclusive effect and  
9 may have prevented Marchai's recovery against SFR.

10 But even if this Court concludes that either NRS 116.4117 or N.R.C.P. 68 authorize an  
11 award of attorney's fees, Marchai asks this Court to deny the motion because Wyeth Ranch has  
12 not complied with its obligations under *Brunzell v. Golden Gate National Bank*, and those factors  
13 support denying the motion or, at a minimum, severely cutting the attorney's fees Wyeth Ranch  
14 requests.

#### 15 Argument

16 **A. Marchai asks this Court to decline to award any attorney's fees or costs to Wyeth Ranch un-**  
17 **der NRS 116.4117 because NRS 116.4117 does not apply to Marchai's claims against Wyeth**  
18 **Ranch, Wyeth Ranch is not the prevailing party, and Marchai prevailed on the major issue.**

19 **1. NRS 116.4117 applies only to suits by the association, a homeowner, or a class of homeown-**  
20 **ers, not, as here, by the holder of a security interest.**

21 District courts can award attorney fees "only if authorized by a rule, contract, or statute." *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 825, 192 P.3d 730, 733 (2008). A  
22 district court abuses its discretion if it awards attorney's fees "without a . . . basis for doing so." *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000). Here, Wyeth Ranch asks this  
23 Court to award fees and costs under NRS 116.4117, but NRS 116.4117 does not apply.

24 NRS 116.4117 provides that a court "may award attorney's fees to the prevailing party"  
25 in a civil action for damages for a failure to comply with NRS 116 or the association's governing  
26 documents. *See* NRS 116.4117(1), (6). But it limits the action to claims by an association, a home-  
27 owner, or a class of homeowners. *See* NRS § 116.4117(2)(a)–(c). Here, Marchai is not the  
28

1 association, a homeowner, or a class of homeowners. Hence, NRS 116.4117 does not provide a  
2 basis for a fee award. *See id.*; *see also Bank of Am., N.A. v. Treasures Landscape Maint. Ass’n*, No.  
3 2:16-CV-380-JCM-(NJK), 2017 WL 3116233 (D. Nev. July 21, 2017) (refusing to grant attorney’s  
4 fees to an association against a lender under NRS § 116.4117 when the lender sued following an  
5 association’s foreclosure sale); *accord Bank of N.Y. Mellon v. Log Cabin Manor Homeowners Ass’n*,  
6 362 F. Supp. 3d 930, 939 (D. Nev. 2019) (recognizing that NRS 116.4117 applies only to suits by  
7 the association, homeowner, or class of homeowners).

8 **2. Even if NRS 116.4117 applied, Marchai, not Wyeth Ranch, is the prevailing party.**

9 Even if NRS 116.4117 applies, Marchai, not Wyeth Ranch, is the prevailing party. When a  
10 party seeks attorney’s fees under a statute authorizing fees to the prevailing party, the district  
11 court faces a two-fold inquiry: (1) is the party requesting fees the “prevailing party”; and (2) if  
12 so, how much should the court award. *Shum v. Intel Corp.*, 629 F.3d 1360, 1366 (Fed. Cir. 2010).  
13 The prevailing party need not prevail on all its claims. *Las Vegas Metro. Police Dep’t v. Blackjack*  
14 *Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015). The difficulty arises when, as here, no  
15 party prevailed on every claim, and multiple parties won claims and lost others. *See Shum*, 629  
16 F.3d at 1363.

17 In *Shum v. Intel Corp.*, the Federal Circuit considered this precise issue under Federal  
18 Rule of Civil Procedure 54(d). In *Shum*, the plaintiff sought to obtain joint ownership of patents  
19 and \$409 million in damages. The district court denied the damages claims but awarded the  
20 plaintiff joint ownership of some patents. Under Rule 54, the district court concluded both sides  
21 “prevailed” and awarded both parties’ costs. But the district court also decided, in the alterna-  
22 tive, that the defendants were the prevailing party since money damages was the central issue.  
23 The plaintiff appealed, arguing there can be only one prevailing party and that he was the prevail-  
24 ing party. The Federal Circuit agreed, in part.

25 The court agreed that Rule 54(d) provides that only one side can prevail: either plaintiffs  
26 or defendants. The court reasoned that Rule 54(d), which provides for costs to “the prevailing  
27 party,” unambiguously limits the number of parties to one: either plaintiffs or defendants. *Id.* at  
28

1367 (emphasis in the original). But the court agreed with the district court’s conclusion that the defendants, not the plaintiff, prevailed. *Id.* at 1368–69.

Here, like Rule 54(d), NRS 116.4117 limits fees to “*the* prevailing party.” Both Marchai and Wyeth Ranch “prevailed,” but Marchai is “*the* prevailing party.” *See id.* The central issue was whether Wyeth Ranch’s foreclosure extinguished Marchai’s deed of trust. This Court ruled that Perez’s payment satisfied the superpriority portion of Wyeth Ranch’s lien and, thus, Wyeth Ranch foreclosed upon a junior lien. Hence, Marchai’s deed of trust survived the foreclosure. Because Marchai, not Wyeth Ranch, is the prevailing party, NRS 116.4117 does not authorize fees. *See id.*<sup>1</sup>

**3. Even if NRS 116.4117 applied, Marchai asks this Court to exercise its discretion and decline to award attorney’s fees because Marchai prevailed on the principal claim against SFR.**

An award of attorney’s fees under NRS 116.4117 is permissive. *See* NRS § 116.4117(6) (stating that a “court *may* award reasonable attorney’s fees to the prevailing party.”). “Whether to award attorney’s fees is within the discretion of the district court; its decision will not be reversed absent manifest abuse of that discretion.” *Glenbrook Homeowners Ass’n v. Glenbrook Co.*, 111 Nev. 909, 901 P.2d 132 (1995). So long as a district court explains its refusal to award fees, the court does not abuse its discretion. *See Pandelis Constr. Co., Inc. v. Jones-Viking Assocs.*, 103 Nev. 129, 131–32, 734 P.2d 1236, 1237–38 (1987) (recognizing that a district court abuses its discretion if it refuses to award fees but provides no reason for the refusal). Here, if NRS § 116.4117 applies, Marchai asks this Court to exercise its discretion and decline to award Wyeth Ranch any attorney’s fees.

Marchai prevailed on the principal issue remanded by the Nevada Supreme Court: did the homeowner’s payments satisfy the superpriority portion of Wyeth Ranch’s lien? This Court concluded they did and ruled that Marchai’s deed of trust survived the foreclosure. Because this Court concluded Marchai’s deed of trust survived the foreclosure, it left this Court with no

---

<sup>1</sup> Marchai is aware that the Nevada Supreme Court has affirmed awards to both plaintiff and defendant when the plaintiff prevails on some claims and the defendant prevails on some claims. *See, e.g., Schouweiler v. Yancey Co.*, 101 Nev. 827, 832–32, 712 P.2d 786, 789 (1985). But Marchai is unaware of any case in which the Nevada Supreme Court expressly considered Marchai’s argument that the plain language of NRS 116.4117 limits an award of fees to only one prevailing party: plaintiffs or defendants.



choice but to dismiss Marchai's alternative claims against the association, each of which relied upon a finding that Marchai's deed of trust did not survive the foreclosure. Because Marchai won on the principal claim and, by default, Wyeth Ranch won on the alternative claims, Marchai asks this Court to decline to award attorney's fees under NRS 116.4117. *See Glenbrook Homeowners Ass'n*, 111 Nev. at 922, 901 P.2d at 141 (finding the district court did not abuse its discretion by refusing to award fees when "[e]ach party won on some issues and lost on others.").

Also, denying attorney's fees to Wyeth Ranch is compelling given the facts. Wyeth Ranch's failure to maintain separate accounts of its lien's superpriority and subpriority portions, to disclose in its notices the superpriority or subpriority amounts owed, and to maintain complete documentation about applying payments necessitated the remand and trial. And Wyeth Ranch compounded its failure by having its witness testify directly contrary to its documents. In essence, Wyeth Ranch significantly contributed to the need for this litigation and succeeded by default because Marchai prevailed. Awarding Wyeth Ranch fees would be unjust. *See id.*

**B. Marchai asks this Court to deny Wyeth Ranch's request for attorney's fees under N.R.C.P. 68 because Marchai brought its claims in good faith, Wyeth Ranch's offer was not reasonable or in good faith, and Marchai's decision to reject the offer was reasonable and in good faith.**

Besides NRS 116.4117, Wyeth Ranch also asks this Court to award attorney's fees because Marchai did not accept Wyeth Ranch's \$15,000 offer of judgment. When a party does not accept an offer of judgment and the offeree does not better the offer at trial, district courts have the discretion to award attorney's fees. *See* N.R.C.P. 68; *see also Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). "[T]he purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forego legitimate claims." *Id.* at 588, 668 P.2d at 274. Thus, before awarding fees, the court must consider these four factors:

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

*Id.* at 588-89, 668 P.2d at 274. Here, the factors weigh heavily for denying attorney's fees to Wyeth Ranch.

1       **1.       Marchai brought its claims against Wyeth Ranch in good faith.**

2               In the motion, Wyeth Ranch concedes that Marchai brought its claims in good faith. (*See*  
3       Mot. at 4:21–23.) And *after* Wyeth Ranch served its offer of judgment, Marchai defeated Wyeth  
4       Ranch’s motion for summary judgment and a motion for reconsideration. (*Compare* Offer of J.  
5       (Oct. 29, 2020) *with* Order Den. Wyeth Ranch Cmty. Ass’n’s Mot. for Summ. J. (Nov. 24, 2020)  
6       and Order Den. Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Reconsid. or Clarification Under  
7       NRCPP 60, Alternatively Mot. in Lim. (Jan. 20, 2021).) Because Marchai brought its claims  
8       against Wyeth Ranch in good faith, Marchai asks this Court to decline to award attorney’s fees.  
9       *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 562, 216 P.3d 788, 792 (2009) (affirming a district  
10       court’s decision to decline to award attorney’s fees under N.R.C.P. 68 when the plaintiff brought  
11       its claims in good faith).

12       **2.       Wyeth Ranch’s offer was not reasonable or in good faith.**

13               Wyeth Ranch’s offer was not reasonable or in good faith because Wyeth Ranch knew that  
14       Marchai could not accept the offer without potentially abandoning its claims against SFR, which  
15       Marchai could not do for \$15,000. An offer of judgment is *not* an offer to sign a settlement.  
16       Instead, it is an offer to accept a *judgment*. That judgment has preclusive effects, including claim  
17       and issue preclusion. *See Mendenhall v. Tassinari*, 133 Nev. 614, 403 P.3d 364 (2017) (concluding  
18       that an accepted offer of judgment is a final judgment for claim preclusion purposes).

19               Here, Marchai had essentially two alternative claims against Wyeth Ranch. First, if the  
20       homeowner’s payments did not satisfy the superpriority portion of Wyeth Ranch’s lien and the  
21       foreclosure extinguished Marchai’s deed of trust, then Wyeth Ranch owed Marchai for any funds  
22       it received through the foreclosure above the superpriority amount. Second, if the homeowner’s  
23       payments satisfied the superpriority portion of Wyeth Ranch’s lien, but this Court concluded  
24       SFR was a bona fide purchaser, then Wyeth Ranch wrongfully foreclosed and owed Marchai  
25       \$360,000, the property’s fair market value during the foreclosure. If Marchai accepted Wyeth  
26       Ranch’s \$15,000 offer, and this Court entered judgment, SFR would have argued that the ruling  
27       precluded Marchai from proceeding against SFR because the judgment is an acknowledgment by  
28       Marchai that either the homeowner did not satisfy the superpriority portion of Wyeth Ranch’s

lien or that SFR was a bona fide purchaser. *See id.* In essence, Wyeth Ranch’s offer of judgment would force Marchai to forego the principal purpose: protecting its deed of trust. And that is antithetical to N.R.C.P. 68. *See Beattie v. Thomas*, 99 Nev. at 588, 668 P.2d at 274 (“[T]he purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forego legitimate claims.”) Hence, Marchai asks this Court to refuse to award attorney’s fees under N.R.C.P. 68. *See Byrne as Tr. of the UOFM Tr. v. Sunridge Builders, Inc.*, 136 Nev. Adv. Op. 69, 475 P.3d 38 (2020) (reversing the district court’s award of attorney’s fees as an abuse of discretion where the case involved unresolved legal issues).

**3. Marchai’s decision to reject the offer of judgment was reasonable and in good faith.**

Marchai did not accept Wyeth Ranch’s offer because it could not (for \$15,000) risk having the judgment preclude Marchai’s claims against SFR, on which Marchai ultimately prevailed. *See Mendenhall*, 133 Nev. at 619, 403 P.3d at 370. Also, SFR continued to argue that even if the homeowners paid the superpriority portion of Wyeth Ranch’s lien, the foreclosure still extinguished Marchai’s deed of trust because SFR was a bona fide purchaser. (*See* SFR Invs. Pool 1, LLC’s Trial Br. Re: Bona Fide Purchaser (Feb. 22, 2021).) Ultimately, the Court rejected SFR’s argument. But if this Court had agreed with SFR, Marchai’s acceptance of a \$15,000 offer of judgment would preclude its \$360,000 wrongful foreclosure claim. Because Marchai’s decision to reject Wyeth Ranch’s offer was reasonable and in good faith, Marchai asks this Court to exercise its discretion and refuse to award attorney’s fees. *See Bidart v. Am. Title Ins. Co.*, 103 Nev. 175, 179, 734 P.2d 732, 735 (1987) (affirming the district court’s decision to refuse to award attorney’s fees when the offeree reasonably rejected an offer of judgment).

**C. Wyeth Ranch did not submit sufficient information for this Court to review under *Brunzell v. Golden Gate National Bank* and the *Brunzell* factors support no fee award.**

If this Court concludes that NRS 116.4117 or N.R.C.P. 68 warrant an award of attorney’s fees to Wyeth Ranch, Marchai requests this Court award Wyeth Ranch only its reasonable attorney’s fees. Before awarding attorney’s fees, this Court must consider the four factors adopted by the Nevada Supreme Court in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Specifically, this Court must consider “(1) the qualities of the advocate . . . ; (2) the

1 character of the work to be done . . . ; (3) the work actually performed by the lawyer . . . ; and (4)  
2 the result: whether the attorney was successful and what benefits were derived.” *Id.* at 349, 455  
3 P.2d at 33. Here, Wyeth Ranch has not provided this Court with sufficient information to analyze  
4 the *Brunzell* factors.

5 The first *Brunzell* factor requires the party requesting fees to provide the court with infor-  
6 mation to evaluate the qualities of the advocate. *See id.* Here, Wyeth Ranch attached a declara-  
7 tion from David Ochoa describing his qualities but provided no information about the other attor-  
8 neys or non-attorneys who billed to this file. Without this information, this Court cannot evaluate  
9 the advocates’ qualities. *See id.*

10 The fourth *Brunzell* factor requires this Court to review the results achieved by counsel  
11 for Wyeth Ranch. *See id.* Without intending to insult Wyeth Ranch’s counsel, Wyeth Ranch’s  
12 results had *little* to do with counsel’s advocacy. Instead, Wyeth Ranch obtained dismissal of Mar-  
13 chai’s claims *because Marchai prevailed* against SFR on the principal issue. Wyeth Ranch could  
14 have done little more than file an answer, defend the one deposition, and show up at trial and  
15 achieved the same result. Hence, this Court should deny the motion and reject any award of fees  
16 to Wyeth Ranch.

17 The third *Brunzell* factor requires this Court to analyze the work performed. The time-  
18 sheets Wyeth Ranch attached to its motion reveal numerous instances of wasted effort that  
19 achieved no results for Wyeth Ranch.<sup>2</sup>

- 20 • In July 2017, Wyeth Ranch moved for summary judgment even though this Court  
21 already decided that genuine issues of fact precluded summary judgment. (*Com-*  
22 *pare* Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Summ. J. (July 21, 2017) *with* De-  
23 cision & Order (Mar. 22, 2016).) This Court (Judge Bell) thought so little of Wy-  
24 eth Ranch’s motion, it not only denied the motion but *sua sponte* granted summary  
25 judgment for Marchai. (*See* Decision & Order (Oct. 3, 2017).)

27 <sup>2</sup> Attached to this Opposition as Exhibit 1 is a spreadsheet containing an itemized list of unreasonable charges  
28 by Wyeth Ranch that this Court should reject.

- Although the Nevada Supreme Court remanded for trial, Wyeth Ranch again moved for summary judgment, which this Court denied. (*See* Order Den. Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Summ. J. (Nov. 24, 2020).)
- Dissatisfied with this Court’s initial ruling, Wyeth Ranch then moved for reconsideration, which, again, this Court denied. (*See* Order Den. Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Reconsid. or Clarification Under NRCP 60, Alternatively Mot. in Lim. (Jan. 20, 2021).)
- Although Marchai *and SFR* agreed to reopen discovery to take Wyeth Ranch’s deposition, Wyeth Ranch refused to stipulate and opposed Marchai’s motion. This Court granted Marchai’s motion and allowed the deposition to proceed. (*See* Order Granting Marchai’s Mot. to Reopen Disc. on an Order Shortening Time and Den. the Alternative Countermot. for a Briefing Schedule (Aug. 21, 2020).)
- Wyeth Ranch unnecessarily had two lawyers represent its interests at trial.
- Wyeth Ranch spent time preparing a budget for its client, which does not advance the litigation.

Because this work provided no benefit to Wyeth Ranch and increased the cost for all parties, if this Court awards fees, Marchai asks this Court to exercise its discretion and, at a minimum, reduce the fees requested by \$23,161.00.

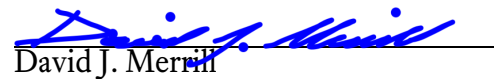
**Conclusion**

Neither NRS 116.4117 nor N.R.C.P. 68 justify an award of attorney's fees to Wyeth Ranch. Marchai prevailed. Wyeth Ranch reaped the benefit of Marchai's advocacy. Hence, Marchai asks this Court to deny the motion and award Wyeth Ranch no attorney's fees.

Dated this 20th day of April 2021.

David J. Merrill, P.C.

By:



David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

**Certificate of Service**

I certify that on the 20th day of April 2021, a copy of Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs was served electronically to the following through the Court's electronic service system:

**Kim Gilbert Ebron**

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

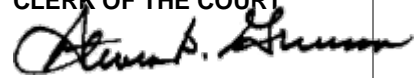
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

**Lipson, Neilson, Cole, Seltzer & Garin, P.C.**

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

AND ALL RELATED CLAIMS AND ACTIONS.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
OPPOSITION TO THE MOTION TO  
RETAX AND SETTLE COSTS**

Hearing Date: May 7, 2021  
Hearing Time: *In Chambers*

Defendant WYETH RANCH COMMUNITY ASSOCIATION (“HOA” or “Wyeth Ranch”), by and through its counsel of record, LIPSON NEILSON P.C., hereby submits its Opposition to the Motion to Retax and Settle Costs.

**I. INTRODUCTION AND REQUEST FOR EXCUSAL OF LATE OPPOSITION**

HOA was the prevailing party for the claims made against it in this homeowner association foreclosure case, and as such, is entitled to an award of fees and costs against Plaintiff Machai, B.T. (“Marchai” or “Plaintiff”). A separate Motion for Fees and Costs was filed concurrently with the Memorandum of Costs and is currently set for an *in chambers* hearing on May 7, 2021. HOA brings its request for costs under NRS 18.020 and seeks this Court leave to file the untimely opposition due to excusable neglect.



1 Counsel had been recently bombarded with litigation activity in a case currently  
2 pending before your honor and did not notice that the deadline to oppose the Motion to  
3 Retax was not on his calendar. Counsel submits that the Opposition, though technically  
4 4 days late will not prejudice Plaintiff on this relatively simple matter.

## 5 **II. LEGAL ARGUMENT**

6 HOA seeks \$1,524.14 in costs; the memorialization of attorney's fees incurred in  
7 this action was surplusage. HOA submits that the evidence provided to this Court  
8 concurrently in the Motion for Fees and Costs supports that the costs requested herein  
9 were necessary and reasonable. Additionally, based on the Findings of Fact and  
10 Conclusions of Law, HOA was plainly the prevailing party.

### 11 **A. HOA was the prevailing party**

12 Plaintiff provides no facts or law to support its claim that it was the prevailing  
13 party against HOA. The crux of Plaintiff's argument is that it was the prevailing party  
14 against HOA because it prevailed against SFR in establishing that its deed of trust  
15 survived the foreclosure. That would make sense if HOA and SFR are one and the  
16 same-but they are not. It might be a plausible argument if the HOA argued that the  
17 deed of trust was extinguished-but it did not. In this action, HOA did not make claims  
18 asserting entitlement to the subject property, and did not assert that Marchai's deed of  
19 trust was foreclosed upon.

20 Plaintiff's argument that it is the prevailing party and HOA should not recover its  
21 costs under NRS 18.020 rings hollow. Nothing cited by Plaintiff supports this position.  
22 Plaintiff cites to a patent case called *Shum v. Intel Corp.*, 629 1360, 1366 (Fed. Cir.  
23 2010) for the proposition that there can be only one winner and that is Marchai. In  
24 *Shum*, there were only two parties, and the plaintiff prevailed in some claims against the  
25 defendant and lost in other claims against the defendant. Even though the Federal  
26 Circuit found the *defendant* to be the prevailing party, the patent case cited is not  
27 analogous. Here, Marchai lost in ALL claims against this defendant. Marchai is clearly  
28 the losing party and HOA is the prevailing party.

**B. HOA met its burden in Establishing the Costs Requested**

As a preliminary matter, nothing within the request are costs that Plaintiff has not otherwise also incurred and seeks recovery. See Plaintiff's Memorandum of Costs. The Court can take judicial notice of its docket (the financial summaries stated therein and all the documents HOA was required to file as a result of being included in this case), and that for every electronically filed document, the Eighth Judicial District Court charges attorneys \$3.50. A copy of the dockets for this case (because it was consolidated) is attached hereto as **Exhibit 1**. As exemplified in Lipson Neilson's invoices attached to the Motion for Attorney's Fees and Costs, each and every cost requested was invoiced to the client.

1. Filing Fees: In this case, HOA seeks recovery of filing fees from the period of September 1, 2016 through February 28, 2021 in the amount of \$694.19.<sup>1</sup> But for Plaintiff including HOA in this case, HOA would not have had to incur the filing fees associated with defending this case, and electronic service fees that the Eighth Judicial District Court imposes on attorneys.
2. Runner Services: In this case HOA seeks runner services in the amount of \$564.00. As the docket reflects, HOA was involved in this case since the year 2016. Prior to COVID-19, it was custom and practice to send runners to the court and the opposing counsel's office for execution of orders, dropping off trial binders, collecting wet signatures for stipulation and orders for dismissal, serving subpoenas. This case readied for trial twice necessitating the expense for trial subpoenas. A copy of the invoices from Nationwide are attached as **Exhibit 2**. For the life of this case and in relation to the costs requested by Plaintiff, HOA runner service fees were reasonable and necessary.<sup>2</sup>

---

<sup>1</sup> Plaintiff purports to have incurred \$680.10 in costs associated with filing fees.

<sup>2</sup> Plaintiff purports to have incurred \$631.80 in costs associated with delivery and service of process.

3. Deposition of Yvette Saucedo: In this case, HOA was required to defend the deposition of Yvette Saucedo and due to the court's denial of its motion for summary judgment, purchase a transcript of her deposition in the event she was called as a witness. A copy of the Invoice is attached as **Exhibit 3**. The deposition transcript was \$265.95.<sup>3</sup>

### III. CONCLUSION

Each and every one of the requests for costs HOA seeks is publicly verifiable, either because it is a matter of public record, the parties to the action and the court were recipients of the runner services, and/or the opposing parties incurred the same costs. Litigation is not cheap, but HOA did not ask to be part of this case and did not ask to be accused of inappropriate conduct, such as violating NRS Chapter 116. Other lenders in this situation have chosen to not include homeowner associations in their quiet title actions. This lender did otherwise, took a chance and lost. HOA prevailed against Marchai, BT. The costs HOA seek were reasonable and necessary. This Court should settle costs in favor of HOA and against Marchai BT in the amount of \$1,524.14.

DATED this 23<sup>rd</sup> day of April, 2021.

LIPSON NEILSON P.C.

*/s/ David T. Ochoa*

By: \_\_\_\_\_

KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant  
Wyeth Ranch Community Association*

<sup>3</sup> Plaintiff purports to have incurred \$617.74 in costs associated with transcripts.

**CERTIFICATE OF SERVICE**

I certify that on the 23<sup>rd</sup> day of April, 2021, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S OPPOSITION TO THE MOTION TO RETAX AND SETTLE COSTS** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

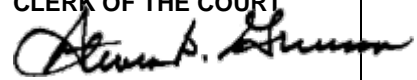
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerillpc.com](mailto:david@djmerillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1, LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.



**RIS**  
David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
E-mail: david@djmerrillpc.com  
Attorney for Marchai, B.T.

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

MARCHAI, B.T., a Nevada business trust,  
  
Plaintiff,  
  
v.  
  
CRISTELA PEREZ, an individual; *et al.*  
  
Defendants.

Case No.: A-13-689461-C  
Dept. No. XI  
  
Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-  
TIONS

**Reply in Support of Marchai, B.T.'s Motion to Retax and Settle the Costs**

**Introduction**

Marchai, B.T asks this Court to deny an award of costs to Wyeth Ranch Community Association because it is not the prevailing party. Marchai, not Wyeth Ranch, is the prevailing party because Marchai prevailed on the case's central issue. But even if Nevada law provides both

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

Marchai and Wyeth Ranch prevailed, Marchai asks this Court to tax costs awarded to Wyeth Ranch against SFR Investments Pool 1, LLC and Cristela Perez because they lost.

### Argument

**A. Wyeth Ranch conceded that it improperly included attorney's fees in its memorandum of costs.**

The motion argued that Wyeth Ranch improperly included a request for attorney's fees in its memorandum of costs to shift its burden to Marchai. (*See* Marchai, B.T.'s Mot. to Retax & Settle the Costs at 3:7–19.) Wyeth Ranch conceded this was improper, calling the inclusion of attorney's fees in the memorandum of costs “surplusage.” (*See* Def. Wyeth Ranch Cmty. Ass'n's Opp'n to the Mot. to Retax & Settle Costs at 2:6–7.) Hence, Marchai asks this Court to deny Wyeth Ranch's request for attorney's fees in its memorandum of costs.<sup>1</sup>

**B. Wyeth Ranch cannot recover its costs because it is not the prevailing party under NRS 18.020.**

Wyeth Ranch's opposition claims Marchai provided “no facts or law” to support its claim Marchai was the prevailing party. (*See* Wyeth Ranch's Opp'n at 2:12–13.) But the motion provided persuasive authority from the Federal Circuit, *Shum v. Intel Corp.*, 629 F.3d 1360 (Fed. Cir. 2010), which recognizes that when assessing costs, there can be only *one* prevailing party. *Id.* at 1367. Wyeth Ranch provides no countervailing authority. (*See* Wyeth Ranch's Opp'n at 2:11–28.) Instead, it misrepresents *Shum* and argues distinctions without differences.

Wyeth Ranch first claims that *Shum* involved “only two parties, and the plaintiff prevailed in some claims against the defendant and lost in other claims against the defendant.” (*See* Wyeth Ranch's Opp'n at 2:23–25.) Wyeth Ranch's assertion is untrue. The caption of the case itself identifies *four parties*, the plaintiff (*Shum*) and *three* defendants: Intel Corporation, Jean-Marc Verdiell, and LightLogic, Inc. *Id.* at 1360.

Wyeth Ranch then claims that *Shum* does not apply because it is a patent case. (*See* Wyeth Ranch's Opp'n at 2:21–22, 25–27.) Wyeth Ranch's argument is a distinction without a difference. *Shum* is a patent case, but the court's decision does not rely on patent law. Instead, the

<sup>1</sup> Wyeth Ranch did file a motion for attorney's fees, which Marchai has opposed.

1 court interpreted Federal Rule of Civil Procedure 54(d), which provides costs to “*the* prevailing  
2 party.” *Shum*, 629 F.3d at 1367 (emphasis in the original). Because Nevada law also provides  
3 costs to “*the* prevailing party,” *Shum*’s analysis is strong, persuasive authority. *See Yount v.*  
4 *Crisswell Radovan, LLC*, 136 Nev. Adv. Op. 47, 469 P.3d 167, 172 (2020).

5 *Shum* recognizes that in “mixed judgment” cases, only *one* side (plaintiffs or defendants)  
6 can prevail. *See Shum*, 629 F.3d at 1367; *accord Nam Soon Jeon v. 445 Seaside, Inc.*, No. Civ. 11-  
7 00015 SOM-BMK, 2013 WL 5915674 (D. Haw. Oct. 30, 2013) (concluding that *Shum* stands for  
8 the proposition that only one side of the case—plaintiffs or defendants—can prevail). The deter-  
9 mination of which side prevailed in a mixed judgment case hinges on who won on the “central  
10 issue.” *Shum*, 629 F.3d at 1367. Wyeth Ranch did not win the “central issue.” Hence, as the pre-  
11 vailing party, Marchai is entitled to costs, and Wyeth Ranch is entitled to nothing. *See id.*

12 **C. Even if Wyeth Ranch can recover costs, Marchai asks this Court to tax those costs against**  
13 **SFR and Perez because Marchai prevailed on its claims against them.**

14 The motion, relying on *Schouweiler v. Yance Co.*, 101 Nev. 827, 712 P.2d 786 (1985), asked  
15 this Court to tax any costs it awards to Wyeth Ranch against SFR and Perez since Marchai pre-  
16 vailed on its claims against them. (*See* Mot. at 5:21–6:4.) SFR filed an opposition, claiming that  
17 *Schouweiler* does not apply because it involved an award of costs under NRS 18.020 and Wyeth  
18 Ranch “only sought to recover costs . . . based on NRCP 68.” (*See* SFR’s Invs. Pool 1, LLC’s  
19 Opp’n to Pl.’s Mot. to Retax & Settle Memo. of Costs & Disbursements at 2:6–7.) SFR is wrong.

20 Wyeth Ranch’s memorandum of costs requests all costs incurred, including those that  
21 pre-date Wyeth Ranch’s October 29, 2020 offer of judgment. (*Compare* Offer of J. Pursuant to  
22 N.R.C.P. 68 attached as Ex. B to Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Att’y’s Fees & Costs  
23 (Oct. 29, 2020) *with* Def. Wyeth Ranch Cmty. Ass’n’s Verified Memo. of Fees & Costs (Apr. 1,  
24 2021).) If Wyeth Ranch sought costs only based on Rule 68, it could only request “post-offer  
25 costs.” *See* N.R.C.P. 68(f)(1)(B). Hence, SFR’s reasoning fails.

26 Also, SFR claims Wyeth Ranch’s costs are a penalty against Marchai, not costs. SFR pro-  
27 vides no case authority to support its assertion. (*See* SFR’s Opp’n at 2:6–9.) And SFR’s position  
28 contradicts *Schouweiler*.

1 In *Schouweiler*, a class of condominium owners sued six defendants for negligent design  
2 and construction. The plaintiff prevailed against three defendants and lost against the other  
3 three. One defendant (Cavallero), against whom the plaintiff lost, made an offer of judgment.  
4 Even though the plaintiff did not beat Cavallero's offer, the Nevada Supreme Court still con-  
5 cluded that the homeowners could tax the costs assessed against the homeowners by the three  
6 defendants that won (including Cavallero) against the losing defendants. 101 Nev. at 832-33, 712  
7 P.2d at 789-90. Hence, if this Court awards costs to Wyeth Ranch, Marchai asks it to tax those  
8 costs against SFR and Perez.

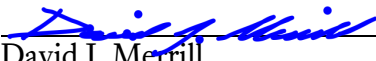
9 **Conclusion**

10 Marchai asks this Court to grant the motion and deny Wyeth Ranch any costs. But if the  
11 Court awards costs to Wyeth Ranch, Marchai asks this Court to tax those costs against SFR.

12 Dated this 30th day of April 2021.

13 David J. Merrill, P.C.

14  
15 By:

  
16 David J. Merrill  
17 Nevada Bar No. 6060  
18 10161 Park Run Drive, Suite 150  
19 Las Vegas, Nevada 89145  
20 (702) 566-1935  
21 Attorney for Marchai, B.T.  
22  
23  
24  
25  
26  
27  
28



**Certificate of Service**

I certify that on the 30th day of April 2021, a copy of the Reply in Support of Marchai, B.T.'s Motion to Retax and Settle Costs was served electronically to the following through the Court's electronic service system:

**Kim Gilbert Ebron**

Diana Cline Ebron  
E-Service for Kim Gilbert Ebron  
Michael L. Sturm  
Tomas Valerio

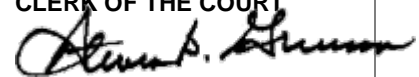
diana@kgelegal.com  
eservice@kgelegal.com  
mike@kgelegal.com  
staff@kgelegal.com

**Lipson, Neilson, Cole, Seltzer & Garin, P.C.**

Brenda Correa  
Kaleb Anderson  
Megan Hummel  
Renee Rittenhouse  
Susana Nutt  
Juan Cerezo  
David Ochoa

bcorrea@lipsonneilson.com  
kanderson@lipsonneilson.com  
mhummel@lipsonneilson.com  
rrittenhouse@lipsonneilson.com  
snutt@lipsonneilson.com  
jcerezo@lipsonneilson.com  
dochoa@lipsonneilson.com

  
An employee of David J. Merrill, P.C.



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500  
(702) 382-1512 - fax  
[kanderson@lipsonneilson.com](mailto:kanderson@lipsonneilson.com)  
[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

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

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

AND ALL RELATED CLAIMS AND ACTIONS.

Case No.: A-13-689461-C  
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH  
COMMUNITY ASSOCIATION'S  
REPLY IN SUPPORT OF ITS  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

Hearing Date: May 7, 2021  
Hearing Time: In Chambers

Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA" or "Wyeth Ranch"), by and through its counsel of record, LIPSON NEILSON P.C., hereby submits its Reply in Support of the Motion for Attorney's Fees and Costs.

**I. INTRODUCTION**

HOA was the prevailing party for the claims made against it in this homeowner association foreclosure case, and as such, is entitled to an award of fees and costs against Plaintiff Machai, B.T. ("Marchai"). There are multiple means for this Court to issue Wyeth Ranch its incurred fees and costs. Pursuant to NRS 116.4117, Wyeth Ranch is entitled to \$63,089.00 in attorney's fees and \$1,524.14 in costs that it incurred during the life of this 5 year old case. Wyeth Ranch is also entitled to its costs incurred from the date of its involvement in this case pursuant to NRS 18.020. Alternatively,

1 pursuant to NRCP 68 and NRS 17.117, Wyeth Ranch is entitled to at least \$29,449.50  
2 in attorney's fees and \$17.50 in costs that were incurred after service upon Marchai of  
3 an Offer of Judgment that it failed to beat.

4 HOA is plainly entitled to its attorney's fees and costs in this case where it was  
5 the prevailing party and Plaintiff has taken one bad faith position after another. In this  
6 case, where Plaintiff claims to have incurred \$254,848.00 in attorney's fees and  
7 \$4,360.41 in costs, it is incredulous for Plaintiff to claim that the HOA's request for fees  
8 and costs in the total amount of \$64,610.14 is neither reasonable or necessary. But for  
9 Plaintiff's conduct, HOA would not have had to expend the \$64,610.14 in fees and costs  
10 (which are a mere 25% of the Plaintiff's requested fees and costs). HOA respectfully  
11 requests the additional amount of \$5,000 for having to file this instant brief to respond to  
12 Plaintiff's frivolous Motion to Retax and Opposition to the Motion for Fees.

## 13 **II. LEGAL ARGUMENT**

### 14 **A. NRS 116.4117 Allows the HOA to Recover its Fees and Costs** 15 **Against Marchai**

16 Marchai disingenuously argues that it is not subject to NRS Chapter 116, thus  
17 cannot be subject to an award of attorney's fees under NRS 116.4117 when the parties  
18 just completed trial where Marchai argued that it was entitled to relief against HOA for  
19 violating NRS Chapter 116 and maintained this position since the year 2016.

20 NRS 116.4117(1) states "any person" may sue "any other person subject to this  
21 chapter" who "fails to comply with any of its provisions or any provisions of the  
22 declaration or bylaws." When a lawsuit deals with a claim of a violation of NRS 116 (as  
23 this one does here), the Court may award fees to the prevailing party under NRS  
24 116.4117.

25 NRS 116.4117(2) admittedly deals with suits by the association and suits by  
26 homeowners. However, Marchai ignores NRS 116.4117(1), which deals with suits by  
27 "any person" regarding a violation of NRS 116. To read NRS 116.4117(1) to be limited  
28 to homeowner's who have been aggrieved renders the language of "any person,"  
nugatory. Courts are charged with interpreting statutes in a manner that gives full effect

1 to all of the terms therein and does not render any of them superfluous. See, e.g., *S.*  
2 *Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)  
3 (“When interpreting a statute, this court must give its terms their plain meaning,  
4 considering its provisions as a whole so as to read them ‘in a way that would not render  
5 words or phrases superfluous or make a provision nugatory.’”)

6 Review of the history of NRS 116.4117 reveals that an award of fees for Non-  
7 homeowner suits has always been allowed. In the 1993 Amendment, the distinction  
8 between homeowner and non-homeowner suits did not exist yet. The 1993  
9 Amendment added that a suit by any person required “suffering actual damages from”  
10 the failure to follow NRS 116. It also added the prevailing party language. The  
11 Amendment read as follows:

12 **NRS 116.4117** is hereby amended to read as follows:

13 116.4117 If a declarant or any other person subject to this  
14 chapter fails to comply with any of its provisions or any provision of  
15 the declaration or bylaws, any person or class of persons ~~adversely~~  
16 ~~affected by~~ suffering actual damages from the failure to comply has  
17 a claim for appropriate relief. Punitive damages may be awarded for  
18 a willful and material failure to comply with this chapter ~~[-] if the~~  
19 failure is established by clear and convincing evidence. The court ~~[-]~~  
20 ~~in an appropriate case,~~ may award reasonable attorney’s fees ~~[-] to~~  
21 the prevailing party.

22 See **Exhibit C** attached hereto, 1993 Amendment to NRS 116.4117. The future  
23 distinction between homeowner and non-homeowner suits under NRS 116.4117 had  
24 nothing to do with awarding fees.

25 The 1997 Amendments added NRS 116.4117(2) and the distinction of  
26 association and homeowner lawsuits versus just any person. See Exhibit C, 1997  
27 Amendment. The obvious reason for the distinction is that the association, declarant,  
28 and homeowners discussed in NRS 116.4117(2) are already in a relationship and  
bound to the CC&Rs. The language from the 1993 Amendment of “suffering actual  
damages” is maintained for non-homeowners in section 1, but not for those in the new  
section 2 that are already bound to the CC&Rs. Additionally, the 1997 amendment  
moves the award of fees to its own section, and it applies to both homeowner and non-  
homeowner suits. *Id.* As this was an action for an alleged violation of NRS 116, NRS

1 116.4117 applies and the Court may award fees to HOA as the prevailing party.

2 Plaintiff's citation to trial court cases in the federal district court for the proposition  
3 that an HOA cannot recover fees against a lender are unpersuasive. In the case *Bank*  
4 *of New York Mellon v. Log Cabin Manor Homeowners Association*, 362 F. Supp.3d 930  
5 (Dist. Nev. 2019), Judge Du granted the homeowner association's motion for summary  
6 judgment arguing that the lender lacked standing to pursue claims under NRS  
7 116.4117(2). The case did not concern attorney's fees and has no persuasive value in  
8 that regard.

9 In the case *Bank of America, N.A. v. Treasures Landscape Maint. As'n*, No. 2:16-  
10 CV-380-JCM-NJK, 2017 WL 3116233, (D. Nev. July 21, 2017), Judge Mahan denied  
11 the land maintenance association's request for attorney's fees and costs because the  
12 lender brought suit for quiet title and declaratory relief only. Here, Marchai claimed that  
13 it could proceed to trial against HOA for breaching NRS 116.1113. See Plaintiff's  
14 Opposition to Wyeth Ranch Community Association's Motion for Summary Judgment,  
15 filed October 19, 2020 at 16-17. See also Plaintiff's Fourth Claim for Relief entitled  
16 "Violation of NRS § 116.1113 et seq. –Against Wyeth Ranch and Alessi & Koenig" See  
17 Complaint.

18 For Plaintiff to proceed for the past six years and prevent summary judgment,  
19 arguing that it had a valid NRS Chapter 116 claim against the HOA and now assert  
20 otherwise simply because it lost is bad faith. If this Court should decline to award HOA  
21 its fees under NRS 116.4117, it should accept Plaintiff's argument as an admission to  
22 having brought and maintained its suit in bad faith and award HOA its fees and costs  
23 from the commencement of this case under NRS 18.010(2)(b).<sup>1</sup>

24 <sup>1</sup> NRS 18.010(2)(b) states, "Without regard to the recovery sought, when the court finds that the  
25 claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was  
26 brought or maintained without reasonable ground or to harass the prevailing party. The court  
27 shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all  
28 appropriate situations. It is the intent of the Legislature that the court award attorney's fees  
pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of  
Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims  
and defenses because such claims and defenses overburden limited judicial resources, hinder the  
timely resolution of meritorious claims and increase the costs of engaging in business and  
providing professional services to the public."

**B. HOA was the Prevailing Party Against Marchai**

Plaintiff provides no facts or law to support its claim that it was the prevailing party against HOA. The crux of Plaintiff's argument is that it was the prevailing party against HOA because it prevailed against SFR in establishing that its deed of trust survived the foreclosure. That would make sense if HOA and SFR are one and the same-but they are not. It might be a plausible argument if the HOA argued that the deed of trust was extinguished-but it did not. In this action, HOA did not make claims asserting entitlement to the subject property, and did not seek a determination that Marchai's deed of trust was extinguished by the foreclosure. On the contrary, NRS 116 allows for the possibility of Marchai's deed of trust being extinguished if it does not pay off the superpriority amount, and the HOA argued it was not liable for the foreclosure if that was the basis for Marchai's deed of trust being extinguished.

Plaintiff's argument that it is the prevailing party and HOA should not recover its costs under NRS 18.020 rings hollow. Nothing cited by Plaintiff supports this position. Plaintiff cites to a patent case called *Shum v. Intel Corp.*, 629 1360, 1366 (Fed. Cir. 2010) for the proposition that there can be only one winner and that is Marchai. In *Shum*, there were only two parties, and the plaintiff prevailed in some claims against the defendant and lost in other claims against the defendant. Even though the Federal Circuit found the defendant to be the prevailing party, the patent case cited is not analogous. Here, Marchai lost in ALL claims against this defendant. Additionally, on April 26, 2021, Marchai filed its Notice of Appeal and Case Appeal Statement referencing that the Court "rule[d] in favor of Wyeth Ranch on Marchai's claims for bad faith, wrongful foreclosure, and intentional interference with contract." See Marchai's Case Appeal Statement at 3. Marchai is clearly the losing party and HOA is the prevailing party.

///

///

///

1 **C. The Beattie Factors support an Award of Fees and Costs under the Penalties**  
2 **of the Offer of Judgment Statute and Rule**

3 1. Plaintiff's Litigation Position has been Grossly Unreasonable

4 Contrary to Plaintiff's representations, HOA does not believe Plaintiff's Complaint  
5 was maintained in good faith. It might have been brought in good faith but subsequent  
6 actions (i.e. filing a claim against HOA for violating NRS Chapter 116 and now claiming  
7 not to have standing to file such claims)<sup>2</sup> indicate the Plaintiff's Complaint was brought  
8 in bad faith and Plaintiff's litigation conduct has been nothing but grossly unreasonable.

9  
10 As discussed in the Motion for Summary Judgment, and recognized in the  
11 Findings of Fact and Conclusions of Law, Plaintiff had no basis to pursue claims against  
12 HOA after remand. HOA never made claims of ownership or title to the subject property  
13 and only took action to foreclosure as allowed by the statute, which gives lenders a  
14 similar ability to protect their deed of trust.

15 Plaintiff claims that HOA created this confusion about where payments were  
16 made because the documents did not align with the testimony at trial. This ignores the  
17 fact that case at this point was really about quiet title. There isn't any justification for  
18 maintaining claims through trial that are likely to fail, because you do not like the parties  
19 testimony on other claims. There is no basis to say the HOA's testimony would have  
20 been different if they were never a party to the case or they were dismissed before trial..  
21 The fact of the matter is Marchai tried to bully HOA with trumped up arguments and took  
22 a chance at trial and Lost. That is the Plaintiff's strategic and litigation choices-not the  
23 fault or cause of HOA. It was unreasonable.  
24  
25

26 ///

27  
28 <sup>2</sup> See Plaintiff's Opposition to Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs, P. 3.

2. Plaintiff's Claim that it Could not Accept the Offer of Judgment is Meritless

Plaintiff claims that it could not have accepted the Offer of Judgment because it would have a preclusive effect, prejudicing it against SFR. However, Plaintiff offers no case law to support such an argument. In fact, such an assertion runs afoul of Nevada's public policy supporting settlement and speedy resolution of cases. See NRCP 1. Plaintiff claims that *Mendenhall v. Tassinari* stands for the proposition that an accepted offer of judgment serves as issue and claim preclusion against the accepting party as to (presumably) other defendants. 133 Nev. 614 (2017). Such is not the case. In *Mendenhall*, there was only two sides to the litigation, the Brownstone Entities and Mendenhall/Sunridge Corporation. The Brownstone Entities accepted Mendenhall/Sunridge Corporation's Offer of Judgment (drafted by Mendenhall/Sunridge Corporation. *Id.* at 616. Thereafter, Mendenhall/Sunridge Corporation (tried) to sue Brownstone Entities' agent. *Id.* The Nevada Supreme Court found that a bar of future litigation was an agreed upon term. "The Offer settled 'all claims between and among' the parties 'or those asserted *or that could have been asserted* on behalf of each of them against one another.' (Emphases added.) These included, 'but [were] not limited to, those [claims] asserted in the [c]omplaint *as well as any related or potential claims that could [have] be asserted in [the first] action against one another.*' (Emphasis added.)" *Id.* at 625. After a thorough discussion about offers of judgment not being ordinary consent judgments and being creatures of contract, the Nevada Supreme Court found that Mendenhall/Sunridge Corporation's claims were barred after applying the *claim preclusion test*, which examines whether: (1) the parties to the judgment are the same parties, (2) the judgment was final and valid and (3) the claims in the first case were the same as the second case. *Id.* at 618-620. There is no conceivable way in which SFR could apply the doctrine of claim preclusion to bind Marchai to a judgment



1 where (1) SFR was not a party to and (3) Marchai did not have identical claims against  
2 HOA and SFR.

3 Marchai only briefly asserts without any analysis that SFR's Bona Fide Purchaser  
4 claim made it so Marchai's acceptance of a \$15,000 offer of judgment would preclude  
5 its \$360,000 wrongful foreclosure claim. Opposition at 6. Marchai does not establish a  
6 connection between the two or establish that acceptance would have prevented it from  
7 maintaining its claims against SFR. This merely points out that Marchai wanted to  
8 assert liability against the HOA if it loses its deed of trust. The Court has to look at the  
9 reasonableness of the offer in the context of the world of HOA foreclosure litigation and  
10 the probability Marchai would get a monetary judgment against the HOA, versus if there  
11 was an issue with the sale and Marchai just maintaining its deed of trust; and also view  
12 the timing of the offer in the context after remand with these issues being extremely  
13 narrowed. The reality is Marchai made the calculation that they would take the risk and  
14 potentially pay the HOA's attorney fees after the offer judgment to maintain the ability to  
15 seek a monetary judgment against the HOA for a wrongful foreclosure. This had nothing  
16 to do with its claims against SFR. As the ultimate decision points out, the Court could  
17 find the HOA did not act in bad faith, wrongfully foreclosure, or interfere with the  
18 contract, and still find Marchai keeps its deed of trust. Given the very high probability  
19 that Marchai was not going to receive a monetary judgment against the HOA, based on  
20 the status of the case and timing of the offer, \$15,000 was more than reasonable.  
21 Further, the HOA ended up paying almost twice as much as its offer thereafter for  
22 having to continue to trial.  
23

24 In this case, HOA's Offer of Judgment states nothing as to barring Marchai's  
25 claims against SFR. It states that the offer is made for Plaintiff to take judgment against  
26 HOA-not for SFR to take judgment against HOA. It also states that if Marchai chose to  
27  
28

1 accept the Offer of Judgment, a dismissal with prejudice could be entered, rather than  
2 judgment against HOA.

3 Based on the universal policy to facilitate and encourage settlement, had SFR  
4 sought to take advantage of Marchai's settlement it is clear that the Nevada Supreme  
5 Court would look solely to the offer between the parties and not read into it an offset or  
6 judgment in favor of SFR that did not exist. The scenario that Marchai suggests would  
7 have happened was expressly rejected by the Minnesota Supreme Court in the case  
8 *Collins v. Minn. Sch. of Bus.*, 655 N.W.2d 320, 327-28 (Minn. 2003) (not reading into an  
9 offer of judgment an offset in favor of a non-settling party). There's no merit to Plaintiff's  
10 perceived concerns.  
11

12 As previously stated, HOA's offer was reasonable in timing and amount. Upon  
13 remand, the only issue was where HOA applied the owner's late payments. HOA  
14 offered Marchai \$15,000 more than what Plaintiff could prove on its best day in  
15 damages.  
16

17 3. HOA has met the *Brunzell* factors in establishing that the requested fees  
18 and costs are Necessary and Reasonable

19 As a preliminary matter, it must be stated that HOA did not choose to be part of  
20 this action; it did not assert a claim to the subject property; it did not make Plaintiff invest  
21 in the subject property. Other lenders have in similar situations chose not to sue the  
22 homeowners association and certainly not make such serious claims that the  
23 homeowners association breached their duty of good faith and sought damages under  
24 NRS Chapter 116 for hundreds of thousands of dollars. A homeowners association, by  
25 statute, must be a corporate entity and must have counsel to defend itself in litigation.  
26 For Plaintiff to claim that its inability to beat the offer of judgment or to obtain judgment  
27 against the HOA has little to do with the undersigned's advocacy IS insulting.  
28

1 It is true, unlike Plaintiff's counsel who has all of the work done by its principal  
2 and purports to have reasonable fees charging fees at \$425-515 per hour, HOA's  
3 counsel uses a team approach, with a bulk of the work being performed by associates  
4 and where possible, by paraprofessionals at lesser rates. In this case, the rates of the  
5 Lipson Neilson associate attorneys who worked on this case were \$175-180 per hour,  
6 partners at \$200-\$205 per hour and paralegals at \$95 per hour. In addition to the  
7 exhibits attached to the motion establishing satisfaction of the Brunzell factors and  
8 reasonableness of the fee, attached hereto are the declarartions of attorneys Kaleb  
9 Anderson and Megan Thongkham attesting to their work on the file and accuracy of the  
10 billing. See Exhibits A and B.

12 Plaintiff takes issue with two attorneys at Lipson Neilson attending the trial in this  
13 matter, but as exemplified above, two attorneys at Lipson Neilson do not even equate to  
14 the rate of Plaintiff's chosen attorney's hourly rate. Had Plaintiff not opposed the motion  
15 for summary judgment and made a reasonable analysis of the remaining issues in this  
16 quiet title action, two attorneys for the HOA would not have appeared at trial. Plaintiff's  
17 request to reduce HOA's fees for having two attorneys at trial is unwarranted.

19 Plaintiff asserts that fees can only be awarded where the conduct advances the  
20 litigation and takes issue with the preparation of the budget. While Plaintiff cites no  
21 case law for the proposition that an award of fees must "advance the litigation," it is  
22 plain that a creation of a budget assists in protecting a client's interest. A budget assists  
23 the client in determining what are its risks and can assist in determining a case  
24 settlement value. In this case, Plaintiff did not accept the settlement offers that HOA  
25 made, but it doesn't mean that the creation of a budget did not assist the HOA.

27 ///

28 ///

**III. Conclusion**

Based on the foregoing, Defendant Wyeth Ranch Community Association respectfully requests the Court enter an award in its favor against Plaintiff Marchai in the amount \$63,089.00 for fees and \$1524.14 in costs for a total of \$64,593.14 pursuant to NRS 116.4117, or NRS 116.4117 in conjunction with NRCP 68 and NRS 17.117.

Alternatively, Wyeth Ranch Community Association respectfully requests this Court enter an award in its favor and against Plaintiff Marchai in the amount of \$29,449.50 for fees and \$17.50 in costs for a total of \$29,467 pursuant to NRS 17.117 and NRCP 68.

DATED this 30<sup>th</sup> day of April 2021.

LIPSON NEILSON P.C.

*/s/ David T. Ochoa*

By: \_\_\_\_\_

KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
DAVID T. OCHOA, ESQ.  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant  
Wyeth Ranch Community Association*

**CERTIFICATE OF SERVICE**

I certify that on the 30<sup>th</sup> day of April, 2021, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

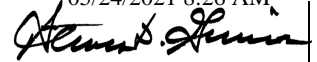
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
[david@djmerillpc.com](mailto:david@djmerillpc.com)

*Attorney for Plaintiff Marchai, B.T.*

Diana Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)  
[jackie@kgelegal.com](mailto:jackie@kgelegal.com)  
[karen@kgelegal.com](mailto:karen@kgelegal.com)

*Attorneys for SFR Investments Pool 1,  
LLC*

/s/ Juan Cerezo  
An employee of LIPSON NEILSON P.C.

  
CLERK OF THE COURT

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

**ODM**  
David J. Merrill  
Nevada Bar No. 6060  
David J. Merrill, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 566-1935  
Facsimile: (702) 993-8841  
Email: david@djmerrillpc.com  
Attorney for Marchai, B.T.

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

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-  
TIONS

**Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs**

Marchai, B.T.'s Motion to Retax and Settle the Costs came before the Court, in chambers, on the 7th day of May 2021. The Court, having considered the motion, SFR Investments Pool 1, LLC's Opposition to Plaintiff's Motion to Retax and Settlement Memorandum of Costs; Defendant Wyeth Ranch Community Association's Opposition to the Motion to Retax and Settle Costs; the Reply in Support of Marchai, B.T.'s Motion to Retax and Settle the Costs; and good cause appearing therefor:

**It is ordered** that the motion is **denied**;

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

**It is further ordered** that Wyeth Ranch is awarded reasonable costs against Marchai of \$1,524.14;

**It is further ordered** that under *Schouweiler v. Yance Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the costs awarded against Marchai are passed through and assessed against SFR Investments Pool 1, LLC.

**Dated this 24th day of May, 2021**

E. H. H. H.

**819 309 8B54 5B04**  
**Elizabeth Gonzalez**  
**District Court Judge**

Submitted by:

David J. Merrill, P.C.

By: /s/ David J. Merrill  
David J. Merrill  
Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 566-1935  
Attorney for Marchai, B.T.

Approved as to form:

Kim Gilbert Ebron

Lipson Neilson P.C.

By: /s/ Karen L. Hanks  
 Karen L. Hanks  
 Nevada Bar No. 9578  
 7625 Dean Martin Drive, Suite 110  
 Las Vegas, Nevada 89139  
 (702) 485-3300  
 Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa  
David T. Ochoa  
Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite  
120  
Las Vegas, Nevada 89144  
(702) 382-1500  
Attorneys for Wyeth Ranch Community As-  
sociation



David Merrill &lt;david@djmerillpc.com&gt;

---

**RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs**

1 message

---

**Karen Hanks** <karen@kgelegal.com>

Thu, May 20, 2021 at 11:27 AM

To: David Merrill &lt;david@djmerillpc.com&gt;, David Ochoa &lt;dochoa@lipsonneilson.com&gt;

Cc: Jackie Gilbert &lt;jackie@kgelegal.com&gt;, Diana Ebron &lt;diana@kgelegal.com&gt;, "Wolf Rivers

(de715b910+matter1020495566@maildrop.clio.com)" &lt;de715b910+matter1020495566@maildrop.clio.com&gt;, Candi Fay &lt;candifay@kgelegal.com&gt;

You can insert my e-signature

Karen L. Hanks, Esq.

**Kim Gilbert Ebron**

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Telephone: 702-485-3300

Facsimile: 702-485-3301

**From:** David Merrill [mailto:[david@djmerillpc.com](mailto:david@djmerillpc.com)]

**Sent:** Thursday, May 20, 2021 6:58 AM

**To:** Karen Hanks <[karen@kgelegal.com](mailto:karen@kgelegal.com)>; David Ochoa <[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)>

**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs

Karen and David,

I have attached for your review and approval a draft of the Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs. I must submit to the Court by tomorrow. Please review and advise if you have any suggested changes or with approval to add your electronic signature. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

AA 480



Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



David Merrill <david@djmerillpc.com>

---

**RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs**

1 message

---

David Ochoa <DOchoa@lipsonneilson.com>

Thu, May 20, 2021 at 7:43 PM

To: David Merrill <david@djmerillpc.com>, "Karen L. Hanks" <karen@kgelegal.com>

David,

I approve, you may add my e-signature.

David



David Ochoa, Esq.

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

702-382-1500

702-382-1512 (fax)

E-Mail: [dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

**OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO \*\*\*\*\***  
\*\*\*\*\*

**CONFIDENTIALITY NOTICE**

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

---

**From:** David Merrill <david@djmerillpc.com>

**Sent:** Thursday, May 20, 2021 6:58 AM

**To:** Karen L. Hanks <karen@kgelegal.com>; David Ochoa <DOchoa@lipsonneilson.com>

**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs

AA 482

Karen and David,

I have attached for your review and approval a draft of the Order Denying Marchai, B.T.'s Motion to Retax and Settle the Costs. I must submit to the Court by tomorrow. Please review and advise if you have any suggested changes or with approval to add your electronic signature. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Marchai B T Bank Trust,  
Plaintiff(s)

CASE NO: A-13-689461-C

7 vs.

DEPT. NO. Department 11

8  
9 Cristela Perez, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/24/2021

15 David J. Merrill .	david@djmerrillpc.com
16 Diana Cline Ebron .	diana@kgelegal.com
17 E-Service for Kim Gilbert Ebron .	eservice@kgelegal.com
18 Kaleb Anderson .	kanderson@lipsonneilson.com
19 Michael L. Sturm .	mike@kgelegal.com
20 Renee Rittenhouse .	rrittenhouse@lipsonneilson.com
21 Susana Nutt .	snutt@lipsonneilson.com
22 Tomas Valerio .	staff@kgelegal.com
23 KGE Legal Staff	staff@kgelegal.com
24 KGE E-Service List	eservice@kgelegal.com
25 Diana Ebron	diana@kgelegal.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

David Ochoa	dochoa@lipsonneilson.com
David Merrill	david@djmerrillpc.com
Kaleb Anderson	kanderson@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com
Juan Cerezo	jcerezo@lipsonneilson.com
Candi Fay	candifay@kgelegal.com