Case No. 83214

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY, Appellant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, A NATIONAL ASSOCIATION, Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JESSICA PETERSEN, District Judge
District Court Case No. A-13-692304-C

APPELLANT APPENDIX VOLUME 9

Respectfully submitted by:

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com

DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
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KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Attorneys for Appellant
SFR Investments Pool 1, LLC

GENERAL INFORMATION	
PARCEL NO.	177-24-514-043
OWNER AND MAILING ADDRESS	HAWKINS ROBERT M & CHRISTINE V 3263 MORNING SPRINGS DR HENDERSON NV 89074-6958
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	3263 MORNING SPRINGS DR PARADISE
ASSESSOR DESCRIPTION	SEASONS AT PEBBLE CANYON PLAT BOOK 53 PAGE 45 LOT 50 BLOCK 10 SEC 24 TWP 22 RNG 61
RECORDED DOCUMENT NO.	* 20060612:03525
RECORDED DATE	06/12/2006
VESTING	JOINT TENANCY

*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	470
APPRAISAL YEAR	2012
FISCAL YEAR	12-13
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2012-13	2013-14
LAND	8750	8750
IMPROVEMENTS	32413	31188
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	41163	39938
TAXABLE LAND+IMP (SUBTOTAL)	117609	114109
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	41163	39938
TOTAL TAXABLE VALUE	117609	114109

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	0.12 Acres
ORIGINAL CONST. YEAR	1993
LAST SALE PRICE MONTH/YEAR	300000 06/06
LAND USE	1-10 RESIDENTIAL SINGLE FAMILY

DWELLING UNITS	1

PRIMARY RESIDENTIAL STRUCTURE					
TOTAL LIVING SQ. FT.	1292	CARPORT SQ. FT.	0	ADDN/CONV	NONE
1ST FLOOR SQ. FT.	1292	STORIES	ONE STORY	POOL	NO
2ND FLOOR SQ. FT.	0	BEDROOMS	3	SPA	NO
BASEMENT SQ. FT.	0	BATHROOMS	2 FULL	TYPE OF CONSTRUCTION	FRAME STUCCO
GARAGE SQ. FT.	420	FIREPLACE	1	ROOF TYPE	CONCRETE TILE
CASITA SQ. FT.*	0				

*Note: Casita square footage not included in Total Living square footage.

EXHIBIT C

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Case No.: A-13-692304-C

AFFIANT, being first duly sworn, deposes and says:

1. That Affiant is the Paralegal (position or title) of Nevada Association Services ("NAS") and in the capacity as Paralegal (position or title), is a custodian of the records of NAS.

2. That NAS is licensed to do business as a Corporation in the State of Nevada.

3. That on the _____ day of March, 2016, that Affiant was served with a Subpoena from the law offices of BALLARD SPAHR LLP, in connection with the above-entitled cause, calling for testimony and the production of records.

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the normal course and scope of a regularly conducted business activities of NAS.

6. As the duly authorized representative and custodian of records of NAS, I attest that these records are trustworthy to the best of my knowledge.

Executed on: 5/12/2016

AFFIANT

SUBSCRIBED and SWORN to before me
this 12 day of May, 2015.

Maren Parry

1-218 pages

MAREN PARRY
Notary Public
State of Nevada
Appt. No. 03-80305-1
My Appt. Expires Mar. 9, 2019

Plaintiff's Exhibit No. 2
Date: 5-12-16
Witness: Moses
A13692306C
Reporter: D. Kelly

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

EXHIBIT 26

EXHIBIT 26

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL, 1, LLC, a Nevada limited liability company; DOES 1 through 10, ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross Defendants.

CASE NO.: A-13-692304-C
DEPT NO. XXIV

DEPOSITION OF:
MIMI MAROIS

APRIL 11, 2016

DEPOSITION OF

MIMI MAROIS,

April 11, 2016

10:04 a.m.

100 North City Parkway
Suite 1750
Las Vegas, Nevada

Christine M. Jacobs, CCR No. 455

APPEARANCES OF COUNSEL

For the Plaintiff and Counter-Defendant JP Morgan Chase Bank N.A.:

BALLARD SPAHR LLP
RUSSELL J. BURKE, ESQ.
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106
702 471-7000
702 471-7070 Fax
burker@ballardspahr.com

For SFR Investments Pool, 1, LLC:

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JEREMY R. BEASLEY, ESQ.
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Las Vegas, Nevada 89139
702 485-3300
702 485-3301 Fax
jeremy@kgelegal.com

For Taylor Management:

WRIGHT LAW FIRM, LTD
WILLIAM PAUL WRIGHT, ESQ.
7065 West Ann Road, Suite 130-663
Las Vegas, Nevada 89130
702 776-7257
Wpw@wrightlawfirmltd.com

Also Present: Tom Golden, Robert Hamblen

Q. Does the HOA ever attend the foreclosure sales for its properties?

A. I do not know.

Q. Because you weren't involved with the HOA at this point in time?

A. That's correct.

Q. But you could find out?

A. Probably. But I doubt it, because I don't know where -- those board members I don't even know if they're still alive.

Q. Has the HOA foreclosed on any properties in this year, 2016?

A. I do not remember. Honestly, I don't remember.

Q. What about 2015?

A. I took over in 2015, yes.

Q. Were there any foreclosures in 2015?

A. I believe so.

Q. Do you know if anyone attended on behalf of the HOA?

A. No, they did not.

Q. Is there a policy about that?

A. No.

Q. In 2013 when the HOA foreclosed on a piece of property, did the HOA believe it was extinguishing the deed of trust?

MR. WRIGHT: Calls for a legal conclusion.

THE WITNESS: I'm not an attorney. I cannot answer that.

Q. (By Mr. Burke) Did the HOA believe that it wiped out the bank's deed of trust in 2015?

MR. WRIGHT: Same.

MR. BEASLEY: Join.

THE WITNESS: I don't know. I don't remember at the time what the law was. I'm sorry. I know the law changed, but it's only happened in 2015.

Q. (By Mr. Burke) Sure. Notwithstanding whatever the law said, what did the HOA believe was happening?

A. I believe they thought that the lien was not extinguished from the bank I believe.

Q. What do you base that belief on?

A. Well, with what we have on the NRS116, etc.

Q. Generally at an HOA foreclosure there can be excess proceeds. Are you aware of that?

A. I do not know the process at that point.

Q. Okay. Do you mean -- "at that point," do you mean 2015?

A. Well, I don't know the process when you go in foreclosure and all the, mostly the auction by itself.

Q. Okay. Prior to this foreclosure sale in 2013, are you aware if the HOA communicated to NAS what the

would that change your answer?

A. Yes. Yes. Sorry.

Q. Earlier you stated that you in this particular case with this property you did not believe that the board thought that the association or the, excuse me, the first deed of trust was extinguished at the foreclosure sale. What did you base that on?

A. Well, that was mostly per NAS that provide us the information at that time.

Q. So are you saying NAS had conveyed to the association that the first deed of trust would not be extinguished by the sale?

A. That's what they told us.

Q. Earlier counsel asked you to define "lien." Would you be surprised to find out that the lien in associations exists within a statute?

A. That's correct.

Q. Do you believe that the association records liens?

A. Yes, they do, but they don't need to. At that time, they didn't need to because it's on the co-lending document.

Q. So your knowledge of what recording liens and what the lien is is based on?

A. Correct. It's based actually to make sure it's

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, CHRISTINE M. JACOBS, a certified shorthand reporter for the state of Nevada, do hereby certify:

That I reported the deposition of the witness, MIMI MAROIS, commencing on April 11, 2016, commencing at the hour of 10:04 a.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcription of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time. That review of the transcript was not requested.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 21st day of April 2016.

Christine M. Jacobs

CHRISTINE M. JACOBS, CCR 455

EXHIBIT 27

EXHIBIT 27

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC A NEVADA LIMITED LIABILITY COMPANY,	
PLAINTIFFS,	CASE NO.: A-13-678842-C
VS.	
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2005-HE6, ASSET-BACKED CERTIFICATES, SERIES 2005-HE6; CITIBANK, N.A., TRUSTEE FOR SACO 1 TRUST 2005-4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4, A NATIONAL ASSOCIATION; DOES I THROUGH X, ROE CORPORATIONS I THROUGH X, INCLUSIVE,	
DEFENDANTS.	

DEPOSITION OF ROBERT DIAMOND
VOLUME I, PAGES 1 - 97
TAKEN ON THURSDAY, JULY 14, 2016
AT 1:35 P.M.
AT THE LAW OFFICES OF BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA

REPORTED BY: LINDA COLUCCI, C.C.R. NO. 112

APPEARANCES:

For the Plaintiff:
KAREN HANKS
Attorney at Law
KIM GILBERT EBRON
7625 Dean Martin Drive
Suite 110
Las egas, Nevada 89139

For the Defendant U.S. Bank National Association, as Trustee:
LINDSAY DEMAREE
Attorney at Law
BALLARD SPAHR LLP
100 North City Parkway
Suite 1750
Las Vegas, Nevada 89106

Also Present: ALAN HARVEY

I N D E X

E X H I B I T S

A. Correct.

Q. Was that typically pretty close to the opening bid amount? Again, I'm just asking based on your experience.

A. Plus or minus. Just like all the papers. No one knew the real number until that moment. I think it's set up per moment, per day, whatever.

Q. Right. But you could get a good ballpark?

A. Right. 15 percent, maybe, 20 percent.

Q. Did you consider whether a bank was in the process of foreclosing on a property when you decided whether or not to bid on it?

A. No, because I don't really care.

Q. Okay. Again, that was something Miss Kelso mentioned in her deposition, that she said she spoke with you and you told her that you liked to see if there was, and she used the term, clean history of bank foreclosures on the property.

A. If they're going to foreclose in the next 20 days, no, I would not, obviously.

Q. Why wouldn't you bid on a property if a bank was going to foreclose soon?

A. To my knowledge, you'd probably lose your investment because that's what foreclosing is.

Q. So you understood that if you purchased a

property at an HOA foreclosure sale and then a bank foreclosed, you would lose the investment?

A. To my knowledge.

Q. Did you consider whether or not there was going to be litigation over a property when you decided how much to bid on it?

A. What do you mean, litigation?

Q. Let me back up. Did you believe that -- did you know if there were going to be lawsuits over a property that you purchased?

A. No.

Q. So if you didn't know whether there was going to be a lawsuit, did you consider things like legal expenses in determining how much to bid for a property?

A. No. I never put that in my thoughts.

Q. Did you look at the tax records for properties, the Clark County Assessor's Web page?

A. I understand. I might have, yeah, to see square footage and how many bedrooms. It gives you those details, descriptions of the physical.

Q. Did you look at the tax records to see the taxable value of the property?

A. It would show you everything on -- those Clark County tax records show you the square footage, land, and it gives you also their last taxes paid because

REPORTER'S DECLARATION

State of Nevada)
ss:
County of Clark)

I, Linda Colucci, C.C.R. No. 112, declare as follows:

That I reported the taking of the deposition of the witness, ROBERT DIAMOND, Volume I, commencing on Thursday, July 14, 2016, at 1:35 P.M.;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes taken down at said time; and that pursuant to NRCP 30(e), transcript review by the witness was requested.

I further declare that I am not a relative or employee of any party involved in said action, nor a person financially interested in the action.

Dated at Las Vegas, Nevada, this 19th day of July 2016.

Linda Colucci

Linda Colucci, C.C.R. 112

EXHIBIT 28

EXHIBIT 28

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

CASE NO. A-13-692304-C

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

_____/

///

DEPOSITION OF PAULINA KELSO

30(b)(6) SFR INVESTMENTS POOL 1, LLC

Taken at the offices of Ballard Spahr, LLP

on Friday, June 24, 2016

at 1:38 p.m.

at 100 N. City Parkway, Suite 1750
Las Vegas, Nevada

Reported by: Denise R. Kelly, CCR #252, RPR

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

Counterclaimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Counter-Defendant/
Cross-Defendants.
_____/

APPEARANCES:

For Plaintiff/
Counterdefendant: LINDSAY DEMAREE, ESQ.
BALLARD SPAHR, LLP
100 N. City Parkway
Suite 1750
Las Vegas, Nevada 89106

For Defendant
Counterclaimant: KAREN HANKS, ESQ.
KIM GILBERT EBRON
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139

* * * * *

INDEX

INFORMATION TO BE SUPPLIED
None

view the properties typically prior to purchasing. So he stated that that would be one risk is what condition the property is going to be in once he receives it and also the risk of litigation.

Q. What did he tell you about the risk of litigation?

A. Just that he's aware that there is a possibility that the homes that he purchases will go into litigation.

Q. So is the risk just that they would be tied up in litigation or was it the risk of an adverse decision to SFR?

MS. HANKS: Objection. Form.

THE WITNESS: I believe he stated that it was just the general risk of litigation for the properties. I don't know that he specifically said one or the other that he mentioned.

BY MS. DEMAREE:

Q. Why was the risk of litigation considered?

A. I guess I'm not sure what you mean.

Q. So you said that the risk of litigation was something that Chris Hardin said he considered in doing a risk assessment, correct?

A. I don't know that he said that he even did a risk assessment. He just said that he was aware

when he was bidding on these properties and purchasing them from the HOA sales that there was a risk of litigation.

Q. Did the risk of litigation affect whether or not he bid on the property?

A. No, I don't think so.

Q. Did the risk of litigation affect how much he would pay for the property?

A. I don't know that it was how much he would pay, but he described that's why the homes were going for the prices that they were was because of the risk of litigation was associated with it.

Q. And the risk of litigation that was associated with purchasing a property at an HOA sale, that's what you're talking about?

A. Yes.

Q. And I'm just trying to clarify what risk of litigation means in this context, do you know?

A. So prior to the Supreme Court's decision, they knew that they were counting on their interpretation of NRS 116. So it would be to that extent. And then after the ruling, then it was still a risk of litigation associated with NRS 116, and not as much as a risk anymore but that there still would be issues interpreting the law.

BY MS. DEMAREE:

Q. So SFR understood that there was a possibility that a court could find a First Deed of Trust was not extinguished after an HOA foreclosure sale?

MS. HANKS: Objection. Scope.

THE WITNESS: That there was that possibility that the Court wouldn't rule with SFR's interpretation, yes.

BY MS. DEMAREE:

Q. Again, just so we are clear with this line of questioning, these were things that Chris Hardin discussed with you when you asked him about risk assessments, correct?

A. Yes. For the most part, those are things that have also just come through other, not specifically our conversation yesterday, but what he's told me before.

Q. But he did say that the risk of litigation?

A. He did.

Q. So we will go through in a more organized fashion about what Chris Hardin did with respect to each property or what he believes he did based on his general practices. But other than that, is there

are the three that I can think of that would survive. But things that he would have to potentially pay if he was to buy the property, that he would have to take care of.

Q. Anything else that he looked at on the Clark County Recorder's web page?

A. I think those were the ones he's mentioned to me.

Q. Did he look for CC&Rs?

A. I have not heard him say that to me.

Q. Has he looked for Deeds of Trust?

A. He doesn't look for them, but he'll notice them if they are on there, if they are recorded.

Q. Before the sale, does SFR obtain copies of any of the recorded documents?

A. Before a sale? No, I don't believe so.

Q. So Chris Hardin would rely on the Clark County Recorder's website to learn information about the three notices, the tax liens, utilities, things like that?

A. Yes.

Q. You also mentioned Zillow?

A. I did.

Q. And why would he look at Zillow?

A. So he can put in the house address and

looking for was, you know, the things that matter to him were location, age of the property, square footage, room numbers. I believe those things.

BY MS. DEMAREE:

Q. Would that also apply to the Morning Springs property?

A. I believe so, yes.

Q. Other than what you just testified about, was there anything else SFR considered when deciding to bid on the Morning Springs property?

A. I don't believe so, no.

Q. Did SFR consider the risk of litigation in purchasing both the Morning Springs and Begonia properties?

A. SFR was aware that there is likely -- that there is a risk that litigation will likely ensue.

Q. We talked about this earlier. And I believe you said you weren't -- it was a risk that the Court might disagree with SFR's position on NRS 116.

A. Correct. That and just the risk in general. Even if they did side like they did, then, you know, there is still a risk of litigation because the other side is going to want to, you know, contend that.

Q. How did the risk of litigation impact

SFR's decision to bid on the property?

A. I don't know that it impacted it, the decision to bid. I just believe that SFR is aware of that risk.

Q. Did the risk of litigation impact SFR's -- did it impact how much SFR was willing to pay for the property?

A. From my understanding, what SFR was willing to pay was just the events of that day and a gut reaction what was happening at the auction played into what they were willing to pay.

Q. Did the risk of litigation lower the amount that SFR was willing to pay?

A. I don't believe so.

Q. So --

A. The homes in general, when I've talked to Chris, the homes in general at HOA foreclosures were going for these types of amounts because people were aware of the risk of litigation. I don't know that a risk of litigation would play into how much he was willing to pay. Do you know what I'm saying? In general just that risk brought the prices down.

Q. You mentioned that the amount that Chris would pay was a gut reaction. What do you mean by that?

MS. HANKS: Objection. Form.

THE WITNESS: Can you say that again.

BY MS. DEMAREE:

Q. You mentioned that SFR considered the risk of litigation?

A. Correct.

Q. I'm trying to understand risk of litigation by whom? Who else would be involved in that litigation?

A. Yeah. I think, like I said before, probably somebody associated with the First Deed of Trust. And then gosh, it could be others too. I just don't know off the top of my head. But it would be anybody associated, I guess, with that house.

Q. But SFR didn't get copies of the actual HOA notices before the sale, did it?

A. No. It doesn't -- you mean the recorded documents?

Q. Yes.

A. No, it doesn't pull them prior to an HOA sale.

Q. Did SFR contact the person associated with the First Deed of Trust before a sale?

A. It's my understanding they do not.

Q. Does SFR obtain copies -- well, did SFR

ever confirm with the foreclosure agents for the properties whether or not the association published the Notice of Sale?

A. Prior to the auction?

Q. Yes.

A. I don't believe so.

Q. Did SFR ever confirm with the foreclosure agent whether or not the association properly mailed the notices?

A. I don't believe so.

Q. Did SFR ever cap the amount that it was willing to bid for a particular property?

A. It's my understanding that there was not a cap.

Q. But was there -- I think as your counsel mentioned earlier, Chris Hardin might have a certain amount allocated to spend on a certain day?

A. No, not that he would have a certain amount allocated. At the time he was attending so many auctions that he told me he would maybe have a couple hundred thousand for auctions, but that doesn't mean -- he stated to me he didn't have a cap. He doesn't have a maximum of what he can bid on a property.

Q. But he would have an amount set aside for

REPORTER'S DECLARATION

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I Denise R. Kelly, CCR #252, RPR, do hereby declare:

That I reported the taking of the deposition of the witness, PAULINA KELSO, commencing on Friday, June 24, 2016, at the hour of 1:38 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript. The original signature page is being forwarded to Karen Hanks, Esq. to obtain the deponent's signature. After 30 days the original transcript will be sent to Lindsay Demaree, Esq.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

Dated this 1st day of July, 2016.

Denise R. Kelly
CCR #252, RPR

EXHIBIT 29

EXHIBIT 29

Inst #: 201302220001500
Fees: $17.00
N/C Fee: $0.00
02/22/2013 11:56:39 AM
Receipt #: 1507348
Requestor:
PREMIER AMERICAN TITLE
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
National Default Servicing Corporation
WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 11-36688-JP-NV

61105026
APN : 177-24-514-043

SUBSTITUTION OF TRUSTEE

WHEREAS, **ROBERT M. HAWKINS AND CHRISTINE V. HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS** was the original Trustor(s), **MARIN CONVEYANCING CORP.** was the original Trustee and **MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC., NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC. ITS SUCCESSORS AND ASSIGNS** was the original Beneficiary under that certain Deed of Trust dated **06/07/2006** and recorded on **06/12/2006** as Instrument No. **20060612-0003526** of the Official Records of **CLARK** County, State of NV and

WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes **NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16th Street, Suite 300, Phoenix, Arizona 85020,** as Trustee under said Deed of Trust. Said Substitute Trustee is qualified to serve as Trustee under the laws of this state.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Dated : 2-6-13

By : Tonia Y. McFadden-Williams
Its : Vice President

STATE OF Ohio
COUNTY OF Franklin

On February 6, 2013 before me, the undersigned, a Notary Public for said State, personally appeared Tonia Y. McFadden-Williams who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

NOTARY PUBLIC STATE OF OHIO

TARA L. TUCKER
Notary Public, State of Ohio
My Comm. Expires 05/26/2013

TAB 28

MSJD
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.
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

SFR Investments Pool 1, LLC ("SFR") hereby files its Motion for Summary Judgment against JP MORGAN CHASE BANK, NATIONAL ASSOCIATION (the "Bank") pursuant to NRCP 56(c). This Motion is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert, Esq. ("Gilbert

Decl."), attached hereto as **Exhibit A**, and such evidence and oral argument as may be presented at the time of hearing on this matter.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on 05 day of June, 2018, in Department XXIV of the above-entitled Court, at the hour of 9:00 a.m. ~~/p.m.~~, or as soon thereafter as counsel may be heard, the undersigned will bring SFR's Motion for Summary Judgment before this Court for hearing.

DATED this 13th day of April, 2018.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for SFR Investments Pool 1, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

SFR previously filed a Motion for Summary Judgment on or about July 7, 2016. SFR prevailed on all issues. However, one of those issues was the standing of the Bank to raise 12 U.S.C. § 4617(j)(3) as a defense or claim. *See* Findings of Fact and Conclusions of Law filed on August 23, 2016. The Bank filed a Notice of Appeal ("NOA") on or about September 16, 2016. *See* NOA filed with this Court. Based on the Nevada Supreme Court's opinion in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. Adv. Op. 34, the parties stipulated to remand back to District Court to brief ***only*** the issues related to §4617(j)(3) before the District Court. *See* Stipulation and Order, pg. 3 ¶ 10, filed on September 18, 2017 attached hereto as **Exhibit D**. *See also*, Stipulation to Remand filed with Nevada Supreme Court attached hereto as **Exhibit C**.[1]

[1] Based on the stipulations and the order of this Court, SFR has not reargued the remaining issues decided by the Court in the initial order. SFR believes the Bank has waived the right to reargue those issues based on its stipulations. If the Court determines it will reconsider any of these other arguments by the Bank outside of the agreement to limit the issues, SFR requests the ability to brief those issues. SFR does not wish to waive its right to not waive the waiver.

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Summary Judgment can be granted in SFR's favor for the following reasons: **(1)**; the Bank's claims under 12 U.S.C. § 4617(j)(3) is barred by statute of limitations; (**2)** the Bank has failed to prove that FHFA/Freddie has an ownership interest; and **(3)** the Bank has failed to establish that it is a servicer for the FHFA/Freddie. As such, summary judgment can be granted in favor of SFR.

II. ARGUMENT

III. STATEMENT OF UNDISPUTED FACTS REGARDING CLAIMS AND DEFENSES RELATED SPECIFICALLY TO 12 U.S.C. § 4617(J)(3).

Undisputed Fact #1:

On or about June 12, 2006, a Deed of Trust ("the DOT") was recorded as Instrument No. 20060612-0003526, which purportedly states that the lender is GreenPoint Mortgage Funding, Inc. and MERS is the beneficiary under the security interest.[2]

Undisputed Fact #2:

On or about October 27, 2009, an Assignment was recorded, which states it transfers interest under the DOT from MERS to JP Morgan Chase Bank, National Association, due to the following language "assigns and transfers to [Chase] all beneficial interest under that certain Deed of Trust…" [3]

Undisputed Fact #3:

On or about October 27, 2009, a document titled Substitution of Trustee was recorded. This document states that "Marin Conveyancing Corp., was the original trustee… undersigned beneficiary, Chase, hereby substitutes California Reconveyance Company."[4]

Undisputed Fact#4:

On or about February 22, 2013, a document titled Substitution of Trustee was recorded. This document states that Chase was authorizing the substitution of National Default Servicing Corporation as the new trustee under the DOT *See* recorded Substitution of Trustee attached to

[2] *See* DOT attached to Gilbert Decl. as **Exhibit A-1**.

[3] *See* Assignment attached to Gilbert Decl. as **Exhibit A-2**.

[4] *See* Substitution of Trustee attached to Gilbert Decl. as **Exhibit A-3**.

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Gilbert Decl. as **Exhibit A-5**.

Undisputed Fact #5:

On or about August 23, 2013, another document titled corporate assignment of DOT was recorded, in which MERS again was assigning its interest in the DOT to JP Morgan Chase Bank, National Association. *See* recorded corporate assignment attached to the Gilbert Decl. as **Exhibit A-6**.

Undisputed Fact #6:

None of the documents referenced in Facts # 1-5 make any reference to any interest of Freddie Mac or FHFA in the note or deed of trust.

Undisputed Fact #7:

The foreclosure sale at which SFR obtained its interest in the Property was held on March 1, 2013 and the resulting Foreclosure Deed was recorded on March 6, 2013.

Undisputed Fact # 8:

The Bank waited 30 months to allege any interest by Freddie Mac in the Property, deed of trust or note, something it knew or should have known at the time it filed its original complaint.

IV. LEGAL ARGUMENT

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) *quoting Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it]." *Wood*, 121 Nev. at 32, 121 P.3d at 1031.

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The non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment must show that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit Mart,* 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

B. <u>The Bank's Claims are Time-Barred</u>.

1. The statute of limitations under § 4617(b)(12).

The statute that governs the statute of limitations in this context is 12 U.S.C. 4617(b)(12) which provides:

> **(12) Statute of limitations for actions brought by conservator or receiver**
>
> **(A) In general**. Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—
>
> (ii) in the case of any tort claim, the longer of—
>
> (I) the 3-year period beginning on the date on which the claim accrues; or
> (II) the period applicable under State law.

12 U.S.C. 4617(b)(12). The statute of limitations in Nevada for a wrongful foreclosure claim three years. NRS 11.190(3)(a).

By asserting § 4617(j)(3), the Bank is claiming the Association's foreclosure was wrongful because it occurred without the Federal Housing Finance Agency's ("FHFA") consent. A claim for wrongful foreclosure is a tort claim. *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 300, 662 P.2d 610, 620 (1983). This means under § 4617(j)(12), said claim carries a **three-year statute of limitations**. To that end, the Bank's claim accrued on the date of the sale i.e. March 1, 2013[5], which means that Bank had **until March 1, 2016**, to bring this claim. The Banks First Amended Complaint was filed on or about March 9, 2016, which is after the

[5] *See* Foreclosure Deed attached to Gilbert Decl. as **Exhibit A-4**.

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expiration of the statute of limitations. Thus, the Bank is time barred in bringing this claim.

2. The Amended Complaint does not relate back to the original filing date.

The amended complaint does not relate back to the original complaint. Nothing in the original complaint put SFR on notice of any claimed interest by Freddie Mac or that 12 U.S.C. § 4617(j)(3) was implicated. *See Wilson v. Fairchild Republic Co.*, 143 F.3d 733, 738 (2d Cir. 1998) ("The pertinent inquiry, in this respect, is whether the original complaint gave the defendant fair notice of the newly alleged claims." (*citing Baldwin County Welcome Center v. Brown*, 466 U.S. 147,149 n.3, 104 S. Ct 1723 (1984)). overruled on other grounds by *Slayton v. Am. Express Co.,* 460 F.3d 215, 227–28 (2d Cir.2006) (adopting *de novo* standard of review for Rule 15(c)). The Bank knew or should have known of the facts related to Freddie's alleged interest and made the allegations when filing its original complaint. The Bank cannot even assert 4617(j)(3) as a defense because this too is time barred. *City of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1035-36 (9th Cir. 2003) (barring City's defense under statute of limitations because defenses were "mirror images of time-barred claims"). In *Evans*, the 9th Circuit, noted that a party cannot "engage in a subterfuge to characterize a claim as a defense in order to avoid a temporal bar." *Evans*, citing *Mobil Oil Corp. v. Dep't of Energy*, 728 F.2d 1477, 1488 (1983) (holding that laches barred a pre-enforcement declaratory judgment action alleging that a price regulation was invalid). *See also Gilbert v. City of Cambridge*, 932 F.2d 51, 58 (1st Cir. 1991) (holding that temporal bar cannot be sidestepped by asserting a defensive declaratory judgment claim); *Clark v. Slack Steel & Supply Co.*, 611 P.2d 80, 83 (Alaska 1980) (dismissing, as barred by statute of limitations, plaintiff's affirmative claim that a contract be declared void because it was formed under duress). As the *Evans* Court noted, "statutes of limitations 'are aimed at lawsuits, not at the consideration of particular issues in lawsuits....'" 344 F.3d at 1035 (*quoting Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 416 118 S.Ct. 1408 (1998)). At the end of the day, the statute of limitations applies regardless of whether the Bank couches its 4617(j)(3) assertion as a claim or defense. As the *Evans* Court put it, "[n]o matter what gloss [the Bank] puts on its defenses, they are simply time-barred claims masquerading as defenses and are likewise subject to the statute of limitations bar." *Evans*, at 1036.

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Following this analysis, another court within the district held that the three-year statute of limitations was applicable and that based thereon, "the allegation of a federal foreclosure bar action under 12 U.S.C. Sec. 4617(j)(3) is time barred." *See* Decision and Order in *River Glider Avenue Trust v. Citimortgage, Inc.*, District Court Case No. A-13-680532-C (January 29, 2018) attached hereto as **Exhibit B**.

Based thereon, the Bank's purported claim under 12 U.S.C. § 4617 is time-barred.

C. <u>The Recorded Documents Prove Freddie Mac Has Zero Interest in the Note/Deed of Trust.</u>

Pursuant to NRS 47.240(2) it is conclusive that "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title." This means the facts recited in the recorded documents are now conclusive; i.e., they cannot be contradicted. Here, the recorded documents establish that MERS as nominee beneficiary for GreenPoint Mortgage Funding, Inc. ("GreenPoint") originally had the interest in the Note and Deed of Trust. Then MERS, on behalf of GreenPoint assigned all its rights, title and interest in the Note/Deed of Trust to Chase. While there is subsequent assignment from MERS to Chase again, this assignment makes little sense given that Chase was previously assigned the Note/Deed of Trust in 2009. Nevertheless, there are no assignments to Freddie Mac, and none of the documents refer to Chase as nominee beneficiary for Freddie Mac.

As a result, it is conclusively established that Freddie Mac does not and did not have an interest in the subject Note/Deed of Trust at the time of the Association foreclosure sale. Because this is summary judgment, the Bank need more than proclamations to establish this fact. As the non-moving party, they must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002).

If the recorded assignments were not enough, which they are, the Bank has not even established Freddie Mac's interest through the production of the wet-ink promissory note. The proper method of transferring a mortgage note is governed by Article 3 of the Uniform Commercial Code—Negotiable Instruments, because a mortgage note is a negotiable

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instrument.[6] *Leyva v. Nat'l Default Servicing Corp.,* 127 Nev. 470, 255 P.3d 1275, 1279–81 (2011) (citing *Birkland v. Silver State Financial Services, Inc.,* No. 2:10–CV–00035–KJD, 2010 WL 3419372, at *4 (D. Nev. Aug. 25, 2010)). *See also,* NRS 104.3301; *In re Veal*, 450 B.R. 897, 920, at *16 (B.A.P. 9th Cir. June 10, 2011) (holding that a purported servicer, did not prove that it was the party entitled to enforce, and receive payments from, a mortgage note because it "presented no evidence as to who possessed the original Note.)

"An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." UCC § 3–203(a). "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument. ..." UCC § 3–203(b). While the failure to obtain the endorsement of the payee or other holder does not prevent a person in possession from being the "person entitled to enforce" the note, the possessor does not have the presumption of a right to enforce. *Branch Banking & Trust Co. v. Smoke Ranch Dev., LLC*, No. 2:12-CV-00453-APG-NJK, 2014 WL 4796939, at *4 (D. Nev. Sept. 26, 2014). Rather, the possessor of the note must demonstrate both the fact and the purpose of the delivery of the note to the transferee in order to qualify as the "person entitled to enforce." *Leyva*, 255 P.3d at 1281.

Here, there is no evidence showing that Freddie Mac possesses the Note. Although to be clear, possession of both the Note and an interest in the Deed of Trust is required. *1597 Ashfield Valley Trust v. Federal National Mortgage Association*, 2015 WL 4581220 at 8 (D. Nev. July 28, 2015) (finding that possession of "note does not qualify as in property subject to protection

[6] *See* NRS 104.3102 (1) which applies to negotiable instruments like mortgage notes under Nevada's adoption of UCC Article 3. Transfer of a mortgage note must be done in accordance to NRS 104.3109 (note payable to bearer or order) and properly transferred or negotiated to a subsequent holder by proper endorsement if required. *See* NRS 104.3109; 104.3201; 104.3204; *see also Leyva v. Nat'l Default Servicing Corp.*, 255 P.3d 1275, 1280 (Nev. 2011).

If the note is payable to the order of an identifiable party but is then sold or otherwise assigned to a new party, it must be endorsed by the party to whom it was originally payable for the note to be considered properly negotiated to the new party. *Leyva*, 255 P.3d at 1280. "When endorsed in blank, an instrument becomes payable to bearer...." NRS 104.3205(2). Further, "a note initially made payable 'to order' can become a bearer instrument, if it is endorsed in blank." *Bank of New York v. Raftogianis,* 418 N.J.Super. 323, 13 A.3d 435, 439 (N.J.Super.Ct.Ch.Div.2010); *see also* U.C.C. § 3–205 cmt. 2 (2004). A party wishing to enforce a note must demonstrate it was validly negotiated or transferred by proper endorsement or proving the transaction through which, the note was acquired. *Leyva*, 255 P.3d at 1281 citing NRS 104.3203(2) and U.C.C. § 3-202 cmt 2.

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under 12 U.S.C. § 4617(j)(3)"). As noted in *Ashfield*, "[a] promissory note connected with a home mortgage loan is not an interest in the real property encumbered by the deed of trust." *Id.* at *8 *citing Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 254 (Nev. 2012). This is so because "the holder of the note is only entitled to repayment and does not have the right under the deed to use the property as means of satisfying repayment." *Edelstein*, *citing Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). Thus, in order for the Bank to show that 4617 even applies, it has to prove Freddie Mac has both an interest in the Note and Deed of Trust. The undisputed evidence belies this, and as such, 4617(j)(3) is not in play.

V. CONCLUSION

Based on the above, the Court should enter summary judgment in favor of SFR, stating that (1) SFR holds title to the Property free and clear of the subject Deed of Trust, (2) the Deed of Trust was extinguished when the Association foreclosed its lien containing super priority amounts, making it unenforceable against the Property, (3) the Bank, and any agents acting on its behalf or any entities on whose behalf the Bank may claim to be an agent for, are permanently enjoined from taking any action based on the Deed of Trust that would affect SFR's title to the Property, including but not limited to sale or transfer.

DATED this 13th day of April, 2018.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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Las Vegas, NV 89139
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, to the following parties:

Ballard Spahr		
	Contact	**Email**
	Abran Vigil	vigila@ballardspahr.com
	Mary Kay Carlton	carltonm@ballardspahr.com
Ballard Spahr Andrews & Ingersoll, LLP		
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	Russell J. Burke	BurkeR@ballardspahr.com

/s/Caryn R. Schiffman
An Employee of Kim Gilbert Ebron

EXHIBIT A

Declaration of Jacqueline A. Gilbert

Ex. A

DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043** (the "Property"), I reviewed the documents attached hereto as **Exhibits A-1 through A-6**.

7. Attached hereto as **Exhibit A-1** through **A-6,** are true and correct copies of excerpts from JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("the Bank") Initial and Supplemental Disclosures of Witnesses and Documents.

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

Dated this 13th day of April, 2018.

/s/Jacqueline A. Gilbert
Jacqueline A. Gilbert

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EXHIBIT A-1

Deed of Trust

20060612-0003526

Fee: $34.00
N/C Fee: $0.00

06/12/2006 14:00:35
T20060102935
Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane KCP
Clark County Recorder Pgs: 21

Assessor's Parcel Number:
177-24-516-043
Return To: GreenPoint Mortgage Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA 95403-2049

Prepared By: GreenPoint Mortgage Funding, Inc.
100 Wood Hollow Drive, Novato, CA 94945
Recording Requested By: GreenPoint Mortgage Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA, 95403-2049

1303226-DK

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN Redacted

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated June 7, 2006 together with all Riders to this document.

(B) "Borrower" is Robert M. Hawkins and Christina V. Hawkins, Husband And Wife as joint tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GreenPoint Mortgage Funding, Inc.

Lender is a Corporation organized and existing under the laws of the State of New York

Lender's address is 100 Wood Hollow Drive, Novato, CA 94945

(D) "Trustee" is Marin Conveyancing Corp.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated June 7, 2006
The Note states that Borrower owes Lender two hundred forty thousand and 00/100
Dollars
(U.S. $240,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2036
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]
☒ Occupancy Rider	☐ Interim Interest Rider	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
8007

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

As more particularly described in exhibit "A" attached hereto and made a part hereof.

Parcel ID Number: 177-24-514-043 which currently has the address of

1263 Morning Springs Drive [Street]

Henderson [City], Nevada 89074 [Zip Code]

("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

8007

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

8007

one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 900.00

6007

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ Robert M. Hawkins (Seal) -Borrower

_____ Christine V. Hawkins (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on June 8, 2006 by
Robert M. Hawkins, Christine V. Hawkins

Mail Tax Statements To:
Robert M. Hawkins
3263 Morning Springs Drive, Henderson, NV 89074 USA

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
TRACEY DERRICK
Appt. No. 04-91185-1
My Appt. Expires Dec 6, 2007

8007

VMP-6A(NV) (0507) Page 15 of 15 Form 3029 1/01

EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE CANYON, as shown by map thereof on file in Book 53 of Plats, Page 45, in the Office of the County Recorder of Clark County, Nevada.

Assessor's Parcel Number: **177-24-514-043**

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 3263 Morning Springs Drive, Henderson, NV 89074

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions

(the "Declaration"). The Property is a part of a planned unit development known as Seasons At Pebble Canyon

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8007

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Robert M. Hawkins (Seal) -Borrower

Christine V. Hawkins (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

8007

VMP-7R (0411) Page 3 of 3 Form 3150 1/01

3\

OCCUPANCY RIDER TO MORTGAGE/ DEED OF TRUST/SECURITY DEED

THE OCCUPANCY RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to GreenPoint Mortgage Funding, Inc. (the "Lender") of the same date and covering the property described in the Security Instrument and located at

3263 Morning Springs Drive, Henderson, NV 89074

("Property Address")

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

1. That the above-described property will be personally occupied by the Borrower as their principal residence within 60 days after the execution of the Security Instrument and Borrower shall continue to occupy the property as their principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld.
2. That if residency is not established as promised above as well as in the Security Instrument, the Lender may, without further notice, take any or all of the following actions:
   a. increase the interest rate on the Note by one-half of one percent (0.500%) per annum on a fixed-rate loan or increase the Margin on an Adjustable Rate Note by one-half of one percent (0.500%) per annum and to adjust the principal and interest payments to the amount required to pay the loan in full within the remaining term; and/or
   b. charge a non-owner occupancy rate adjustment fee of two percent (2.00%) of the original principal balance and/or
   c. require payment to reduce the unpaid principal balance of the loan to the lesser of (1) 70% of the purchase price of the property or (2) 70% of the appraised value at the time the loan was made. The reduction of the unpaid principal balance shall be due and payable within thirty (30) days following receipt of a written demand for payment, and if not paid within thirty (30) days will constitute a default under the terms and provisions of the Note and Security Instrument, and/or
   d. declare a default under the terms of the Note and Security Instrument and begin foreclosure proceedings, which may result in the sale of the above-described property; and/or
   e. refer what is believed to be fraudulent acts to the proper authorities for prosecution. It is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements or reports for the purpose of influencing in any way the action of the Lender in granting a loan on the above property under the provisions of TITLE 18, UNITED STATES CODE, SECTIONS 1010 AND 1014.

It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

Should any clause, section or part of this Occupancy Rider be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Occupancy Rider which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.

It is further specifically agreed that the Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies set forth above, including but not limited to, reasonable attorney's fees.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Occupancy Rider.

Robert M Hawkins (Borrower)
Robert M. Hawkins

Christine V. Hawkins (Borrower)
Christine V. Hawkins

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

EXHIBIT A-2

Assignment of Deed of Trust

Ex. A-2

(2)

Stewart Title
APN#: 177-24-514-043

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Inst #: 200910270000618
Fees: $15.00
N/C Fee: $0.00
10/27/2009 08:52:54 AM
Receipt #: 107162
Requestor:
SPL INC
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use only

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. Redacted

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 06/07/2006 executed by ROBERT M HAWKINS AND CHRISTINE V HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, to MARIN CONVEYANCING CORP., as Trustee; and Recorded 06/12/2006, Instrument 0003526, Book 20060612, Page of Official Records in the Office of the County Recorder of CLARK County, Nevada..

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part the real property described therein.

Property Address: 3263 MORNING SPRINGS DRIVE
HENDERSON, NV 89074

DTAA 34

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. Redacted

Date: October 26, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

COLLEEN IRBY, OFFICER

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On October 26, 2009 before me, C LUCAS, "Notary Public," personally appeared COLLEEN IRBY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

C. LUCAS
Commission # 1821933
Notary Public - California
Los Angeles County
My Comm. Expires Nov 9, 2012

35

EXHIBIT A-3

Substitution of Trustee

Ex. A-3

(2)

Stewart Title

APN# 177-24-514-043

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Inst #: 200910270000619
Fees: $15.00
N/C Fee: $0.00
10/27/2009 08:02:54 AM
Receipt #: 107182
Requestor:
SPL INC
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

V

Space above this line for recorder's use only

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No Redacted

SUBSTITUTION OF TRUSTEE

WHEREAS, ROBERT M HAWKINS AND CHRISTINE V HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, MARIN CONVEYANCING CORP. was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS), SOLELY AS NOMINEE FOR LENDER, GREENPOINT MORTGAGE FUNDING, INC., ITS SUCCESSORS AND ASSIGNS. was the original Beneficiary under that certain Deed of trust dated 06/07/2006, Recorded 06/12/2006, Book 20060612, Page ,Instrument 0003526 of Official Records in the office of the Recorder of CLARK County, Nevada.

WHEREAS, JPMorgan Chase Bank, National Association the undersigned, is the present Beneficiary under said Deed of Trust, and,

WHEREAS, the undersigned, desires to substitute a new Trustee under said Deed of Trust in the place of and stead of said original Trustee thereunder.

Now, THEREFORE, the undersigned Beneficiary hereby substitutes CALIFORNIA RECONVEYANCE COMPANY, 9200 Oakdale Avenue CA2-4379, Chatsworth, CA 91311, as Trustee of Said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number indicates the plural.

Date: 10/26/09

JPMorgan Chase Bank, National Association

COLLEEN IRBY, OFFICER

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No Redacted

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On October 26, 2009, before me, C LUCAS, "Notary Public" personally appeared COLLEEN IRBY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

C. LUCAS
Commission # 1821833
Notary Public - California
Los Angeles County
My Comm. Expires Nov 9, 2012

EXHIBIT A-4

Foreclosure Deed

Ex. A-4

Inst #: 201303060001648
Fees: $18.00 N/C Fee: $0.00
RPTT: $20.40 Ex: #
03/06/2013 11:35:06 AM
Receipt #: 1522804
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Rd., B-214
Las Vegas, NV 89119

FORECLOSURE DEED

APN # 177-24-514-043
North American Title #33131

NAS # N71869

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Pebble Canyon HOA), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 3, 2012 as instrument number 00020722 Book 20120803, in Clark County. The previous owner as reflected on said lien is Robert M Hawkins, Christina V Hawkins. Nevada Association Services, Inc. as agent for Pebble Canyon HOA does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 10 Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Pebble Canyon HOA governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/20/2012 as instrument #0001440 Book 20120920 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Pebble Canyon HOA at public auction on 3/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $3,700.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 1, 2013

Elissa Hollander

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

CHASE-HAWKINS0011

STATE OF NEVADA)
COUNTY OF CLARK)

On March 1, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal) (Signature)

M. BLANCHARD
Notary Public, State of Nevada
Appointment No. 09-11646-1
My Appt. Expires Nov. 5, 2013

M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 177-24-514-043
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 3,700.00
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 3,700.00
   d. Real Property Transfer Tax Due: $ 20.40

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Nevada Association Services	Print Name: S F R Investments Pool 1, LLC
Address: 6224 W. Desert Inn Rd.	Address: 5030 Paradise Rd., B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89146	State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

- North American Title Company
- 8485 W. Sunset Road #111
- Las Vegas, NV 89113

Escrow # 38131 / NT1869

State: Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT A-5

Substitution of Trustee

Ex. A-5

Inst #: 201302220001500
Fees: $17.00
N/C Fee: $0.00
02/22/2013 11:58:39 AM
Receipt #: 1507348
Requestor:
PREMIER AMERICAN TITLE
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
National Default Servicing Corporation
WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 11-36688-JF-NV

Redacted

APN : 177-24-514-043

SUBSTITUTION OF TRUSTEE

WHEREAS, ROBERT M. HAWKINS AND CHRISTINE V. HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor(s), MARIN CONVEYANCING CORP. was the original Trustee and MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC., NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC. ITS SUCCESSORS AND ASSIGNS was the original Beneficiary under that certain Deed of Trust dated 06/07/2006 and recorded on 06/12/2006 as Instrument No. 20060612-0003526 of the Official Records of CLARK County, State of NV and

WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16th Street, Suite 300, Phoenix, Arizona 85020, as Trustee under said Deed of Trust. Said Substitute Trustee is qualified to serve as Trustee under the laws of this state.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Dated: 2-6-13

By: Tonia Y. McFadden-Williams
Its : Vice President

STATE OF Ohio
COUNTY OF Franklin

On February 6, 2013 before me, the undersigned, a Notary Public for said State, personally appeared Tonia Y. McFadden-Williams who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

NOTARY PUBLIC STATE OF OHIO

TARA L. TUCKER
Notary Public, State of Ohio
My Comm. Expires 05/26/2013

Description: Clark,NV Document-Year.Date.DocID 2013.222.1500 Page: 1 of 1
Order: 2 Comment:

Chase-Hawkins_NAS00179

EXHIBIT A-6

Corporate Assignment

Ex. A-6

Inst #: 201308230002507
Fees: $18.00
N/C Fee: $0.00
08/23/2013 01:16:00 PM
Receipt #: 1745305
Requestor:
NATIONWIDE TITLE CLEARING
Recorded By: MJM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

The undersigned does hereby affirm that this document submitted for recording does not contain personal information about any person.

Parcel #: 177-24-514-043

When Recorded Mail To:
JPMorgan Chase Bank, NA
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 5303775687

CORPORATE ASSIGNMENT OF DEED OF TRUST

Contact JPMORGAN CHASE BANK, N.A. for this instrument 780 Kansas Lane, Suite A, Monroe, LA 71203, telephone # (866) 756-8747, which is responsible for receiving payments.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC., ITS SUCCESSORS AND ASSIGNS, WHOSE ADDRESS IS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, WHOSE ADDRESS IS 700 Kansas Lane, MC 8000, MONROE, LA 71203 (866)756-8747, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Deed of Trust made by ROBERT M. HAWKINS AND CHRISTINE V. HAWKINS, and recorded on 06/12/2006 as Instrument # 20060612-0003526, and/or Book n/a, Page n/a, in the Recorder's office of CLARK County, Nevada.

Dated on 08 / 08 /2013 (MM/DD/YYYY)
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC., ITS SUCCESSORS AND ASSIGNS

By: Jatoshia J Brazil
Jatoshia J Brazil
ASST. SECRETARY

JPCAS 21206909 -- WAMU CJ5316992 MIN 100013800898380072 MERS PHONE 1-888-679-6377
T0613082215 [C] FRMNV1

D0002806519

Parcel #: 177-24-514-043
Loan #: 5303775687

STATE OF LOUISIANA
PARISH OF OUACHITA
On 08 / 08 /2013 (MM/DD/YYYY), before me appeared Latoshia S Brazil, to me personally known, who did say that he/she/they is/are the ASST. SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC., ITS SUCCESSORS AND ASSIGNS and that the instrument was signed on behalf of the corporation (or association), by authority from its board of directors, and that he/she/they acknowledged the instrument to be the free act and deed of the corporation (or association).

Signed: _____
Notary Public - State of LOUISIANA
Commission expires: Upon My Death

HELEN P. TUBBS
OUACHITA PARISH, LOUISIANA
LIFETIME COMMISSION
NOTARY ID# 40392

Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
JPCAS 21206909 – WAMU CJ5316992 MIN 100013800898380072 MERS PHONE 1-888-679-6377
T0613082215 [C] FRMNV1

D0002806519

EXHIBIT B

Judge Bell - Decision and Order

Ex. B

Electronically Filed
1/29/2018 1:00 PM
Steven D. Grierson
CLERK OF THE COURT

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST, Plaintiff, *vs.* CITIMORTGAGE, INC.; CAL-WESTERN RECONVEYANCE CORPORATION; AND ERIK M. DUNCAN. Defendants.	Case No. A-13-680532-C Dept. No. VII
CITIMORTGAGE, INC., Counterclaimant, *vs.* RIVER GLIDER AVENUE TRUST, Cross/Counter-defendants.	

DECISION AND ORDER

This case involves a dispute concerning title priority to the real property located at 336 River Glider Ave., North Las Vegas, NV 89084, under a non-judicial homeowners association foreclosure. Plaintiff River Glider Avenue Trust filed a complaint asserting quiet title and declaratory relief claims against Defendants Citimortgage, Inc., Cal-Western Reconveyance Corporation, and Erik M. Duncan. Citimortgage brought counterclaims for quiet title, declatory relief, and unjust enrichment against River Glider. This matter came before the Court for a bench trial on November 29, 2017. The Court finds that CitiMortgage failed to tender the superpriority lien amount to The Parks Homeowners Association to preserve Citimortgage's interest in the property. Accordingly, the NRS 116 foreclosure sale extinguished Citimortgage's interest in the property. The Court finds in favor of Plaintiff River Glider Avenue Trust.

JAN 29 2018

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Case Number: A-13-680532-C

I. Findings of Fact

Erik Duncan is the former owner of 336 River Glider Avenue, North Las Vegas, NV 89084. Mr. Duncan obtained a home loan refinance for $149,700.00 in January 2004. The refinance was secured by a deed of trust recorded on January 22, 2004. The deed of trust stated that Mortgage Electronic Registration System, Inc. ("MERS") was the beneficiary and nominee for the lender, Home Loan Center, Inc. The trustee was listed as Nevada Title Company.

Mr. Duncan failed to pay the homeowners' association monthly assessments. On April 25, 2011, Fuller Jenkins, as an agent for the HOA, recorded a lien notice against the property. Fuller stated in the lien notice that the total amount due was $1,088.66, which included assessments, costs, fees, expenses, and advances. The lien notice did not specify the superpriority amount. Fuller on behalf of the HOA recorded a notice of default stating the amount due was $1,948.35, including assessments, costs, fees, expenses, and advances. On November 1, 2011, Fuller recorded a notice of sale stating that the amount due to the HOA was $3,573.09, including assessments, costs, fees, expenses, and advances. Every notice included an amount equal to at least nine months of homeowner monthly assessments without applicable additional amounts. The notice of sale stated that the HOA foreclosure sale was set for November 28, 2011. Fuller stated in the foreclosure deed that the November 28, 2011 sales price to River Glider was $3,574.00.

The buyer at the sale was River Glider Avenue Trust. River Glider represented that it had no knowledge of the property prior to the sale other than what was recorded. Citimortgage received the notice of default and notice of sale prior to the sale. Citimortgage did not contact the HOA or Fuller to determine the superpriority lie amount and that it did not attend the sale. The foreclosure deed was recorded on January 4, 2012. This current action results from Citimortgage recording a notice of default and election to sell in contradiction to River Glider's position that Citimortgage's deed of trust was extinguished in the HOA foreclosure sale.

II. Conclusions of Law

River Glider brought claims for quiet title and declatory relief. Citimortgage brought counterclaims for quiet title, declatory relief, and unjust enrichment against River Glider. Each party's claims primarily center on the Court's determination of whether the HOA's foreclosure sale

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

was validly conducted and whether the deed of trust survived the foreclosure sale. Each party's claims are dispositive on whether Fannie Mae had a valid interest in the property and if so if the federal foreclosure bar preserves the deed of trust.

The deed of trust did not survive foreclosure sale. Citimortgage failed to protect its interest in the property by failing to tender the superpriority lien amount on the property to the HOA. Moreover, the HOA lawfully exercised its right to foreclose on the property under NRS 116 and properly conducted the sale to extinguish the Citimortgage's interest in the property. There is no evidence demonstrative that River Glider was not a bona fide purchaser. River Glider lawfully purchased the property at the foreclosure sale subject to no prior interest. Further, Citimortgage did not establish that Frannie Mae had a valid cognizable property interest in the Property. Consequently, there is no application of the federal foreclosure bar that would preserve the deed of trust. This Court quiets title in River Glider's favor.

A. The Sale Complied with NRS Chapter 116

Nevada Revised Statute 116.31162 provides the procedural requirements regarding notices for HOAs seeking to secure a lien for unpaid assessments and fees. These requirements include who must receive notice, method of notice, timing and recording requirements that put the owner and any subsequent parties on notice that the property is subject to a homeowner association lien. The HOA properly recorded a lien notice against the property; a notice of default; a notice of sale; and a foreclosure deed. The HOA timely mailed, posted the required notices on the property and in public places, and published in the Nevada Legal News. Every notice included an amount equal to at least nine months of homeowner monthly assessments without applicable additional amounts.

i. The Default and Sale was Noticed Properly Pursuant to NRS Chapter 116

Citimortgage admits that it received the notice of default and sale. The Clark County Recorder records also show that all required recording requirements were met. Testimony by

Fuller Jenkins's sales trustee, Adam Clarkson, evidenced that the notices were mailed to the owner and other statutorily prescribed parties, including MERS, the beneficiary under the deed of trust. Citimortgage did not present any evidence contrary to River Glider's assertion that the notice provisions under NRS Chapter 116 were met.

ii. A Superpriority Lien Amount is Not Required to Be Specified in the Default and Sale Notices

The Nevada Supreme Court found that when an HOA sends notices regarding its lien to the homeowner and junior lienholds, it is "appropriate to state the total amount of the lien." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 418 (2014), reh'g denied (Oct. 16, 2014). There is no requirement that homeowners association itemize the superpriority amount. Chapter 116 provides that provisions may be varied by agreement and, but that rights provided by Chapter 116 cannot be waived. The Nevada Supreme Court specifically rejected that the CC&R's can vary a statutory scheme. SFR at 419. These findings are especially true in cases where "nothing appears to have stopped [the holder of a deed of trust] from determining the precise superpriority amount in advance of the sale." SFR at 418.

Here, the HOA's notices state the total amount of the total lien without a breakdown of the superpriority lien. This is appropriate under Nevada law. The Court finds that Citimortgage's argument that the superpriority portion must be listed specifically is incorrect. The notices put Citimortgage on notice that Citimortgage's interest could be extinguished and is makes Citmortgatge's lack of attempt to contact the HOA or tender the superpriority amount more indicative of a finding that Citimortgage's interest was extinguished in the HOA foreclosure sale.

C. Citimortgage Did Not Make a Tender

Nevada Revised Statute Chapter 116 provides that a deed of trust can be extinguished under an HOA foreclosure for superpriority lien amount consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411, 419 (Nev. 2014). Specifically, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S. Bank,

334 P.3d 408, 412 (Nev. 2014). The deed of trust can be preserved if an unconditional tender offer for nine months of homeowner monthly assessments is made, even if unjustly rejected by the homeowners association.

A junior lienholder can pay off a homeowner association's lien to avoid the loss of its security. Id. at 414. Tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-7 (Or. 2004). Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972). Tender extinguishes a superpriority lien, even if the tender is unjustifiably rejected. After tender of the superpriority amount, sale of the property is subject to any prior-recorded deed of trust. Stone Hollow Avenue Trust v. Bank of America Nat'l Ass'n, 382 P.3d 911 (Nev. 2016).

Citimortgage received notice that failing to satisfy the superpriority lien could result in a foreclosure sale that would extinguish the deed of trust. Citimortgage never contacted Fuller or the HOA to inquire about satisfaction and failed to tender the superpriority portion of the lien amount to the HOA. Without a valid offer to tender, the deed of trust was consequently extinguished upon the HOA's foreclosure sale.

D. Citimortgage Failed to Exhaust Legal Remedies

Although Citimortgage was on notice that it could have its deed of trust extinguished, nothing further was done to prevent that result. The Nevada Supreme Court has held that a bank must suffer having its interest extinguished when a bank failed to avail itself of its legal remedies prior to a homeowner association's sale. SFR at 414. The Nevada Supreme Court has also held that there are remedies that are available to a bank during and up to the conclusion of the sale, including attending the sale, requesting arbitration, and seeking to enjoin the sale. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 366 P.3d 1105, 1114 (Nev. 2016). Citimortgage did not attend the sale, request arbitration, or otherwise do anything to avail itself to legal remedies available to it.

E. River Glider is a Bona Fide Purchaser

Citimortgage argues that River Glider is not a bona fide purchaser. A bona fide purchaser is a subsequent purchaser "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Shadow Wood at 1115. Citimortgage only disputes River Glider's bona fide purchaser status in regards to notice because River Glider paid $3,574.00 as valuable consideration.

Even finding of bona fide purchaser status, the Court must balance competing equities. Id. at 1114, 1116. The Court considers the actions and inactions of the parties when considering the potential harm an order will cause to bona fide purchasers. Id. A party can "demonstrate that the equities swayed so far in its favor as to support setting aside [the HOA] foreclosure sale," even if it will negatively impact a bona fide purchaser. Id. at 1116.

i. A Homeowners' Association's CC&Rs Cannot Vary a State Statute

Citimortgage argues that River Glider is not a bona fide purchaser because the CC&Rs placed River Glider on notice. The CC&Rs stated that a foreclosure sale would not extinguish a first deed of trust. A homeowners' association's CC&Rs cannot waive NRS Chapter 116's statutory rights. SFR at 419.

ii. River Glider was Only On Notice of Citimortgage's Interest

A first deed of trust is extinguished in a homeowner association foreclosure sale unless the deed holder tenders the superpriority lien. The superpriority lien was not tendered and consequently Citimortgage's interest was extinguished. It is the bank's burden to show that a purchaser was on notice that there was a possible dispute regarding the deed of trust. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 366 P.3d 1105, 1112 (Nev. 2016). The deed of trust being recorded does not put River Glider on notice that a dispute has arisen regarding Citimortgage and the HOA because Citimortgage did not avail itself of any legal remedies prior to the sale. Further, Citimortgage did not establish that River Glider's bankruptcy proceedings evidenced that it was on notice that it would not take the property free and clear.

iii. River Glider's Bankruptcy Proceedings Does Not Preclude River Glider from Exercising Its Rights Under NRS Chapter 116

Citmortgage asserts that River Glider is precluded from its rights as a bona fide purchaser under NRS Chapter 116 because of River Glider's bankruptcy proceedings. Citimortage asserts that River Glider admits that it was not a bona fide purchaser because it listed the property as an asset that may have another claimant. Citmortgage also argues that the bankrupotcy dismissal results in the instant matter triggering judicial estoppel.

a. River Glider's Listing of a Potential Claim in Bankruptcy is not an Admission

To receive the protections of bankruptcy, a debtor must list any and all potential claims to the assets of the bankruptcy estate in its schedules. A debtor is required to do so to put any potential claimants on notice that their interests may be extinguished in a bankruptcy proceeding and gives opportunity for a claimant to raise an adversary complaint. Here, River Glider listed Citimortgage as a potential claimant because they had been on the deed of trust. Listing a claimant is not an admission, but merely a mechanism to put potential parties on notice.

b. Judicial Estoppel is Not Applicable

Citmortgage further argues that the Court is precluded from adjudicating the property under judicial estoppel but the factors for judicial estoppel are not established. Judicial estoppel requires: 1) the same parties taking two positions; 2) the positions taken in judicial or quasi-judicial administrative proceedings; 3) the party successful in asserting the first position; 4) the positions are inconsistent; and 5) the first position was not taken as a result of ignorance, fraud, or mistake. Marcuse v. Del Webb Communities, Inc, 163 P. 3d at 468-469 (Nev. 2007). Here, judicial estoppel does not apply because River Glider was under an obligation to list any potential claim on its bankruptcy schedules. The bankruptcy court did not make a finding as to the property as River Glider's bankruptcy was dismissed, not discharged. Consequently, River Glider nor Citimortgage was successful in asserting their position and the issue is ripe for this Court to adjudicate under NRS Chapter 116.

///

F. Commercial Unreasonableness in Not a Reason for Inquiry

Foreclosure sales conducted pursuant to NRS Chapter 116 have a rebuttable presumption of validity. For a sale to be set aside, Nevada requires a showing of fraud, oppression, or unfairness to set aside a sale. Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963).

i. Citimortgage Does Not Establish the Sale as Invalid Because there is No Evidence of Fraud, Oppression, or Unfairness

Citimortgage argues that the foreclosure sale for the property was commercially unreasonable because the property was only sold for $3,574.00 when Citimortgage presented expert testimony that the fair market value at the time of the foreclosure was $72,500.00. The Nevada Supreme Court has held that commercial unreasonableness is not an inquiry because HOA real property foreclosure sales are not evaluated under Article 9's standard. Nationstar Mortgage, LLC. v. Saticoy Bay LLC Series 2227 Shadow Canyon, 405 P.3d 641, 646 (Nev. 2017). Rather, Nevada requires evidence of fraud, oppression, or unfairness to set aside a sale. Golden, 995. The Nevada Supreme Court has additionally clarified that a low sales price alone is not evidence of fraud, oppression, or unfairness. Shadow Wood at 1112 (Nev. 2016). It appears that the HOA sale was a customary sale in accordance with the statute. As Citimortgage did not otherwise present any evident supporting allegations of fraud, oppression or unfairness it is concluded that the sale conducted fairly and properly. Consequently, the foreclosure sale extinguished Citimortgages's interest in the property was validly conducted.

G. The Federal Foreclosure Bar Cannot Be Invoked to Protect an Unknown Interest

Citmortgage alleges that the federal foreclosure bar prevents the extinguishment of the deed of trust because of preemption. The federal foreclosure bar under 12 U.S.C. Sec. 4617(b)(2) acts to bar any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. The federal foreclosure bar preempts the state foreclosure statute that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish the Enterprises' interest in property while the Enterprises are under

FHFA's conservatorship. Berezovsky v. Moniz, 869 F.3d 923, 930-31 (9th Cir. 2017). Citimortgage's arguments fail primarily because it is not able to demonstrate that Fannie Mae owned the property at the time of the sale.

i. A Transfer of Property Ownership Must Satisfy the Statute of Frauds

Citimortgage alleges Fannie Mae's ownership prevents extinguishment of Citimortgage's interest. The federal foreclosure bar operates when a federal interest is established. 12 U.S.C. Sec. 4617(j)(3). Under the federal foreclosure bar, "No property of the agency shall be subject shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency." 12 U.S.C. Sec. 4617(j)(3). Without evidence sufficient to support a finding of Fannie Mae's property interest, state law is used to establish property interests. "The existence of property rights is an issue controlled by state law." Peoples National Bank of Washington v. Unites States, 777 F.2d 459, 461 (9th Cir. 1985). Here, no evidence exists to support a finding that Fannie Mae had an established interest. Fannie Mae's expert, Graham Babbin testified Fannie Mae's ownership proof resides in a computer database maintained solely by Fannie Mae. Mr. Babbin explained that Fannie Mae's interest data is not entered by Fannie Mae employees, but that this data is entered by third-parties. There is no writing signed by Fannie Mae evidencing Fannie Mae's ownership. Nevada law requires that property interest be recorded. NRS 111.315. Pursuant to Nevada law, unrecorded conveyances are void against bona fide purchasers. NRS 111.315 and 111.325. Fannie Mae never recorded an interest in this property. Additionally, at the time of trial Fannie Mae failed to provide sufficient evidence to support a finding that Fannie Mae owned the property.

ii. Fannie Mae/FHFA Fail to Establish a Property Interest

Fannie Mae's expert, Graham Babbin, testified that Fannie Mae purchases hundreds of thousands of single family mortgages. Fannie Mae assists in stabilizing the housing market by providing government back security to loans. Some of the loans are packaged and sold in a pool to investors. The loan however is between the lending institution and borrower, with Fannie Mae owning the note and the deed of trust. Citimortgage presented evidence consisting of a signed

transfer to an unstated person/entity that was not signed by Fannie Mae. This blank endorsement does not evidence Fannie Mae's interest. Fannie Mae's interest is not listed anywhere in a writing. Any indication of Fannie Mae's interest rests on third-party data entry entered by approved sellers and resides in a computer application. The accuracy of the data on this computer application rests solely with the entry of an approved seller who does not work within Fannie Mae. This data is not accessible or searchable to any potential buyers that would put third-parties on notice, such as River Glider. Pursuant to Fannie Mae/FHFA's servicing guideline in the year the sale occurred, the remedy available to Fannie Mae/FHFA is against Citimortgage as the loan servicer for failing to act to protect Fannie Mae/FHFA's interest. Consequently, when a bona fide purchaser buys a property where Fannie Mae/FHFA's interest is not recorded and the sale complies with NRS Chapter 116, it leaves Fannie Mae/FHFA with a remedy against Citimortgage, not the bona fide purchaser.

H. Federal Foreclosure Bar Claims Raised by Citimortgage are Barred by the Statute of Limitations

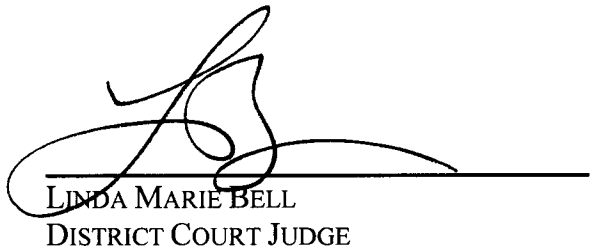
River Glider contends any claim arising from the federal foreclosure bar is time barred. Federal foreclosure bar claims have an applicable statute of limitations of either six years or three years, depending on how the claim originates. 12 U.S.C. Sec. 4617(b)(12). A six year statute of limitations applies to action arising from a contract claim and a three year statute of limitations for actions arising from a tort claim. As there is no contract between HERA, Fannie Mae, or Citimortgage and River Glider, the three year statute of limitation applies. Here, the sale date was November 11, 2011. No assertion of a federal foreclosure bar was raised until May 15, 2015. Consequently, the allegation of a federal foreclosure bar action under 12 U.S.C. Sec. 4617(j)(3) is time barred.

///

III. Conclusion

The Court finds that Citimortgage failed to tender the superpriority lien amount to The Parks Homeowner Association to preserve Citimortgage's interest in the property. Accordingly, the NRS 116 foreclosure sale extinguished Citimortgage's interest in the property. River Glider lawfully purchased the property at the foreclosure sale as a bona fide purchaser subject to no prior interest. Citibank failed to establish that Fannie Mae had a valid and cognizable interest in the subject property that would validate an application of the federal foreclosure bar. Additionally, any federal foreclosure bar claim is time barred. Thus, the Court finds in favor of River Glider Avenue Trust. Title of the property in question is quieted in favor of River Glider.

DATED this 26 day of January 2018.



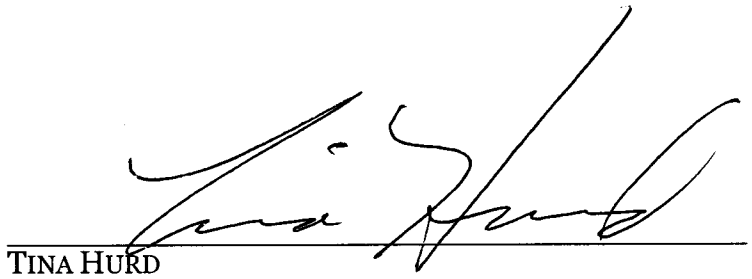
LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Richard J. Vilkin, Esq. Geisendorf & Vilkin, PLLC	Counsel for Plaintiff/Counterdefendant River Glider Avenue Trust
Ariel E. Stern, Esq. Natalie Winslow, Esq. Akerman LLP	Counsel for Defendants CitiMortgage, Inc., Cal-Western Reconveyance Corporation



TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A680532 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 12th/2018
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT C

Stipulation to Remand

Ex. C

IN THE SUPREME COURT OF NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Appellant, v. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Respondent.	Supreme Court No. 71337

STIPULATION TO REMAND

Appellant JPMorgan Chase Bank, National Association ("Chase") and respondent SFR Investments Pool 1, LLC ("SFR" and together with Chase, the "Parties") stipulate as follows:

1. This appeal arises from a quiet title action involving property at 3263 Morning Springs Drive, Henderson, Nevada 89074 (the "Property").

2. The Pebble Canyon Homeowners Association purportedly foreclosed against the Property on March 1, 2013 pursuant to a lien for delinquent assessments.

3. Chase seeks a declaration that a Deed of Trust recorded against the Property survived the foreclosure sale. SFR seeks a declaration that the Deed of Trust was extinguished.

4. Before the district court, Chase argued (among other things) that it was servicing the loan secured by the Deed of Trust on behalf of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which owned the loan. Chase further argued that 12 U.S.C. § 4617(j)(3) preempted Nevada law to the extent that Nevada law would allow an HOA foreclosure sale to extinguish a Deed of Trust securing a loan owned by Freddie Mac.

5. SFR argued (among other things) that Chase lacked standing to assert that § 4617(j)(3) preempted Nevada law. The district court entered summary judgment for SFR, and Chase appealed to this Court.

6. The district did not consider whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, whether Freddie Mac owned the loan at the time of the sale, or whether Chase was servicing the loan at the time of the sale.

7. On June 22, 2017, this Court issued its opinion in Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, 133 Nev. Adv. Op. 34, 396 P.3d 754 (2017), holding that a loan servicer has standing to argue that 12 U.S.C. § 4617(j)(3) preempts Nevada law.

8. Although Chase's appeal divested the district court of jurisdiction over the summary judgment order, the district court may certify its intent to vacate the order. Thereafter, this Court may remand the case to allow the district court to

vacate the order. See Foster v. Dingwall, 126 Nev. 56, 228 P.3d 453 (2010); Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

9. Attached hereto as Exhibit A is a *Stipulation Requesting Reconsideration and Certification* that the Parties filed with the district court, together with the district court's *Certification of Intent to Vacate Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment*.

10. The Parties agree that this appeal should be dismissed without prejudice and that the case should be remanded for proceedings consistent with the district court's certification.

11. The Parties further agree that Chase may reinstate this appeal if the district court fails to vacate the summary judgment order.

12. The Parties further agree they will each bear their own fees and costs for this appeal.

Dated: September 19, 2017.

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By: /s/ Matthew D. Lamb
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Attorneys for Appellant

Dated: September 19, 2017.

KIM GILBERT EBRON

By: /s/ Jacqueline A. Gilbert
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Las Vegas, Nevada 89139

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on September 19, 2017, I filed the foregoing ***Stipulation to Remand.*** The following participants will be served electronically:

Jacqueline A. Gilbert
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139

Counsel for Respondent

/s/ Sarah Walton
An employee of Ballard Spahr LLP

EXHIBIT A

EXHIBIT A

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Attorneys for Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Defendants.	CASE NO. A-13-692304-C DEPT. NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK N.A., NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Counter-Defendants.	

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STIPULATION REQUESTING RECONSIDERATION AND CERTIFICATION

Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association ("Chase") and Defendant/Counter-Claimant SFR Investments Pool 1, LLC ("SFR" and together with Chase, the "Parties") stipulate as follows:

1. This is a quiet title action arising from a foreclosure sale of a residential property at 3263 Morning Springs Drive, Henderson, Nevada 89074 (the "Property").

2. Chase seeks a declaration that a Deed of Trust recorded against the Property as Instrument 20060612-0003526 survived an HOA foreclosure sale of the Property held on March 1, 2013. SFR seeks a declaration that the Deed of Trust was extinguished.

3. SFR filed a Motion for Summary Judgment on July 7, 2016. Chase filed an opposition on July 26, 2016 and SFR filed a reply on August 1, 2016.

4. Chase argued that, at the time of the foreclosure sale, it was servicing the loan secured by the Deed of Trust on behalf of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which owned the loan. Chase further argued that 12 U.S.C. § 4617(j)(3) preempted Nevada law to the extent that Nevada law would allow an HOA foreclosure sale to extinguish a Deed of Trust securing a loan owned by Freddie Mac or the Federal National Mortgage Association ("Fannie Mae").

5. SFR argued, among other things, that Chase lacked standing to assert that 12 U.S.C. § 4617(j)(3) preempted Nevada law.

6. The Court granted SFR's Motion for Summary Judgment in an order filed August 23, 2016.

7. Chase filed a notice of appeal on September 16, 2016. The appeal remains pending before the Nevada Supreme Court.

8. On June 22, 2017, the Nevada Supreme Court issued its opinion in Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, 133 Nev. Adv. Op. 34, 396 P.3d 754 (2017), holding that a loan servicer has standing to argue that 12 U.S.C. § 4617(j)(3) preempts Nevada law. The Supreme Court remanded the matter without addressing

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whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, as the district court in Nationstar had not considered the issue.

9. The Supreme Court remanded the Nationstar case to allow the district court to consider whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, whether Freddie Mac owned the loan in question, and whether the servicer in Nationstar was servicing the loan at the time of the sale.

10. The Parties agree that the summary judgment in this case should also be vacated so the Court may determine (1) whether 12 U.S.C. § 4617(j)(3) preempts Nevada law when the Federal Housing Finance Administration ("FHFA") is acting as conservator over Freddie Mac, (2) whether, at the time of the HOA foreclosure sale, Freddie Mac had a valid and enforceable property interest; and (3) whether Chase had a servicing agreement with Freddie Mac or FHFA with regard to the subject loan at the time of the sale.

11. The Parties agree that the other aspects of the Court's summary judgment will remain in place, provided that the Parties will retain the right to challenge all aspects of the summary judgment in any future appeal.

12. The Parties agree that, if the Nevada Supreme Court remands the case, the Parties will submit a stipulation to this Court within 7 days of the Nevada Supreme Court's remand order with proposed deadlines for dispositive motions addressing the issues listed in Paragraph 10.

13. Although Chase's appeal divested the Court of jurisdiction over the summary judgment, the Court may certify its intent to vacate the summary judgment to the Nevada Supreme Court. Thereafter, the Supreme Court may remand the case to allow this Court to vacate the summary judgment. See Foster v. Dingwall, 126 Nev. Adv. Op. 5, 228 P.3d 453, 454-55 (2010); Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

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14. Accordingly, the Parties ask the Court to certify its intent to vacate the August 23, 2016 summary judgment for the purpose of deciding the issues listed in Paragraph 10.

Dated: September 6, 2017

BALLARD SPAHR LLP

By: /s/ Abran E. Vigil for 14124

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Attorneys for Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association

Dated: September 8, 2017

KIM GILBERT EBRON

By: /s/ Diana Cline Ebron

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A692304

CERTIFICATION OF INTENT TO VACATE ORDER GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Based on the foregoing stipulation between plaintiff/counter-defendant JPMorgan Chase Bank, National Association ("Chase") and defendant/counter-claimant SFR Investments Pool 1, LLC ("SFR"), and good cause appearing,

THE COURT CERTIFIES that if the case on appeal is remanded, it will vacate the August 23, 2016 *Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment* for the purpose of deciding the following issues:

1) Whether 12 U.S.C. § 4617(j)(3) preempts Nevada law to the extent that Nevada law would permit an HOA foreclosure sale to extinguish a deed of trust securing a loan owned by the Federal Home Loan Mortgage Corporation ("Freddie Mac") while the Federal Housing Finance Administration ("FHFA") is acting as conservator of Freddie Mac;

2) Whether, at the time of the HOA foreclosure sale, Freddie Mac had a valid and enforceable property interest; and

3) Whether Chase had a servicing agreement with Freddie Mac or FHFA with respect to the subject loan at the time of the sale.

Dated September 14, 2017.

DISTRICT COURT JUDGE

MS

Submitted by:

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EXHIBIT D

Stipulation and Order Requesting Reconsideration and Certification

Ex. D

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Attorneys for Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Defendants.	CASE NO. A-13-692304-C DEPT. NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK N.A., NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Counter-Defendants.	

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STIPULATION REQUESTING RECONSIDERATION AND CERTIFICATION

Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association ("Chase") and Defendant/Counter-Claimant SFR Investments Pool 1, LLC ("SFR" and together with Chase, the "Parties") stipulate as follows:

1. This is a quiet title action arising from a foreclosure sale of a residential property at 3263 Morning Springs Drive, Henderson, Nevada 89074 (the "Property").

2. Chase seeks a declaration that a Deed of Trust recorded against the Property as Instrument 20060612-0003526 survived an HOA foreclosure sale of the Property held on March 1, 2013. SFR seeks a declaration that the Deed of Trust was extinguished.

3. SFR filed a Motion for Summary Judgment on July 7, 2016. Chase filed an opposition on July 26, 2016 and SFR filed a reply on August 1, 2016.

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5. SFR argued, among other things, that Chase lacked standing to assert that 12 U.S.C. § 4617(j)(3) preempted Nevada law.

6. The Court granted SFR's Motion for Summary Judgment in an order filed August 23, 2016.

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whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, as the district court in Nationstar had not considered the issue.

9. The Supreme Court remanded the Nationstar case to allow the district court to consider whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, whether Freddie Mac owned the loan in question, and whether the servicer in Nationstar was servicing the loan at the time of the sale.

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12. The Parties agree that, if the Nevada Supreme Court remands the case, the Parties will submit a stipulation to this Court within 7 days of the Nevada Supreme Court's remand order with proposed deadlines for dispositive motions addressing the issues listed in Paragraph 10.

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14. Accordingly, the Parties ask the Court to certify its intent to vacate the August 23, 2016 summary judgment for the purpose of deciding the issues listed in Paragraph 10.

Dated: September 8, 2017

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Dated: September 8, 2017

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A692304

CERTIFICATION OF INTENT TO VACATE ORDER GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Based on the foregoing stipulation between plaintiff/counter-defendant JPMorgan Chase Bank, National Association ("Chase") and defendant/counter-claimant SFR Investments Pool 1, LLC ("SFR"), and good cause appearing,

THE COURT CERTIFIES that if the case on appeal is remanded, it will vacate the August 23, 2016 *Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment* for the purpose of deciding the following issues:

1) Whether 12 U.S.C. § 4617(j)(3) preempts Nevada law to the extent that Nevada law would permit an HOA foreclosure sale to extinguish a deed of trust securing a loan owned by the Federal Home Loan Mortgage Corporation ("Freddie Mac") while the Federal Housing Finance Administration ("FHFA") is acting as conservator of Freddie Mac;

2) Whether, at the time of the HOA foreclosure sale, Freddie Mac had a valid and enforceable property interest; and

3) Whether Chase had a servicing agreement with Freddie Mac or FHFA with respect to the subject loan at the time of the sale.

Dated September 14, 2017.

DISTRICT COURT JUDGE

MG

Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross-Defendants.	

JPMORGAN CHASE BANK, N.A' S OPPOSITION TO SFR'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

As described in Chase's Motion for Summary Judgment, while Freddie Mac is in conservatorship under FHFA, none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").[1] Here, at the time of the HOA Sale, Freddie Mac owned the Loan, including both the note and Deed of Trust encumbering the Property. Therefore, the HOA Sale could not extinguish that Deed of Trust without FHFA's consent, and Plaintiff took an interest in the Property subject to that lien.

Multiple federal and state courts have resolved dozens of similar cases in favor of Fannie Mae, Freddie Mac, and their servicers on summary judgment by evaluating materially the same evidence as those in this case. *See* MSJ at 11-12 (citing cases). Plaintiff rehashes arguments that have been explicitly rejected by the appellate courts. These arguments fail as a matter of law and should be rejected.

ARGUMENT

The Nevada Supreme Court and the Ninth Circuit have held that the Federal Foreclosure Bar preempts the State Foreclosure Statute. *See, e.g.*, *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419, 2018 WL 1448731 (Nev. 2018) (unpublished disposition); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 Fed. App'x 658 (9th Cir. 2017); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017). In these Ninth Circuit cases, the court analyzed the exact legal issues as this case and materially the same facts, and recognized that federal law prevents the purchaser of a property at an HOA Sale, like Plaintiff here, from acquiring a free and clear interest in property encumbered by a loan owned by an Enterprise. *Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *see also Flagstar*, 699 Fed. App'x at 659.

SFR appears to concede that the Federal Foreclosure Bar preempts the State

[1] Terms not defined herein shall take on the definition in Chase's Motion for Summary Judgment ("MSJ").

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Foreclosure Statute to the extent it would allow the extinguishment of an Enterprise's deed of trust. Instead, SFR makes two arguments as to why the Federal Foreclosure Bar does not apply in this case: (1) Freddie Mac purportedly did not have a property interest; and (2) Chase's claims are untimely. Both of these arguments fail as a matter of law.

I. Freddie Mac Had an Interest in the Property at the Time of the HOA Sale

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

SFR contends that Freddie Mac had no property interest for the Federal Foreclosure Bar to protect because Freddie Mac never recorded its interest. SFR's MSJ at 7-9. But SFR's argument ignores that Freddie Mac's Deed of Trust *was recorded*, and demonstrates a gross misunderstanding of Nevada law, which recognizes that Freddie Mac maintains its property interest as a loan owner when its servicer or nominee (such as MERS) appears as the record beneficiary of the Deed of Trust. *See In re Montierth*, 354 P.3d 648 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4 (1997) ("Restatement"). Pursuant to these authorities, Freddie Mac's ownership of the Loan and the appearance of its servicer, Chase, as record beneficiary ensured it maintained a property interest.

In its motion for summary judgment, Chase explained how the Nevada Supreme Court in *Montierth* recognized that an entity who owned a loan was a secured creditor—meaning that it had a property interest in the collateral—while MERS, an entity with which it had an agency or contractual relationship, was record beneficiary of the deed of trust. *See Montierth*, 354 P.3d at 651. This case is nearly identical to *Montierth*—Freddie Mac owned the loan while another entity, here a servicer, was record beneficiary of the Deed of Trust. Accordingly, the loan-owner nominee relationship recognizes that "a note owner remains a secured creditor with a property interest in the collateral even if the recorded deed of trust names only the" servicer or nominee. *Berezovsky*, 869 F.3d at 932.

Specifically, the Nevada Supreme Court in *Montierth* recognized that an entity

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which owned a loan was a secured creditor—meaning that it had a property interest in the collateral—while MERS, an entity with which it had an agency or contractual relationship, was record beneficiary of the deed of trust. *See Montierth*, 354 P.3d at 651. The Restatement, which *Montierth* adopts, explains the relationship between "institutional purchasers of loans" and their servicers, and states that when a servicer appears in the public records as beneficiary of a mortgage, "[i]t is clear in this situation that the owner of both the note and mortgage is the investor and not the servicer." Restatement § 5.4 cmt. c. Accordingly, the loan-owner servicer relationship "preserves the note owner's power to enforce its interest under the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 932.

The Supreme Court of Nevada's recent decision in *Nationstar Mortgage., LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), further confirmed that *Montierth* is applicable in the context of the servicer-loan owner relationship when it cited *Montierth* in the context of clarifying that a loan servicer can take action, including litigation, related to a mortgage on behalf of the loan owner. *See id.* at 757.

Moreover, the Nevada Supreme Court recently characterized *Montierth* as "recognizing that it is an acceptable practice for a loan servicer to serve as the beneficiary of record for the actual deed of trust beneficiary." *Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *1 (Nev. Mar. 15, 2018) (unpublished disposition). *Ohfuji* referenced *Montierth*'s holding in describing the relationship between Nationstar, the loan servicer, and Fannie Mae, a loan owner—similar to the facts here. Indeed, *Ohfuji's* description of *Montierth* echoes the Ninth Circuit's interpretation of the same case, supporting the conclusion that when a servicer or nominee appears as record beneficiary on behalf of a loan owner, the loan owner maintains a secured property interest. *See Berezovsky*, 869 F.3d at 932.

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At the time of the HOA Sale, the relevant security interest, the Deed of Trust, was recorded in the name of Chase, Freddie Mac's contractually authorized servicer, putting SFR on notice that the Deed of Trust encumbered the Property. The Deed of Trust was the instrument that Freddie Mac owned, regardless of whether Freddie Mac's name appeared on the face of the instrument. *Montierth* and *Ohfuji* confirm that there is no rule that every deed of trust must be recorded *in its owner's name* for the owner to have a valid, secured, interest. *Montierth*, 354 P.3d at 650-51; *Ohfuji*, 2018 WL 1448729 at *1. Thus, "Nevada law . . . recognizes that . . . a note owner remains a secured creditor with a property interest in the collateral even if the recorded deed of trust names" a servicer. *Berezovsky*, 869 F.3d at 932. Here, "[a]lthough the recorded deed of trust here omitted Freddie Mac's name, Freddie Mac's property interest is valid and enforceable under Nevada law." *Id.*

Despite this clear authority, SFR claims that the only person with any interest at the time of the foreclosure sale was Chase, relying solely on the assignment of the Deed of Trust to Chase—an argument that appears to assume that being the record beneficiary is the only possible interest one can have in a Deed of Trust. This argument cannot prevail in light of *Montierth*'s clear holding that different parties can be the named beneficiary and the owner of the Deed of Trust.

Indeed, SFR's assertion that the assignment transferred *ownership* of the deed of trust and note to Chase is unsupported by any language in that document. The assignment merely reflects that MERS transferred to Chase whatever interest MERS had at the time, and should be read in the context of both Nevada law — under which MERS had an interest only as record beneficiary, not as owner — as well as blackletter assignment law. The principle of *nemo dat quod non habet — i.e.*, one cannot give what one does not have — confirms that the use of assignment language could not enlarge the property rights that could be transferred to subsequent servicers. *See Mitchell v. Hawley*, 83 U.S. 544, 550 (1872). This is because an "assignee stands in the shoes of the assignor and ordinarily obtains only the rights

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possessed by the assignor at the time of the assignment, and no more." 6A C.J.S. Assignments § 111; *see also* 55 Am. Jur. 2d Mortgages § 944 (An "assignee of a mortgagee's interest in a mortgage gains only the rights the assignor had at the time of the assignment.").

Moreover, the assignment must be read in the context of the relationships between MERS, Chase, and Freddie Mac. Prior to Freddie Mac's acquisition of the Loan, MERS was beneficiary "solely as nominee for Lender and Lender's successors and assigns." MSJ, Ex. 5. It did not own the Loan, and the original Lender sold that ownership interest to Freddie Mac. Therefore, the assignment transferred only the interest MERS had as record beneficiary of the deed of trust, an interest that does not include *ownership*. And at the time of the assignment, Chase was Freddie Mac's servicer. Had Chase become the new owner of those instruments at the time of the assignment, Chase would not have continued to report to Freddie Mac concerning the Loan or remit principal and interest payments on a monthly basis. But as Freddie Mac's records show, Chase did just that. MSJ, Ex. 4 (Chase Decl.).

SFR's reliance on *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-CV-2123 JCM, 2015 WL 4581220, at *8 (D. Nev. July 28, 2015), also fails. SFR's MSJ at 8. SFR fails to mention that in *Ashfield*, Judge Mahan held that Fannie Mae *did* have a protected property interest, and accordingly granted Fannie Mae summary judgment. Any dicta suggesting that Fannie Mae must have been assigned the Deed of Trust itself to have a property interest has been rejected by Judge Mahan, who has since granted summary judgment to the Enterprises in over a dozen decisions following that fact pattern.[2] And of course, the Ninth Circuit has similarly granted

[2] *See, e.g.*, *Freddie Mac v. Donel*, No. 2:16-cv-176-JCM-PAL, 2017 WL 2692403 (D. Nev. June 21, 2017); *JPMorgan Chase v. Las Vegas Development Grp.*, No. 2:15-cv-1701-JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Vita Bella Homeowners Ass'n v. Fannie Mae*, No. 2:15-cv-00515-JCM-VCF, 2017 WL 6055667 (D. Nev. Mar. 9, 2017); *LN Mgm't LLC Series 7937 Sierra Rim v. Pfeiffer*, No. 2:13-cv-1934-JCM-PAL, 2017 WL 955184 (D. Nev. Mar. 9, 2017); *Alessi & Koenig LLC v. Dolan*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *G & P Inv. Enters., LLC v. Wells Fargo Bank, N.A.*, 199 F. Supp. 3d 1266 (D. Nev. 2016); *Saticoy* (continued...)

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summary judgment to the Enterprises and their servicers under such circumstances, including in *Flagstar*, where it affirmed Judge Mahan's order granting summary judgment.

B. The Evidence Unequivocally Proved Freddie Mac Owned the Loan.

Chase has supported its Summary Judgment Motion with Freddie Mac and Chase's business records and declarations from their employees explaining those business records and testifying to Freddie Mac's ownership of the Loan at the time of the HOA Sale. MSJ, Ex. 4 (Chase Decl.), Ex. 7 (Freddie Mac Decl.).

Included in this evidence was Freddie Mac's business-records from its MIDAS system, an electronic system of record that Freddie Mac uses in its ordinary business operations to track millions of loans it owns nationwide. MSJ, Ex. 7, 7-1. The MIDAS data shows that the "funding date" on which Freddie Mac acquired ownership of the Loan was in September 27, 2006 - long before the HOA Sale. *Id.* This data also demonstrates Freddie Mac's continued ownership of the Loan at the time of the HOA Sale. MSJ, Ex. 7, 7-1,7-6. None of this evidence has been controverted.

The declaration clearly explains the information reflected in Freddie Mac's database records that are relevant to this case. Nevada Rule of Civil Procedure 56 permits parties moving for summary judgment to support their motions with supporting affidavits that "set forth such facts as would be admissible in evidence." Nev. R. Civ. P. 56(a), (e); *see also United States v. Miller*, 771 F.2d 1219, 1237 (9th

(...continued)
Bay LLC Series 2714 Snapdragon v. Flagstar Bank, FSB, No. 2:13-cv-1589-JCM, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Freddie Mac v. T-Shack, Inc.*, No. 2:16-cv-02664-JCM-PAL, 2018 WL 456878 (D. Nev. Jan. 17, 2018); *Green Tree Servicing LLC v. Valencia Mgt. LLC*, No. 2:15-cv-725-JCM-PAL, 2018 WL 505070 (D. Nev. Jan. 22, 2018); *Fannie Mae v. KK Real Est. Inv. Fund, LLC*, No. 2:17-cv-1289-JCM-CWH, 2018 WL 525297 (D. Nev. Jan. 23, 2018); *JP Morgan Chase Bank, N.A. v. Res. Grp., LLC*, No. 2:17-cv-00225-JCM-NJK, 2018 WL 894612, at *5 (D. Nev. Feb. 13, 2018); *MRT Assets LLC v. Nationstar Mortg., LLC*, No. 2:17-cv-0070-JCM-CWH, 2018 WL 1245501 (D. Nev. Mar. 9, 2018); *Collegium Fund Series 32 v. Snyder*, No. 2:16-cv-1640-JCM-PAL, 2018 WL 1368263 (D. Nev. Mar. 16, 2018).

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Cir. 1985) (holding that the foundational facts for the hearsay exception "must be proved through the testimony of the custodian of the records or other qualified witness, though not necessarily the declarant").

The Ninth Circuit evaluated the exact same type of evidence—business records and a declaration from a Freddie Mac employee—in related cases and held that Freddie Mac's "database printouts" were sufficient to support a "valid and enforceable" property interest under Nevada law. *Berezovsky*, 869 F.3d at 932-33 & n.8. In *Elmer*, "Freddie Mac provided a record from its internal database stating . . . the loan's "funding date"[, which] was . . . well before the [foreclosure] sale[, and] Freddie Mac's employee explained that the record indicates that Freddie Mac acquired ownership of the loan . . . and has owned it ever since." *Elmer*, 707 F. App'x at 428. Chase has provided the same type of evidence here—MIDAS business records providing the "funding date," which was before the HOA Sale, and an employee declaration explaining the records. The submitted business records are "*reliable* and uncontroverted evidence of Freddie Mac's interest in the property on the date of the foreclosure." *Elmer*, 707 F. App'x at 428 (emphasis added). Indeed, in *Elmer*, the Ninth Circuit rejected speculation by the opposing party that the records might be interpreted in some way other than that presented in Freddie Mac's employee declaration. *Id.*

SFR suggests that Chase needs to produce the original wet-ink note. Opp. at 7-8. That is incorrect, as evidenced by the Ninth Circuit decisions which affirmed orders granting the Enterprises summary judgment without any note in the record. This is because SFR misunderstands the difference between a *holder* and an *owner* of a note, and producing the note would only show that one is the *holder*, which is irrelevant to the issues here.

Under Nevada law, the *owner* and the *holder* of a note may be two different entities. A transfer of a note has no bearing on ownership, but instead "vests in the transferee any right of the transferor to enforce the instrument." NRS § 104.3203.

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Thus, "[a] person may be a person entitled to enforce [a promissory note] even though the person is not the owner of the [note]." NRS § 104.3301(2). Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *3 n.9 (Nev. Dec. 20, 2011).

Thus, SFR's demand that Chase prove that Freddie Mac has authority to enforce the note is a red herring and a request to prove it is the *holder* of the note. But that fact is separate from ownership, and thus irrelevant to the issues of this case. Neither Chase nor Freddie Mac is attempting to foreclose on the Property in this litigation, and so Freddie Mac does not need to be able to enforce the note at this time, much less at the time of the HOA Sale. *Cf. Leyva*, 255 P.3d at 1280 (explaining that once a note is properly endorsed, then the "'note holder,' with possession is entitled to enforce the note"). The parties' claims and defenses turn on who *owned* the Loan *at the time of the HOA Sale*; being a holder of a note does not prove ownership.

SFR's reliance on *Leyva* to argue that the note is necessary highlights its mistake. *See* Opp. at 8. *Leyva* concerned the evidence required to enforce a note, *i.e.*, to foreclose upon it, through Nevada's foreclosure mediation program. *See* 255 P.3d at 1277. Under that program, the foreclosing party is statutorily required to bring certain documentation of its status as holder of the note to show it is entitled to enforce the note. *Id.* at 1280-81. In that case, Wells Fargo attempted to prove it could enforce the note by showing it had physical possession of the deed of trust and a notarized statement of one of its employees. But the court held this was not sufficient evidence to enforce the note through the mediation program. *Id.* At no point did *Leyva* articulate a rule of evidence to support *ownership* of a loan in *district court*. Thus, *Leyva*'s interpretation of the statutory requirements for Nevada's foreclosure mediation program has no bearing on the present case.

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II. Chase's Claims Are Timely

SFR also asserts that Chase's invocation of the Federal Foreclosure Bar is untimely, contending that a three-year statutory limitations provision applicable to tort claims brought by FHFA somehow apply to Chase's arguments here. Opp. at 5-6. SFR is wrong for at least two reasons.

First, SFR is wrong that it would be the statute of limitations for a tort claim brought by FHFA under 12 U.S.C. § 4617(b)(12)(A). By its plain language, Section 4617(b)(12)(A) is inapposite here—FHFA did not bring this action, nor has it ever been a party to this case. Section 4617(a) describes the circumstances under which FHFA may be appointed conservator or receiver and when judicial review of that decision is permitted. Section 4617(b) discusses the powers and duties of FHFA when acting as conservator or receiver, and Section 4617(b)(12)(A) provides a statute of limitation period applicable to FHFA in those roles:

> [T]he applicable statute of limitations with regard to any action *brought by the Agency as conservator or receiver* shall be—
> (i) in the case of any contract claim, the longer of—
> (I) the 6-year period beginning on the date on which the claim accrues; or
> (II) the period applicable under State law; and
> (ii) in the case of any tort claim, the longer of—
> (I) the 3-year period beginning on the date on which the claim accrues; or
> (II) the period applicable under State law.

12 U.S.C. § 4617(b)(12)(A) (emphasis added). When interpreting a statutory provision, the courts' "starting point is the plain language of the statute." *U.S. v. Williams*, 659 F.3d 1223, 1225 (9th Cir. 2011) (citation omitted). Here, the unambiguous language of statute restricts the application of the statute of limitations to actions brought by FHFA as conservator or receiver.

SFR fails to explain how FHFA ostensibly "brought" an action in a case in which it is not and has never been a party. In *Deutsche Bank National Trust Co. v. Quicken Loans Inc.*, 810 F.3d 861 (2d Cir. 2015), the Court of Appeals for the Second Circuit held that a case in which FHFA's involvement was limited to filing a

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summons could not "reasonably be said to have been 'brought by' FHFA," so the statute of limitations provision of Section 4617(b)(12) did not apply. *Id.* at 868; *see also Miller v. Tanner*, 196 F.3d 1190, 1193 (11th Cir. 1999) (interpreting the term "brought" to mean "filed" in the context of an "action brought by" a party). The court warned that holding that the statute of limitations in Section 4617(b)(12) applies to actions by private parties would "confound common-sense notions of claims to which the statute applies" and "invite litigation gamesmanship" *Deutsche Bank*, 810 F.3d at 868.

As SFR has not and cannot allege that FHFA has brought any action against any party in this case, Section 4617(b)(12) is inapplicable. Instead, Chase's claim is a quiet title claim, and equivalent quiet title claims are subject to the five-year statute of limitatons periods described in NRS 11.070 and NRS 11.080, as other courts have recently concluded. *See, e.g.*, *JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 2:16-cv-02005-JCM-VCF, 2017 WL 3317813, at *2 (D. Nev. Aug. 2, 2017); *Bank of New York Mellon Trust Co., N.A. v. Jentz*, No. 2:15-cv-1167-RCJ-CWH, 2016 WL 4487841, at *2-3 (D. Nev. Aug. 24, 2016); *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at *3-4 (D. Nev. Mar. 31, 2016). Indeed, in a case where a bank plaintiff brought a quiet title action seeking a declaration that a "foreclosure sale did not extinguish its deed of trust"—a claim essentially identical to the defense Chase asserts here—one court noted that "ultimately, the purpose of Plaintiff's claims [wa]s to quiet title to the Property." *Jentz*, 2016 WL 4487841, at *2-3. As a matter of law and logic, a claim whose legal "purpose" is to "quiet title to … [p]roperty" is necessarily "founded upon … title" to the property. *See* NRS 11.070; *see also Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016) (citing N.R.S. 11.070 as the governing statute of limitations in Nevada for quiet-title claims); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232 (Nev. 2017) (stating quiet-title claims between lienholders and title owners are governed by a

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five-year statute of limitations).

Second, even if a three-year period applied, Chase timely pled its claims because under the Nevada Rules of Civil Procedure, "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." Nev. R. Civ. P. 15(c). In determining whether an amendment "relates back" to a party's original pleadings, the Nevada Supreme Court considers whether those initial pleadings gave "fair notice of the fact pattern" that give rise to the amendment. *Nelson v. City of Las Vegas*, 665 P.2d 1141, 1146 (Nev. 1983). Chase's initial complaint asserted a claim for quiet title, arguing that the HOA Sale had not extinguished the Deed of Trust encumbering the Property. *See* Compl. at ¶23. Chase's invocation of the Federal Foreclosure Bar as a basis for its quiet title claim arises from precisely the same transaction or occurrence that triggered its initial pleading—the HOA Sale and its effect on the Deed of Trust.

The Nevada Supreme Court's recent decision in *Jackson v. Groenendyke*, 369 P.3d 362 (Nev. 2016) is instructive here. In *Jackson*, the court considered whether a party in a water rights dispute could amend its pleadings to include property access claims. The court noted that, barring statutory authority preventing a district court from hearing related claims, "the rules of civil procedure are intended to allow the court to reach the merits of claims, rather than dispose of claims on 'technical niceties.'" *Id.* at 365 (quoting *Costello v. Casler*, 254 P.3d 631, 634 (Nev. 2011)). The court held that because the party's new property access claim "arises out of the same facts and circumstances of the original action, namely the determination of water rights, the district court has jurisdiction to consider those claims." *Id.* at 366.

The situation here is even more compelling. Chase is not asserting a new claim, but rather a new basis for its original quiet title claim. Therefore, its invocation of the Federal Foreclosure Bar necessarily arises out of the exact same facts and circumstances of the original action—a determination of the effect of the

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HOA Sale on the Deed of Trust. This Court should similarly consider the amendment by Chase to assert the protections of the Federal Foreclosure Bar as timely.

CONCLUSION

For these reasons, Chase respectfully requests that this Court grant its motion for summary judgment and declare that the HOA Sale did not extinguish the Deed of Trust.

Dated: May 4, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of Mayl 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **JPMORGAN CHASE BANK, N.A'S OPPOSITION TO SFR'S MOTION FOR SUMMARY JUDGMENT** was filed and served on the following parties in the manner set forth below:

[XX] VIA THE COURT'S ELECTRONIC SERVICE SYSTEM:

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TAB 30

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO JP MORGAN CHASE BANK N. A.'S MOTION FOR SUMMARY JUDGMENT

AND

COUNTERMOTION TO STRIKE

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SFR Investments Pool 1, LLC ("SFR") hereby files its Opposition to JP MORGAN CHASE BANK, NATIONAL ASSOCIATION's (the "Bank[1]") Motion for Summary Judgment pursuant to NRCP 56(c). This response is based on the papers and pleadings on file herein, the following memorandum of points and authorities, SFR's Motion for Summary Judgment, and such evidence and oral argument as may be presented at the time of hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Bank is in breach of a negotiated agreement with SFR, on which this Court signed off. Due to this breach, SFR is seeking a countermotion to strike Bank's arguments that relate to the validity of the foreclosure sale. SFR previously filed a Motion for Summary Judgment on or about July 22, 2016. SFR **prevailed on all issues**. However, one of those issues was the standing of the Bank to raise 12 U.S.C. § 4617(j)(3) as a defense or claim. *See* Findings of Fact and Conclusions of Law filed on October 26, 2016. The Bank filed a Notice of Appeal ("NOA") on or about November 22, 2016. *See* NOA filed with this Court. Based on the Nevada Supreme Court's opinion in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. ___, 396 P.3d 754(Nev. 2017) ("*Nationstar*") The parties stipulated to remand back to District Court to brief **only the issues related** to §4617(j)(3) before the District Court. *See* Stipulation and Order, pg. 3 ¶ 10, filed on September 18, 2017, attached to SFR's MSJ as Exhibit B. *See also*, Stipulation to Remand filed with Nevada Supreme Court attached to SFR's MSJ as Exhibit C. To be clear, SFR did not need to agree to stipulate to remand. SFR agreed **only** because the Court's findings regarding the validity of the sale would remain. As such, the Bank's actions breach the heart of the agreement.

Additionally, the Bank served SFR with its "Third Supplemental Disclosures" on or about April 13, 2018 and the close of discovery was on or about **May 2, 2016**. *See* Scheduling Order filed June 29, 2015. While the parties stipulated to extend the dispositive the motion

[1] Herein the Bank refers to JP Morgan Chase Bank, N. A.

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deadline and allow the Bank to take SFR's deposition, these agreements were not made for the Bank to then one year later without leave of the court or by mutual agreement of the parties to serve the third supplemental disclosures. Further, this Court told the parties that if they wanted to reopen discovery after remand, it would entertain a motion. The Bank filed, then withdrew a motion to reopen. As such, this Court should not consider any evidence, facts, or arguments related to the documents disclosed late.

The Bank's motion can be denied for the following reasons: **(1)** the Bank's claims under 12 U.S.C. § 4617(j)(3) is barred by statute of limitations; (**2)** the Bank's motion is not supported by admissible evidence; **(3)** the Bank has failed to prove that FHFA/Freddie has an ownership interest; and (**4)** the Bank has failed to establish that it is a servicer for the FHFA/Freddie. As such, summary judgment can be granted in favor of SFR.

II. ARGUMENT

III. STATEMENT OF UNDISPUTED[2] AND DISPUTED FACTS REGARDING CLAIMS AND DEFENSES RELATED SPECIFICALLY TO 12 U.S.C. § 4617(J)(3).

Disputed Fact #1: "On September 27, 2006, Freddie Mac ("Freddie") purchased the loan thereby becoming successor to the Lender and acquiring ownership of the Deed of Trust ("DOT") and the Note. See Ex. 7." See Bank's MSJ pg. 7 ¶ 2.

This is disputed for the following reasons. **First**, Exhibit 7 of Bank's MSJ is an affidavit of Dean Meyer, with exhibits attached to it, which was not disclosed during the course of discovery. Dean Meyer was not timely disclosed as a witness during the course of discovery in this case, and the exhibits attached to his affidavit were also not timely disclosed during the course of discovery. The parties did not stipulate to allow a late disclosure. As such, SFR will not respond to Dean Meyer's affidavit or the exhibits attached to his affidavit. **Second**, if the Affidavit and Exhibits are not considered by this Court, then what is left is unsubstantiated

[2] SFR incorporates by reference its Statement of Undisputed Facts contained in its MSJ as if stated herein.

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statements that contradict the recorded documents, which conclusively establish that Freddie did not own the note or DOT. *See* NRS 47.240(2), *see also* section C *infra*.

Pursuant to the Scheduling Order filed with this Court, the close of discovery was on or about May 2, 2016, and Dean Meyer and the exhibits attached to his affidavit were disclosed on or about April 13, 2018, which is well past the deadline. Pursuant to NRCP 37 37(c)(1) "A party that **without substantial justification fails to disclose information** required by Rule 16.1, 16.2, or 26(e)(1), or to **amend a prior response** to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, **or on a motion** any witness or information **not so disclosed**." *Id*. (Emphasis added).

Here, the Bank filed its Notice of Appeal and the parties agreed to remand **only** the issues related to U.S.C. § 4617(j) (3), which was memorialized in the parties Stipulation and Order and attached as Exhibit B to SFR's MSJ. The remand was **not an** opportunity to reopen discovery and SFR did not agree to reopen discovery. Further, *Nationstar* did not change anything. The Bank has been claiming that it is a servicer for Freddie Mac yet waits more than two years after the close of discovery to produce this witness and documents attached. By making this argument, SFR is not waiving any rights or stating that the documents establish anything. Rather SFR is asserting that the witness and documents were disclosed too late for this Court to consider.

Additionally, on or about January 9, 2018, the parties appeared in Court for a status check. At that hearing the Bank discussed that it circulated a stipulation and order to extend discovery but that counsel for SFR would not sign. The Court then set a briefing schedule on the issue of whether to extend discovery. *See* minutes from hearing. Next, the Bank filed a motion to extend discovery, which it withdrew voluntarily following SFR filing its opposition. *See* Notice of Withdrawal filed February 1, 2018. More importantly, counsel for the Bank acknowledge this in the hearing on February 13, 2018, stating that the parties could not come to an agreement and had withdrawn their motion. *See* minutes from hearing. The Bank chose to withdraw its motion to extend discovery knowing that it had failed to disclose what it believes to

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be relevant documents. Yet, the Bank still disclosed documents to SFR late,[3] despite the fact that discovery was closed. Because the Bank knew that Freddie's interest and its standing were at issue prior to the appeal, and because the Bank failed to obtain a discovery extension, the Bank is **without substantial justification to rely** on these undisclosed documents in its MSJ. As a result, the Court should not consider the late disclosed documents in support of the Bank's MSJ.

If this Court agrees with SFR and does not consider the Meyer Affidavit and exhibits attached, all that is presented is mere argument of counsel without admissible evidence which is contra to NRCP 56(c).

Disputed Fact #2: "The relationship between Chase, as the servicer of the loan, and Freddie Mac as the owner of the loan…" *See* Bank's MSJ, pg. 7 ¶ 5.

This is disputed because the Dean Meyer Affidavit, and the guide were not disclosed during the course of discovery in this matter. As a result, without waiving any arguments, SFR will not address the sum and substance of these assertions.

While the disputes over these facts defeat the Bank's motion for summary judgment, the truth or falsity of these facts have no bearing on SFR's Motion for Summary Judgment, which can still be granted even if these facts were true.

IV. COUNTER-MOTION TO STRIKE (1) FACTS AND ARGUMENTS RELATING TO THE VALIDITY OF THE SALE AND (2) FACTS AND ARGUMENTS BASED ON LATE DISCLOSED DOCUMENTS.

The Parties entered into an agreement, which was memorialized in the Stipulation to Remand and in the Stipulation Requesting Reconsideration and Certification (at ¶ 11) attached as Exhibit A to the Stipulation to Remand. *See* Exhibit B attached to SFR's MSJ. The essence of the agreement was to remand **only** issues relating to 12 U.S.C. § 4617(j)(3) as a defense or claim. As such, the Bank's arguments regarding the validity of the sale have already been decided by the Court in SFR's favor and this court should not consider them (Bank's Mot.,

[3] The following exhibits were not disclosed to SFR during the course of discovery, which are attached to the Bank's MSJ and must be struck: Meyer Affidavit, which is Exhibit 7; and all exhibits attached to said Affidavit, Exhibit 7-1 through 7-8, as well Exhibit 10, Exhibit 11, Exhibit 24 and Exhibit 27.

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Heading II, pp 21 section C - D). *See* Order Granting SFR's Motion for Summary Judgment filed on October 26, 2013.

Additionally, SFR requests this Court strike any facts and arguments presented in the Bank's motion for summary judgment that rely on documents not disclosed during discovery. The following exhibits were not disclosed to SFR during the course of discovery, which are attached to the Bank's MSJ and must be struck: The Meyer Declaration Exhibit 7,and all Exhibits attached to Exhibit 7, 7-1 through 7-9, as well as Exhibit 10, Exhibit 11, Exhibit 24 and Exhibit 27 was not disclosed during the course of discovery, and as a result should not be considered including Meyer declaration should also not be considered by the Court.

A. Motion for Summary Judgment Standard.

The primary purpose of a summary judgment procedure is to secure "just, speedy, and inexpensive determination of any action." *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, summary judgment proceedings promote judicial economy and reduces litigation expenses associated with actions clearly lacking in merit. *Id.* Summary judgment enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried." *Id.*, quoting *Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). "Summary judgment is appropriate if, when view in light most favorable to the nonmoving party, the record reveals that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank,* 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)).

The plain language of Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317,323, 106

KIM GILBERT EBRON
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S.Ct. 2548, 2552 (1986) (adopted by Wood v. Safeway, Inc" 121 Nev. 724,731,121 P.3d 1026, 1031 (2005)). In such a situation, there can be "no genuine issue as to any material fact" because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* While the party moving for summary judgment must make the initial showing that no genuine issue of material fact exists, where, as here, the non-moving party will bear the burden of persuasion at trial, the party moving for summary judgment need only: "(1) submit [] evidence that negates an essential element of the nonmoving party's claim, or (2) 'point [] out ... that there is an absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las Vegas, LLC,* 127 Nev. Adv. Op. 60,262 P.3d 705, 714 (2011). Once this showing is met, summary judgment must be granted unless "the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Cuzze v. Univ. & Cmty. ColI. Sys. of Nevada,* 123 Nev. 598, 603, 172 P.3d 131,134 (2007). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment must show that he can produce evidence at trial to support his claim. *Van Cleave v. Kietz-Mill Minit Mart,* 97 Nev. 414,417,633 P.2d 1220, 222 (1981). The Nevada Supreme Court has rejected the "slightest doubt" standard, under which any dispute as to the relevant facts defeats summary judgment. Wood v. Safeway, 121 Nev. at 731, 121 P.3d at 1031. A party resisting summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 622 P.2d 610, 621 (1983) (quoting Halm v. Sargent, 523 F.2d 461,467 (lst Cif. 1975)). Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27,29,38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Indeed, an opposing party "is not entitled to have [a] motion for summary judgment denied on the mere hope that at trial he will be able to discredit movant's evidence; he must at the hearing be able to point out to the court something indicating the existence of a triable issue of fact." *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 784,617 P.2d 871,872 (l980) (quoting *Thomas v. Bokelman,* 86 Nev. 10, 14,462 P.2d 1020, 1022-23 (1970)); see also

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Aldabe v. Adams, 81 Nev. 280,285,402 P.2d 34; 37 (1965) ("The word 'genuine' has moral overtones; it does not mean a fabricated issue.'), overruled on other grounds by *Siragusa v. Brown,* 114 Nev. 1384,971 P.2d 801 (1996); and *Elizabeth E. v. ADT Sec. Sys. W.,* 108 Nev. 889,892,839 P.2d 1308, 1310 (1992).

According to NRCP 56(c), "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). The moving party has the burden of proving that no triable issues remain. *Harry v. Smith,* 111 Nev. 528, 532, 893 P.2d 372, 374 (1995).

Further, evidence in support of a motion for summary judgment must be admissible. NRCP 56(e); *Schneider v. Continental Assurance Co.*, 110 Nev. 1270, 1274, 885 P.2d 572, 575 (1994). This Court should deny the Bank's Motion because it is not supported with admissible evidence, and grant summary judgment in favor of SFR. Here, the close of discovery was May 2, 2016. *See* Scheduling Order filed on June 29, 2015. On or about April 13, 2018, the Bank served SFR with its Third Supplemental Disclosures ("late disclosure"). The late disclosure was served upon SFR one year eleven months and 12 days late. The late disclosure contains the exhibits on which the Bank is relying upon to support its motion for summary judgment, which it cannot. As a result, the Bank has an unsupported motion for summary judgment, which should be denied.

B. <u>The Recorded Documents Prove Freddie Mac Has Zero Interest in the Note/Deed of Trust.</u>

Pursuant to NRS 47.240(2) it is conclusive that "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title." This means the facts recited in the recorded documents are now conclusive; i.e., they cannot be contradicted. Here, the recorded documents establish that MERS as nominee beneficiary for GreenPoint Mortgage Funding, Inc. ("GreenPoint") originally had the interest in the Note and Deed of Trust. *See* DOT attached to SFR's MSJ at Ex. A-1. Then MERS, on behalf of GreenPoint assigned all its rights, title and interest in the Note/Deed of Trust to Chase. *See*

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Assignment attached to SFR's MSJ at Ex. A-2. While there is subsequent assignment from MERS to Chase again, this assignment makes little sense given that Chase was previously assigned the Note/Deed of Trust in 2009. *See* Assignment attached to SFR's MSJ at Exhibit A-6. Nevertheless, there are no assignments to Freddie Mac, and none of the documents refer to Chase as nominee beneficiary for Freddie Mac.

As a result, it is conclusively established that Freddie Mac does not and did not have an interest in the subject Note/Deed of Trust at the time of the Association foreclosure sale. Because this is summary judgment, the Bank need more than proclamations to establish this fact. As the non-moving party, they must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002).

If the recorded assignments were not enough, which they are, the Bank has not even established Freddie Mac's interest through the production of the wet-ink promissory note. The proper method of transferring a mortgage note is governed by Article 3 of the Uniform Commercial Code—Negotiable Instruments, because a mortgage note is a negotiable instrument.[4] *Leyva v. Nat'l Default Servicing Corp.,* 127 Nev. 470, 255 P.3d 1275, 1279–81 (2011) (citing *Birkland v. Silver State Financial Services, Inc.,* No. 2:10–CV–00035–KJD, 2010 WL 3419372, at *4 (D. Nev. Aug. 25, 2010)). *See also,* NRS 104.3301; *In re Veal*, 450 B.R. 897, 920, at *16 (B.A.P. 9th Cir. June 10, 2011) (holding that a purported servicer, did not prove that it was the party entitled to enforce, and receive payments from, a mortgage note because it "presented no evidence as to who possessed the original Note.)

[4] *See* NRS 104.3102 (1) which applies to negotiable instruments like mortgage notes under Nevada's adoption of UCC Article 3. Transfer of a mortgage note must be done in accordance to NRS 104.3109 (note payable to bearer or order) and properly transferred or negotiated to a subsequent holder by proper endorsement if required. *See* NRS 104.3109; 104.3201; 104.3204; *see also Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, __, 255 P.3d 1275, 1280 (Nev. 2011).

If the note is payable to the order of an identifiable party but is then sold or otherwise assigned to a new party, it must be endorsed by the party to whom it was originally payable for the note to be considered properly negotiated to the new party. *Leyva*, 255 P.3d at 1280. "When endorsed in blank, an instrument becomes payable to bearer...." NRS 104.3205(2). Further, "a note initially made payable 'to order' can become a bearer instrument, if it is endorsed in blank." *Bank of New York v. Raftogianis,* 418 N.J.Super. 323, 13 A.3d 435, 439 (N.J.Super.Ct.Ch.Div.2010); *see also* U.C.C. § 3–205 cmt. 2 (2004). A party wishing to enforce a note must demonstrate it was validly negotiated or transferred by proper endorsement or proving the transaction through which, the note was acquired. *Leyva*, 127 Nev. at ___, 255 P.3d at 1281 citing NRS 104.3203(2) and U.C.C. § 3-202 cmt 2.

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"An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." UCC § 3–203(a). "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument. ..." UCC § 3–203(b). While the failure to obtain the endorsement of the payee or other holder does not prevent a person in possession from being the "person entitled to enforce" the note, the possessor does not have the presumption of a right to enforce. *Branch Banking & Trust Co. v. Smoke Ranch Dev., LLC*, No. 2:12-CV-00453-APG-NJK, 2014 WL 4796939, at *4 (D. Nev. Sept. 26, 2014). Rather, the possessor of the note must demonstrate both the fact and the purpose of the delivery of the note to the transferee in order to qualify as the "person entitled to enforce." *Leyva*, 255 P.3d at 1281.

Here, there is no evidence showing that Freddie Mac possesses the Note. Although to be clear, possession of both the Note and an interest in the Deed of Trust is required. *1597 Ashfield Valley Trust v. Federal National Mortgage Association*, 2015 WL 4581220 at 8 (D. Nev. July 28, 2015) (finding that possession of "note does not qualify as in property subject to protection under 12 U.S.C. § 4617(j)(3)"). As noted in *Ashfield*, "[a] promissory note connected with a home mortgage loan is not an interest in the real property encumbered by the deed of trust." *Id.* at *8 *citing Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 254 (Nev. 2012). This is so because "the holder of the note is only entitled to repayment and does not have the right under the deed to use the property as means of satisfying repayment." *Edelstein*, *citing Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). Thus, in order for the Bank to show that 4617 even applies, it has to prove Freddie Mac has both an interest in the Note and Deed of Trust. The undisputed evidence belies this, and as such, 4617(j)(3) is not in play.

C. <u>The Bank's Claims are Time-Barred</u>.

1. The statute of limitations under § 4617(b)(12).

The statute that governs the statute of limitations in this context is 12 U.S.C. 4617(b)(12) which provides:

(12) Statute of limitations for actions brought by conservator or receiver

(A) In general. Notwithstanding any provision of any contract, the

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> applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—
>
> (ii) in the case of any tort claim, the longer of—
>
> (I) the 3-year period beginning on the date on which the claim accrues; or
> (II) the period applicable under State law.

12 U.S.C. 4617(b)(12). The statute of limitations in Nevada for a wrongful foreclosure claim three years. NRS 11.190(3)(a).

By asserting § 4617(j)(3), the Bank is claiming the Association's foreclosure was wrongful because it occurred without the Federal Housing Finance Agency's ("FHFA") consent.[5] A claim for wrongful foreclosure is a tort claim. *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 300, 662 P.2d 610, 620 (1983). This means under § 4617(j)(12), said claim carries a **three-year statute of limitations**. To that end, the Bank's claim accrued on the date of the sale i.e. March 1, 2013,[6] which means that Bank had **until March 1, 2016**, to bring this claim. The Banks First Amended Complaint was filed on or about March 9, 2016, which is after the expiration of the statute of limitations. Thus, the Bank is time barred in bringing this claim.

If the Bank tries to argue that a five-year statue of limitation applies, that is incorrect. The Nevada Supreme Court has not addressed which statute of limitations applies in these circumstances. Under Nevada rules of statutory interpretation, the Court must first look to the statute's plain language. *Clay v. Eighth Jud. Dist. Ct.*, 305 P.3d 898, 902 (Nev. 2013). If the statute's, "language is clear and unambiguous," the Court must enforce it "as written." *Id.* (quotation omitted). The Court must "avoid[] statutory interpretation that renders language meaningless or superfluous," and "interpret a rule or statute in harmony with other rules and statutes." *Id.* (quotation omitted).

[5] To the extent the Bank claims only FHFA can consent that argument fails, because the Nevada Supreme Court has already determined that a servicer, if it can prove ownership by Fannie or Freddie and a contractual relationship between the servicer and the enterprise, has authority to litigate 4617(j)(3) on behalf of FHFA. *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev., Adv. Op. 34, 396 P.3d 754 (2017).

[6] *See* Foreclosure Deed attached to SFR's MSJ at Exhibit A-4.

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With these principles in mind, NRS 11.070 and 11.080 do not apply to the Bank's claim.

NRS 11.070 provides as follows:

> No cause of action or defense to an action, founded upon the title to real property,…shall be effectual, unless it appears that the person prosecuting the action or making the defense…was **seized or possessed** of the premises in question within 5 years before the committing of the act in respect to which said action is prosecuted or defense made.

NRS 11.070 (emphasis added)

NRS 11.070 does not apply to the Bank's claims because the Bank purports to hold only a lien interest; it has no claim to title to the property, and it seeks only to validate its lien rights. The Bank's claim is thus not "founded upon the title to real property," nor was the Bank "seized or possessed of the premises."

NRS 11.080 likewise deals with seisen/possession. Specifically, the statute states in relevant part:

> NRS 11.080 **Seisin within 5 years**; **when necessary in action for real property.**
>
> No action for the **recovery** of real property, or for the **recovery** of the possession thereof . . . shall be maintained, unless it appears that the plaintiff . . . **was seized or possessed of the premises in question**, within 5 years before the commencement."

NRS 11.080 (Emphasis added.)

Seisen is defined as "possession of a freehold estate in land; ownership." Black's Law Dictionary at 1362 7th Ed. 1999. The term is centuries-old and refers to possession under a claim of freehold ownership. The Ninth Circuit acknowledges this very precise and well settled meaning:

> "Seisen and possession, as now understood, mean the same thing. **To constitute seisen in fact, there must be an actual possession of the land**; **for a seisen in law there must be a right of immediate possession** according to the nature of the interest, whether corporeal or incorporeal. 1 Wash.Real Prop. 62. Under this view there can be no seisen in law where there is not a present right of entry. . . ."

Carlson v. Sullivan, 146 F. 476, 478, 77 C.C.A. 32, 2 Alaska Fed. 552, 557 (9th Cir. 1906) (*quoting Savage v. Savage*, 19 Or. 112, 116 23 Pac. 890, 891, 20 (1890)) (emphasis added).

Here, under no set of circumstances can the five-year statute of limitation of NRS 11.080

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apply because the Bank was not "**seized or possessed** of the premises in question." Additionally, the Bank's invocation of the words "quiet title" to describe its claim does not morph it into a seisen claim as this claim only applies to a person who has legal title. In fact, every case that has dealt with the five-year statute of limitation in the context of a quiet title action involved the homeowner, i.e. the person with legal title. In that regard, those cases implicated 11.070 and 11.080. In fact, the Bank may attempt to rely on *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226 (Jan. 26, 2017), which implicated NRS 11.080 only because Saticoy was the record title holder. (finding that the five-year statute of limitations applied to **record title holder's claim**). But of course, this is true for a homeowner because the homeowner does have a seisen/possessory claim. This is not true, however, for the Bank.

2. The Amended Complaint does not relate back to the original filing date.

The amended complaint does not relate back to the original complaint. Nothing in the original complaint put SFR on notice of any claimed interest by Freddie Mac or that 12 U.S.C. § 4617(j)(3) was implicated. *See Wilson v. Fairchild Republic Co.*, 143 F.3d 733, 738 (2d Cir. 1998) ("The pertinent inquiry, in this respect, is whether the original complaint gave the defendant fair notice of the newly alleged claims." (*citing Baldwin County Welcome Center v. Brown*, 466 U.S. 147,149 n.3, 104 S. Ct 1723 (1984)). overruled on other grounds by *Slayton v. Am. Express Co.,* 460 F.3d 215, 227–28 (2d Cir.2006) (adopting *de novo* standard of review for Rule 15(c)). The Bank knew or should have known of the facts related to Freddie's alleged interest and made the allegations when filing its original complaint.

The Bank cannot even assert 4617(j)(3) as a defense because this too is time barred. *City of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1035-36 (9th Cir. 2003) (barring City's defense under statute of limitations because defenses were "mirror images of time-barred claims"). In *Evans*, the 9th Circuit, noted that a party cannot "engage in a subterfuge to characterize a claim as a defense in order to avoid a temporal bar." *Evans*, citing *Mobil Oil Corp. v. Dep't of Energy*, 728 F.2d 1477, 1488 (1983) (holding that laches barred a pre-enforcement declaratory judgment action alleging that a price regulation was invalid). *See also Gilbert v. City of Cambridge*, 932

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F.2d 51, 58 (1st Cir. 1991) (holding that temporal bar cannot be sidestepped by asserting a defensive declaratory judgment claim); *Clark v. Slack Steel & Supply Co.*, 611 P.2d 80, 83 (Alaska 1980) (dismissing, as barred by statute of limitations, plaintiff's affirmative claim that a contract be declared void because it was formed under duress). As the *Evans* Court noted, "statutes of limitations 'are aimed at lawsuits, not at the consideration of particular issues in lawsuits....'" 344 F.3d at 1035 (*quoting Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 416 118 S.Ct. 1408 (1998)). At the end of the day, the statute of limitations applies regardless of whether the Bank couches its 4617(j)(3) assertion as a claim or defense. As the *Evans* Court put it, "[n]o matter what gloss [the Bank] puts on its defenses, they are simply time-barred claims masquerading as defenses and are likewise subject to the statute of limitations bar." *Evans*, at 1036.

Following this analysis, another court within the district held that the three-year statute of limitations was applicable and that based thereon, "the allegation of a federal foreclosure bar action under 12 U.S.C. Sec. 4617(j)(3) is time barred." *See* Decision and Order in *River Glider Avenue Trust v. Citimortgage, Inc.*, District Court Case No. A-13-680532-C (January 29, 2018) attached as Exhibit B to SFR's MSJ. Based thereon, the Bank's purported claim under 12 U.S.C. § 4617 is time-barred.

D. <u>Agency Did Not Succeed to Mortgages Held in Trust, Therefore, 4617(j)(3) Does Not Apply.</u>

12 U.S.C. 4617(j)(3) reads as follows:

> **No property of the Agency** shall be subject to levy, attachment, garnishment, **foreclosure**, or sale **without the consent** of the Agency…
> (Emphasis added.)

Without waiving its stated objections set forth above, it is irrelevant that the Bank asserts that Freddie owns the loan or it is Freddie's servicer, because if the loan was held in trust, then it is not the property of the Agency. The threshold question when dealing with 4617(j)(3) is "property of the agency." Because 4617(j)(3) only applies if "property of the agency" is involved, it stands to reason if "property of the agency" is not implicated then 4617(j)(3) has no application whatsoever. SFR knows from other discovery conducted on Freddie that Freddie securitizes the majority of the loans it acquires, i.e. holds them in trust. But Congress specifically

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excluded mortgages held in trust from the Agency's general power of succession. *See* 4617(b)(19)(B). Section 4617(b)(2)(A-K) lists the general powers of the Agency as conservator or receiver. These general powers include a wide-range of items, with the first being succession. **4617(b)(2)(A) reads, in relevant part, as follows:**

> **(2) General Powers**
>
> **(A) Successor to regulated entity** The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—
> **(i)** all rights, titles, powers, and privileges of the regulated entity…and the assets of the regulated entity…

But Congress limited the General Powers by including General Exceptions. Specifically, section (b)(19)(B) excludes, "mortgages held in trust" from the Agency's general powers, including succession. Section 4617(b)(19)(B) states:

> **(19) General exceptions**
>
> **(B) Mortgages held in trust**
>
> **(i) In general**
> Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.
>
> **(ii) Holding of mortgages**
>
> Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.
>
> **(iii) Liability of conservator or receiver**
>
> The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

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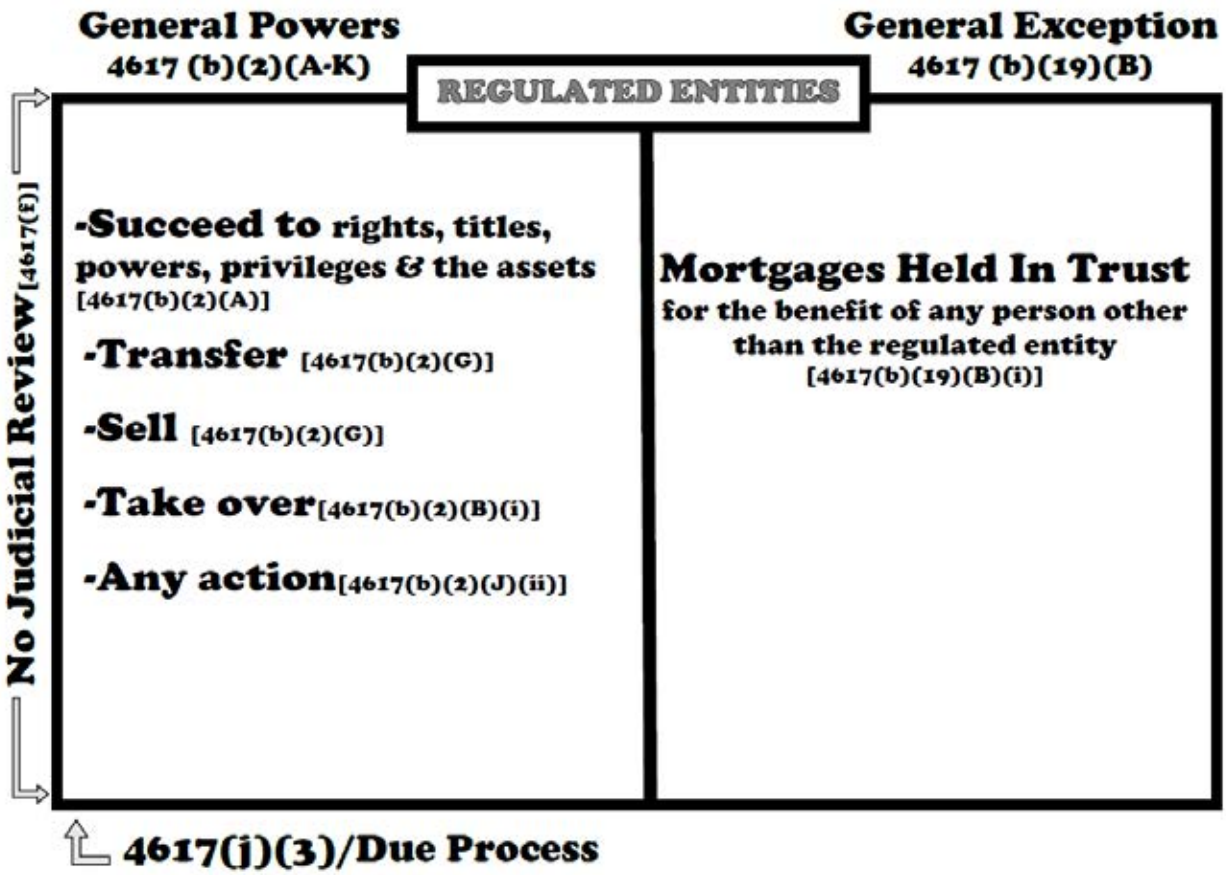
12 U.S.C. 4617(b)(19)(B).



As the Ninth Circuit noted, "FHFA's powers as conservator are not limitless…" *County of Sonoma v. Federal Housing Finance Agency*, 710 F.3d 987, 993 (9th Cir. 2013). Because Congress explicitly limited the Agency's general powers through the general exception excluding mortgages held in trust, mortgages held in trust are not property of the Agency.

Freddie's claim that it owned the subject mortgage/loan is irrelevant: ownership is not the question, succession is. In fact, that is what makes this case different from *Berezovsky*. *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017). In *Berezovsky*, Berezovsky did not argue succession and neither did the parties in *Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage Association*, No. 69419 (Nev. March 21, 2018) (unpublished disposition). *Berezovsky*, 869 F.3d at 923. Moreover, *Berezovsky*, waived his right to conduct discovery. *Berezovsky*, 869 F.3d at FN 8 (noting that "[a]lthough discovery had not yet opened, Berezovsky himself moved for summary judgment and agreed to the district court's resolving

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the motions without further discovery).

In that regard, *Berezovsky* is not dispositive. The succession argument set forth here is currently pending before the 9th Circuit with the matter having been fully argued and submitted.[7]

Again, because 4617(j)(3) only applies to property of the agency, and not to loans held in trust. Thus, the Bank must prove that the subject loan was "property of the Agency," and was not held in trust to even implicate 4617(j)(3). The Bank provided no such evidence. Thus, this Court cannot rely on 4617(j)(3) to grant judgment in favor of the Bank.

E. Agency Has Rendered 4617(j)(3) Procedurally Unconstitutional.

Here, if the Court disagrees on the issue of held in trust, 4617(j)(3) still cannot apply because an unconstitutional law cannot preempt state law. *Alden v. Maine*, 527 U.S. 706, 731 (1999). The Agency violated SFR's due process rights. Under the Fifth Amendment, "No person shall be…deprived of…property, without due process of law. Nev. Const. Art. 1, Sec. 8; U.S. Const. amend. V. In order to trigger due process, a litigant must have a constitutionally protected "property." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). "Property" interests attain "constitutional status by virtue of the fact that they have been initially recognized and protected by state law…" *Paul v. Davis*, 424 U.S. 693, 710 (1976). Even when state and federal law interact, state law's recognition of an interest establishes the existence of "property" so as to implicate due process. *Id*.; *see also United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53-54 (1993); *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 260 (1987); *Ralls Corp. v. CFIUS*, 758 F.3d 296, 316 (D.C. Cir. 2001); *Pillsbury Co. v. FTC*, 354 F.2d (5th Cir. 1966).

Under Nevada law, "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR Investments Pool 1, LLC v. U.S.*

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[7] *See* **United States Court of Appeals for the Ninth Circuit Notice of Docket Activity** The following transaction was entered on 04/11/2018 at 12:59:21 PM PDT and filed on 04/11/2018

Case Name: FHLMC/Freddie Mac, et al v. SFR Investments Pool 1, LLC, et al

Case Number: 16-15962

Docket Text:

Argued and submitted TO M. Margaret Mckeown, Kim Mclane Wardlaw and Gary S. Katzmann. [10832808] (SME)

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Bank, 334 P. 3d. 408, 419 (Nev. 2014). Hence, Nevada law recognizes SFR's property interest in the subject property as being free and clear of the deed of trust to which Freddie claims an interest. The recognition of this interest in the first instance is what triggers due process. This is true even where, later the federal law might trump.

Due process constrains "governmental decisions" that deprive people of property. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "Deprivation" occurs when a government actor's decision alters or extinguishes a state-recognized interest. *Paul*, 424 U.S. at 711. It is the "alteration, officially removing the interest from the recognition and protection previously afforded by the State, which we found sufficient to involve" due process. *Id.*; *Ralls*, 758 F.3d at 316. In the present case, Freddie claims that 4617(j)(3) overrides Nevada law and keeps in tack the deed of trust recorded against the property because the Agency did not consent to the extinguishment of the deed of trust. This "decision" not to consent constitutes a deprivation without due process. Specifically, the Agency lacks a process to request/obtain consent and also has no procedure for challenging its "decision" not to consent. As such, there is no opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Due process' "root requirement" is "an individual be given an opportunity for a hearing before he is deprived of" property. *Loudermill*, 470 U.S. at 542; *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). There is no dispute that the Agency did not give SFR an opportunity to be heard. To make matters worse, the Agency does not give SFR a post-deprivation remedy i.e. an opportunity to contest the decision not to consent. The absence of pre-deprivation procedures coupled with the lack of a post-deprivation remedy establishes that Agency deprived SFR of its property without due process. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). But for the Agency's lack of consent, SFR's property interest as initially recognized by Nevada law would be unaltered.

In addition to the lack of process, the Agency also failed to afford SFR notice that it even claimed an interest such that SFR could even be on notice it needed to obtain consent. Such failure to provide notice constitutes a deprivation without due process. *Mullane*, 339 U.S. at 314; *Jones v. Flowers*, 547 U.S. 220, 230, 234 (2006). because of the failure to provide SFR due

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process, 4617(j)(3) cannot preempt in this case.

F. Agency Consented to Extinguishment.

Should the Court disagree with SFR and find that the subject mortgage/loan was in Freddie's portfolio, i.e. never held in trust, and this Court does not find that either due process is triggered or that the Agency deprived SFR of due process, then 4617(j)(3) does not conflict because the Agency "affirmatively relinquished the cloak" of 4617(j)(3). *Berezovsky*, 869 F.3d at 929. There is evidence that the Agency or its purported servicer has consented to foreclosure. In *Trademark Properties of Michigan, LLC v. Federal National Mortgage Association,* 308 Mich.App.132 (Mich.App.), property owned by Freddie Mac was foreclosed upon by an association, and not once throughout the litigation did Freddie Mac raise 4617(j)(3). In *Trademark*, Freddie Mac had purchased the property on May 11, 2010 at a lender foreclosure sale. Thereafter, Freddie Mac failed to pay its assessments. As a result, the HOA foreclosed on February 15, 2011. This foreclosure was upheld, and at no time did Freddie Mac allege 4617(j)(3) prohibited the foreclosure. Given this example, it likely occurred in this case. SFR is currently in trial in case No. A-13-678094-C, SFR Investments Pool 1, LLC v. Federal National Mortgage Association, dba Fannie Mae, and in trial, Fannie Mae admitted to accepting excess proceeds from the foreclosure sale. If this occurred here, then Freddie consented to extinguishment.

In sum, even if the Court disagrees with SFR, Freddie likely consented to extinguishment.

V. CONCLUSION

For the reasons stated, the Bank's motion should be denied.

DATED this 4th day of May, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2018, 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 JP MORGAN CHASE BANK, N. A.'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO STRIKE**, to the following parties:

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	Case No. A-13-692304-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Counter-Defendant/Cross-Defendants	

SFR Investments Pool 1, LLC ("SFR") hereby files its Reply in Support of its Motion for Summary Judgment against JP MORGAN CHASE BANK, NATIONAL ASSOCIATION (the "Bank") pursuant to NRCP 56(c). This Reply is based on the papers and pleadings on file herein,

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the following memorandum of points and authorities, and such evidence and oral argument as may be presented at the time of hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The 4617(j)(3) claim is barred by the statute of limitations. The FHFA, the GSEs and its cohort sub-servicer banks successfully argued to the Nevada Supreme Court that the GSEs and the sub-servicer banks can assert 4617(j)(3) on behalf of the FHFA. *See Nationstar v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017). That is the whole reason why the parties are now re-briefing the FHFA issue before this Court. The Bank cannot now claim the statute of limitations found in 4617(12) does not apply to it. Either the Bank has standing to assert 4617 or it does not. Because it does, it lives and dies by everything 4617 says, which includes the statute of limitations.

If that was not enough, the Bank's opposition is not supported by admissible evidence,[1] which makes the Opposition just argument of counsel, and speculation, which is insufficient at the summary judgment stage. But the real issue is not ownership, its succession because 4617(j)(3) only applies to property of the Agency (aka FHFA). Because the Agency did not success to mortgages held in trust, 4617(j)(3) does not apply. Alternatively, the Agency has rendered 4617(j)(3) procedurally constitutional, and an unconstitutional law cannot preempt state law.

II. THE BANK DOES NOT DISPUTE SFR'S FACTS

SFR incorporates fully herein by reference its Statement of Undisputed Facts in SFR's Motion for Summary Judgment. Nowhere does the Bank dispute the facts in SFR's Mot. Pursuant to EDCR 2.20(c), the Bank has conceded all the facts stated in SFR's Motion.

III. LEGAL ARGUMENT

A. The 4617(j)(3) Claim is Time Barred.

Shockingly, the Bank argues that the statute of limitations found in 4617(12) only applies

[1] SFR's Opposition to Bank's MSJ contained a countermotion to strike the Bank's exhibits because the witness and exhibits were disclosed outside of discovery. SFR affirms this request should this Court consider the Bank's MSJ even though the Bank does not incorporate its MSJ.

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to the FHFA, suggesting that only if the FHFA asserts 4617(j)(3) does the statute of limitations apply. This is ridiculous. The only reason we are here before this Court is the FHFA, the GSEs and the banks, like Chase, successfully convinced the Nevada Supreme Court that the GSEs and the sub-servicing banks have standing to assert 4617(j)(3); that it is not an exclusive defense. *See Nationstar v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017). Now, in complete contravention of that argument and decision, the Bank claims that only parts of 4617 extend to it, and this Court should ignore the statutory limitations period found in 4617(12). But assuming for the sake of argument Freddie Mac owns the mortgage/loan in question (a point that SFR does not concede) the Bank only asserts 4617(j)(3) on **behalf** of the FHFA. In other words, the claim does not belong to Chase, it belongs to FHFA, but in light of *Nationstar*, Chase has standing to raise it. Thus, the same statute of limitations that would apply as if the FHFA was before this Court equally applies to the Bank. To find any other way, would be in direct contravention of the *Nationstar* decision.

The Bank does not dispute that the proper statute of limitation for a 4617(j)(3) claim is three years. This point is conceded. As a result, because the Bank did not assert the claim until March 9, 2016 and the statute ran on March 1, 2016, the claim is time barred.

Finally, the relation back provision of NRCP 15(c) does not save the day for the Bank. "Where the original pleading does not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the grounds upon which it rests,' the purpose of the statute of limitations has not been satisfied and it is 'not an original pleading that [can] be rehabilitated by invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown,* 466 U.S. 147, 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *Glover v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012). In other words, the analysis under NRCP 15(c) is "whether the *original* complaint adequately notified the defendants of the basis for liability the plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Here, the Bank's original complaint made zero allegations of a federal interest, let alone an assertion that 4617(j)(3) pre-empted the legal effect of the sale as recognized by Nevada law. Additionally, the Bank's citation to *Jackson v. Groenendyke*, 369 P.3d 362 (Nev. 2016) is

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misplaced. That case dealt with analyzing whether the civil rules allowing amendments should also apply in the context of NRS 533.170, which deals with procedures for filing exceptions to State Engineer's Final Order of Determination. *Id.* at 366. Nowhere did the Nevada Supreme Court abrogate *Nelson v. City of Las Vegas*, 665 P.2d 1141 (Nev. 1983). In fact, *Jackson* cites *Nelson* with approval. In *Nelson*, the Court noted that, "where an amendment states a new cause of action that describes a new and entirely different source of damages, the amendment does not relate back, as the opposing party has not been put on notice concerning the facts in issue." *Id.* at 557. In support of this idea, the Court noted the following

> [t]he liberality with which Rule 15 is to be viewed applies mainly to the manner in which the court's discretion shall be exercised in permitting amended pleadings. [Citation omitted.] It does not permit us to so liberalize limitation statutes when new facts, conduct and injuries are pleaded, that the limitation statutes lose their meaning. [Citations omitted.]

Id. quoting *Raven v. Marsh,* 94 N.M. 116, 607 P.2d 654, 656 (N.M.App.1980).

What is more, the *Nelson* court affirmed the district court's decision to deny the motion to amend finding that "[a]ppellants' original complaint and first amended complaint gave absolutely no indication that a claim for battery existed. They did not allege any physical contact whatsoever between the officers and Kathleen Nelson." *Nelson*, at 557. The same analysis applies here. The Bank's general claim that its deed of trust was not extinguished does not even come close to a 4617(j)(3) allegation. As such, the Bank's claim does not relate back to its original complaint.

B. <u>The Recorded Documents Belie Freddie Mac's Alleged Claim of Interest.</u>

SFR incorporates by reference its arguments on the issue of the recorded documents and note, as stated in SFR's MSJ, Opposition and Countermotion to strike, as though fully set forth herein. Because ownership is not even the real issue, SFR will not belabor the recorded documents/note argument any further. That being said it bears noting that in *1597 Ashfield Valley Trust v. Federal National Mortgage Association*, 2015 WL 4581220 at 8 (D. Nev. July 28, 2015) (finding that possession of "note does not qualify as in property subject to protection under 12 U.S.C. § 4617(j)(3)"), the only reason Judge Mahan ruled that 4617(j)(3) applied was Fannie Mae

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was the recorded beneficiary at the time of the Association sale. This is not true for this case.

Finally, the Bank misapplies *In re Montierth,* 354 P.3d 648 (Nev. 2015) and the Restatement. *Montierth* had a narrow and specific ruling that concerned two certified questions from the U.S. Bankruptcy Court: (1) what happens when a note and deed of trust remain split at the time of foreclosure; and (2) whether the recordation of an assignment constitutes a ministerial act that does not violate the automatic stay. *Id.* at 649. The gist of the issue in *Montierth* was whether the beneficiary on a deed of trust could foreclose on behalf of the holder of a promissory note during an automatic bankruptcy stay. The *Montierth* Court never addressed the validity of a property interest or what was required to prove ownership because the trail of the ownership interest in *Montierth* was undisputed, linear and clear: the recorded deed of trust there went from Deutsche Bank to MERS and back to Deutsche Bank.

Nothing in *Montierth* applies to the evidentiary issues at play here. In *Montierth*, the parties did not contest that the Bank owned the Note and MERS held the Deed, and that a principal and agent relationship existed between the two entities. Here, on the other hand, the recorded DOT started with MERS and ended with Chase. At no time, prior to the Association foreclosure did Freddie Mac appear in the chain of recordings. The facts of *Montierth* are inapplicable here, and nothing about the unpublished order in *Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676 (Mar. 15, 2018 unpublished order) changes this either.

C. 4617(j)(3) Does Not Apply to Securitized Mortgages.

12 U.S.C. 4617(j)(3) does not apply because mortgages held in trust are not "property of the agency." Again, for a full analysis if this issue, SFR refers this court to SFR's Opposition to the Bank's MSJ which SFR incorporates as though fully set forth herein. Simply put, because the subject loan was held in trust, 4617(j)(3) does not apply because the Agency did not succeed to mortgages held in trust. As such, summary judgment in favor of SFR is appropriate.

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D. The Agency Has Rendered 4617(j)(3) Procedurally Unconstitutional.

Here, if the Court disagrees on the issue of "held in trust" (although there is no basis to disagree), 4617(j)(3) still cannot apply because an unconstitutional law cannot preempt state law. *Alden v. Maine*, 527 U.S. 706, 731 (1999). SFR incorporates by reference as if stated herein, its arguments from its Opposition to the Banks' MSJ. Because the Agency did not afford SFR due process, 4617(j)(3) cannot preempt Nevada law.

V. CONCLUSION

For these reasons, the Court should enter summary judgment in favor of SFR, again, stating that (1) the deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts; and (2) the Bank, and any agents acting on its behalf, are permanently enjoined from any conduct that would interfere with SFR's fee simple rights to the Property.

DATED this 18th day of May, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to the following parties.

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DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10, ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JP MORGAN CHASE BANK National Association, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross Defendants.	

JPMORGAN CHASE BANK N.A.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

As described in Chase's Motion for Summary Judgment ("MSJ"), while Freddie Mac is in conservatorship under FHFA, none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").[1] In this case, at the time of the HOA Sale, Freddie Mac owned the Deed of Trust encumbering the Property. As the Nevada Supreme Court, and multiple federal and state courts, including the Ninth Circuit, have held in dozens of cases, the Federal Foreclosure Bar protects Freddie Mac's interest, precluding SFR from acquiring a free and clear interest in the Property. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419, 134 Nev. Adv. Op. 36, at 2 (Nev. May 17, 2018) (en banc) ("the Federal Foreclosure Bar invalidates any purported extinguishment of a[n Enterprise's] property interest while under the FHFA's conservatorship, unless the FHFA affirmatively consents.");[2] *see also* MSJ at 11-12 (citing cases).

SFR's Opposition repeats many of the same arguments that it raised in its Motion for Summary Judgment, which Chase addressed in its response. *See generally* Chase's Opposition ("Opp."). Specifically, SFR argues that (1) Freddie Mac did not have an interest in the Property protected by the Federal Foreclosure Bar, (2) FHFA impliedly consented to extinguish Freddie Mac's Property interest, (3) the operation of the Federal Foreclosure Bar is unconstitutional, and (4) Chase's quiet title claim is time-barred. As explained below, SFR's arguments are meritless; numerous courts have rejected similar arguments on summary judgment motions. This Court should do the same here.

SFR also asks this Court to strike certain evidence and arguments by Chase as untimely or improper. As explained further below, the evidence that SFR claims

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[1] Terms not defined herein shall take on the definition in Chase's Motion for Summary Judgment ("MSJ").

[2] The Nevada Supreme Court originally issued its decision in *Christine View* in an unpublished order on March 21, 2018, but, on May 17, 2018, the court reissued the order as precedential opinion.

was untimely was disclosed in 2016. Thus, to the extent SFR could even raise a timeliness objection, it has waived that right because it has known the identity of Mr. Meyer and the referenced documents for approximately two years.

ARGUMENT

I. Freddie Mac Had a Secured Property Interest Protected by the Federal Foreclosure Bar at the Time of the HOA Sale

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

SFR continues to erroneously argue that the "recorded documents . . . conclusively establish that Freddie did not own the note or [Deed of Trust]" at the time of the HOA Sale. Opp. at 4, 8-10. As explained in Chase's Opposition to SFR's Motion for Summary Judgment, SFR's argument misunderstands Nevada law and disregards the three Ninth Circuit decisions that have rejected this argument. *See* Chase's Opp. at 3-7.

The Nevada Supreme Court's decision in *In re Montierth*, 354 P.3d 648 (Nev. 2015) provides the legal principle relevant to this case: an entity that owns a loan remains a secured creditor when an agent or contractually-authorized third-party is the beneficiary of record of the deed of trust securing the loan. Applying Nevada law under similar circumstances, the Ninth Circuit held that Freddie Mac, as a loan owner, does not need to appear as record beneficiary to have a protected property interest. *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017); *see also Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017). Indeed, "[a]lthough the recorded deed of trust here omitted Freddie Mac's name, Freddie Mac's property interest is valid and enforceable under Nevada law," *Berezovsky*, 869 F.3d at 932, because "the record beneficiary of [the] deed of trust is a party acting on Freddie Mac's behalf." *Elmer*, 707 F. App'x at 428.

To be sure, Nevada's recording statutes do not require public recording of changes in the ownership of a loan in order for a party to have a legal property

interest through that ownership. *See* NRS 106.210 (discussing only recording of assignments of beneficial interests). The recording statutes require only the recording of a "conveyance" of a deed of trust itself or an assignment of a deed of trust, not its subsequent acquisition by an investor through its purchase of a loan. If Nevada's recording statutes required all *loan ownership* interests to be recorded, a loan owner would always also need to serve as beneficiary of record of a deed of trust. Under such a rule, the loan owner in *Montierth* would not have had a secured property interest, and the Nevada Supreme Court would have ruled that MERS could not act as record beneficiary as nominee for the lender.

The requirements of the Nevada recording statutes are consistent with those in Kentucky, which the Sixth Circuit recently held did not require a separate recording anytime a party purchased a loan, so long as the beneficiary of record remained the same entity, as is the case here. *See Higgins v. BAC Home Loans Servicing, LP*, 793 F.3d 688, 689 (6th Cir. 2015). Nevada's recording statutes are also consistent with a number of Ninth Circuit decisions regarding MERS and its role in the mortgage industry. *See In re Mortgage Elec. Registration Sys., Inc.*, 754 F.3d 772, 776-77 (9th Cir. 2014); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011).

Moreover, also explained in Chase's Opposition to SFR's Motion for Summary Judgment, the evidence before the court unequivocally proves that Freddie Mac owned the note and Deed of Trust at the time of the HOA Sale. *See* Chase's Opp. at 7-9. Freddie Mac's business records show that Freddie Mac acquired ownership of the Loan in September 2006 and continued to own the Loan in March 2013, at the time of the HOA Sale. *See* MSJ, Exs. 4 (Chase Decl.),7 (Freddie Mac Decl.). Freddie Mac's business records and employee testimony also show that Chase was Freddie Mac's servicer at the time of the HOA Sale. *See* MSJ, Exs. 7, 7-1, 7-6. Consistent with Freddie Mac's business records, Chase produced its business records and an employee declaration confirming that it did not own the Loan at the

time of the HOA Sale. *See* MSJ, Ex. 4. The Second Circuit recently held that the contractual relationship between a servicer and Freddie Mac was established by testimony alone. *U.S. ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 653-54 & n.5 (2d Cir. 2016). Additionally, Freddie Mac's Guide provides evidence of the content of the relationship between Freddie Mac and Chase. The terms of the Guide match the relationship described in *Montierth* to secure Freddie Mac's interest in the Deed of Trust. *Berezovsky*, 869 F.3d at 932.

SFR has failed to raise any genuine issue of material fact and offers no evidence contrary to these business records and declarations.

B. Securitization Is Irrelevant to the Federal Foreclosure Bar's Protection

SFR contends that the Federal Foreclosure Bar does not protect Freddie Mac's Property interest "if" the Loan was transferred to a securitization trust because FHFA as Conservator does not succeed to the ownership of securitized loans. Opp. at 14-17. SFR's argument fails because the Loan was not securitized at the time of the HOA Sale. Even if it had been securitized, it would have no bearing on the Federal Foreclosure Bar's protection because Freddie Mac owns the mortgage loans it securitizes, and FHFA succeeds to that interest during conservatorship.

First, SFR's securitization argument is irrelevant because the Loan was *not* securitized at the time of the HOA Sale. While Freddie Mac placed the mortgage Loan here into a securitization trust after acquisition, the Loan was removed from that trust and transferred to Freddie Mac's unsecuritized portfolio of loans in on or about February 15, 2010, long before the HOA Sale in March 2013. *See* Decl. of Meyer at ¶8, attached hereto as Ex. 1. The Loan has not been securitized since. *Id.* SFR presents no contrary evidence.

Second, as a matter of law, the Enterprises own the loans that they securitize, because those loans are deposited into common-law trusts of which the

Enterprise is the trustee. *See* Ex. 1-1 (PC Master Trust Agreement) at 1, 5 (defining Freddie Mac as the trustee), Section 1.01 (stating mortgages are transferred to Freddie Mac in its capacity as trustee, not to an independent legal entity).

As the Seventh Circuit explained in a case involving securitized assets, "[i]n American law, a trustee is the legal owner of the trust's assets." *Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 691 (7th Cir. 2010). Courts in New York—the jurisdiction governing the execution of Freddie Mac trust agreements—confirm that a common-law trust is not a legally cognizable entity capable of owning property, but instead can act only through a trustee, which holds legal title to trust property. *S.E.C. v. Am. Bd. of Trade, Inc.*, 654 F. Supp. 361, 366 (S.D.N.Y.), *aff'd*, 830 F.2d 431 (2d Cir. 1987) ("A trustee . . . holds legal or equitable title to the property placed in his possession."); *see also* 76 Am Jur. 2d Trusts § 3 (2005). Thus, "a traditional common law trust is a legal relationship between legal entities, not a legal entity in-and-of-itself . . . . A trust is not a legal 'person' which can own property . . . ." *Lane v. Wells Fargo Bank, N.A.*, No. 3:12-cv-00015-RCJ-VPC, 2012 WL 4792914, at *6 (D. Nev. Oct. 8, 2012). Accordingly, Freddie Mac's common-law securitization trusts are not legal entities that have the capacity to own property.

Nor are the beneficiaries of the trust the legal owners of the loans. The "'beneficiary of a trust' signifies one who has an equitable interest in property subject to a trust and who enjoys the benefit of the administration of the trust by the trustee. *A beneficiary, however, has no present ownership of, or lien on, the general assets of the trust.*" 24 Am. Jur. Pl. & Pr. Forms Trusts § 173 (emphasis added); *see also Orff v. United States*, 358 F.3d 1137 (9th Cir. 2004) ("A trust beneficiary has no legal title or ownership interest in the trust assets.").

Third, contrary to SFR's contention, Opp. at 14-17, FHFA, as Conservator, succeeds to the securitized mortgages Freddie Mac owns. 12 U.S.C. § 4617(b)(2)(A)(i) (the "Succession Provision"). SFR argues that a provision of

HERA—12 U.S.C. § 4617(b)(19)(B) (the "Trust Protection Provision")—provides an exception to the Succession Provision for securitized trusts because FHFA is purportedly only capable of "holding" mortgages in trust. SFR's argument thus is rooted in an assertion that the word "holding" must be read as an exception to "succession," an assertion unsupported by the statute itself.

Indeed, the Ninth Circuit gave this argument short shrift, holding that the plain language of the Trust Protection Provision "prohibits creditors from drawing on assets held in trust to satisfy creditors' claims; it does not bar the Agency from succeeding to [an Enterprise's] interest in the assets." *Elmer*, 707 F. App'x at 429. This plain-language interpretation lays bare that the logic of SFR's argument breaks down because "to succeed" and "to hold" are not mutually exclusive.

SFR's proffered reading of the Trust Protection Provision also makes no practical sense. The provision specifies that (i) securitized mortgages are off-limits to the Enterprises' creditors, (ii) that the Conservator must hold them according to the terms of the trust agreements, and (iii) that FHFA can promulgate regulations to cabin the damages available on claims relating to such mortgages. This reflects Congress's aim of stabilizing the nation's housing-finance system.

Yet SFR contends that this Trust Protection Provision—to which the Succession Provision makes no reference, and which itself makes no reference to the Succession Provision—somehow supersedes and nullifies the Succession Provision as it would apply to the Enterprises' securitized loans, thereby leaving that class of asset, and *only* that class, unprotected by the Federal Foreclosure Bar. That is wrong. SFR's interpretation would leave securitized mortgages with *less* protection than that afforded to unsecuritized loans, flouting Congress's intent to preserve the Enterprises' securitization function—and thereby destabilizing the secondary mortgage market.[3]

[3] If Congress intended the Trust Protection Provision to negate the Succession Provision (which it positioned some 17 subsections and 4,000-plus words away) one might have expected Congress to say so, or to at least offer some perceptible hint. Congress did not, and instead used different language in different sections to

SFR also places much reliance on the heading "General Exceptions." "But headings and titles are not meant to take the place of the detailed provisions of the text" of a statute. *N.L.R.B. v. Fresh & Easy Neighborhood Mkt., Inc.*, 805 F.3d 1155, 1160 (9th Cir. 2015) (citation omitted). SFR ignores that the text of the Trust Protection Provision does not fully exempt *any* property from *all* conservator powers, but rather delineates a far more limited exception: it directs the Conservator to manage securitized mortgages according to the terms of the underlying trust instruments, and places those mortgages off-limits to the Enterprises' general creditors.

In sum, this Court should follow *Elmer* by reading the Succession and Trust Protection Provisions according to their plain text and the clear Congressional intent to provide more protection to securitized asserts during the conservatorship, not less. The Federal Foreclosure Bar protects the Enterprises' securitized loans just as it protects their other assets.

II. FHFA Did Not Consent to Extinguish Freddie Mac's Deed of Trust

In another attempt to defeat summary judgment, SFR briefly argues FHFA impliedly consented to extinguish Freddie Mac's Property interest. Opp. at 19. As the Nevada Supreme Court and the Ninth Circuit have already held, it is SFR's burden to prove that FHFA *expressly* consented to extinguish Freddie Mac's property interest. *See Christine View*, 134 Nev. Adv. Op. 36, at 7 ("The Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional protection unless or until [the FHFA] affirmatively relinquishes it.'" (quoting *Berezovsky*, 869 F.3d at 929)).[4] SFR cannot meet its burden because FHFA has stated unequivocally that it

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achieve different results. In contrast to the broad terms of the Succession Provision, the Trust Protection Provision articulates a narrow directive concerning the management and extra protection of securitized loans from creditors.

[4] For this reason, SFR's argument that a servicer can consent on FHFA's behalf is also wrong. Opp. at 11 n.5. By HERA's plain language and the Nevada Supreme Court's interpretation, FHFA must "affirmatively relinquish" Congress' protection of its property interest.

has not and will not consent to extinguish Freddie Mac's property interests. *See* MSJ at 21, Ex. 22.

SFR oddly cites to *Fannie Mae*'s apparent decision not to advance a federal preemption defense in a Michigan state court action to argue that this evidences FHFA's consent here. Opp. at 19 (citing *Trademark Prop. of Mich., LLC v. Fannie Mae*, 863 N.W.2d 344 (Mich. App. 2014)). Whether Fannie Mae raised various alternative arguments, but not the Federal Foreclosure Bar, in an entirely different action, in a different state, under different factual circumstances has no bearing on whether FHFA has consented to extinguish Freddie Mac's interest here.

III. The Federal Foreclosure Bar Does Not Violate Due Process

SFR argues that the Federal Foreclosure Bar's protection of Freddie Mac's lien interest deprives SFR of property without adequate procedural protections. Opp. at 17-18. This argument has been rejected before: "the protections of [the Federal Foreclosure Bar] were already in effect," therefore HOA sale purchasers "all purchased real property subject to FHFA's lienhold interest, and there was no deprivation of property." *Skylights LLC v. Byron*, 112 F. Supp. 3d 1145, 1154 n.4 (D. Nev. 2015); *see also Nationstar Mortg. LLC v. Tow Props., LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064, at *5 (D. Nev. Apr. 27, 2018) (similar).

When SFR bought its interest in the Property, that purchase was governed by *both* federal and state law. The "existing rules and understandings and background principles" that "define the dimensions of the requisite property rights" for purposes of constitutional protections are "derived from an independent source, such as state, *federal,* or common law . . . ." *Schooner Harbor Ventures, Inc. v. United States*, 569 F.3d 1359, 1362 (Fed. Cir. 2009) (emphasis added) (internal quotation omitted). Indeed, "[f]ederal law, no less than state law, can provide the rules or understandings that create and define property interests." *Hardison v. Cohen*, 375 F.3d 1262, 1268 (11th Cir. 2004) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). Accordingly, any interest SFR acquired at the time of the HOA

Sale was, from the outset, subject to Freddie Mac's preexisting property interest, because the Federal Foreclosure Bar had already been enacted and protected Freddie Mac's property, thereby limiting the interest that SFR could acquire at the HOA Sale. SFR cannot be deprived of an interest it never had.

SFR attempts to avoid this conclusion by contending that the Federal Foreclosure Bar only is effective when FHFA makes some case-by-case "'decision' not to consent." Opp. at 18. This contention has no support in the record, and this is not how FHFA operates. Moreover, SFR's argument contemplates that the Federal Foreclosure Bar does not automatically protect Enterprise property, an interpretation contrary to its statutory text and the Nevada Supreme Court's interpretation, which held that, "[a]bsent the FHFA's *affirmative relinquishment*," a purchaser at an HOA sale's "interest in the property is subject to [Freddie Mac's] deed of trust." *Christine View*, 134 Nev. Adv. Op. 36, at 8 (emphases added). Preservation of Freddie Mac's property interest is the default rule, with no action necessary from the Conservator for the statute to prevent the HOA Sale from extinguishing a lien.

The cases SFR cites do not support its due process argument—they undermine it. For example, *Ralls* helps illustrate the distinction between a deprivation of an existing right and a right never having been acquired in the first place under prevailing law. *Ralls Corp. v. CFIUS*, 758 F.3d 296 (D.C. Cir. 2014) (cited at Opp. at 17). In *Ralls*, it was undisputed that the plaintiff first acquired a property right in an Oregon farm. *Id.* at 315. The President subsequently nullified Ralls's purchase pursuant to the Defense Protection Act ("DPA").[5] The default legal regime was thus that Ralls had a property right, and it was only at the President's option that this property right could be cancelled; the DPA operated as a potential qualification on Ralls's vested property rights, not a condition precedent to the

[5] The DPA provides that the President "may take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States." 50 U.S.C. § 4565(d)(1).

vesting of such rights. *Id.* at 316. If the President had taken no action, Ralls would have continued to enjoy rights under Oregon law in perpetuity. *Id.* at 316-17.

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

The other cases cited by SFR are similarly distinguishable; in each, the parties complaining of a due process violation had already acquired a property interest *before* government action purported to take away that interest. For example, *United States v. James Daniel Good Real Property* concerned a civil forfeiture law that would deprive a homeowner of a property that the homeowner already owned prior to the seizure—under such circumstances, due process was required. 510 U.S. 43, 47-48 (1993). None of these cases considers a federal statute that, as here, protects one party's property from being extinguished and thereby prevents from the outset the complainant's acquisition of an interest in the property.

However, even assuming that an adjustment of property rights somehow occurred, that would not salvage SFR's argument. The action that "purportedly deprived . . . property was the enactment of HERA, which was undertaken by Congress in the normal manner prescribed by law." *Skylights*, 122 F. Supp. 3d at 1156; *see also Tow*, 2018 WL 2014064, at *5. "When the action complained of is legislative in nature, due process is satisfied when the legislative body performs its responsibilities in the normal manner prescribed by law." *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012) (citation omitted). Thus, even if SFR had been deprived of some property interest, "the deprivation of

property rights effected by [the Federal Foreclosure Bar] occurred with due process of law." *Skylights*, 112 F. Supp. 3d at 1154.

IV. Chase's Claim Is Not Time-Barred

SFR incorrectly argues that Chase's quiet title claim is time-barred under HERA. Opp. at 10-14. Chase's quiet title claim is not time-barred because the claim is subject to Nevada's five year limitations period under NRS 11.070 or 11.080. HERA's statute of limitations provision is not applicable here. Assuming March 1, 2013 is the date of accrual, as SFR contends, Opp. at 11, Chase's March 9, 2016 claim is timely filed.

A. NRS 11.070's Five-Year Statute of Limitations Applies to Chase's Quiet Title Claims

SFR contends that NRS 11.070 cannot govern Chase's claim because Chase does not claim title to the Property, nor does it claim to have been in possession of the real property. Opp. at 12-13. However, SFR's narrow interpretation of NRS 11.070 runs contrary to the plain text of the statute and applicable case law.

NRS 11.070's five-year limitations period applies to claims or defenses "*founded upon the title* to real property," where "*the person prosecuting the action* or making the defense, *or* under whose title the action is prosecuted or the defense is made, *or the … grantor of such person,* was seized or possessed of the premises in question." (emphases added). Accordingly, the statute does not specify that the claimant—here, Chase—*itself* have a claim to title or to have been in possession of the property. Rather, all that is required is that (1) title to the property is foundational to the claim and (2) the claimant or one of several other entities—specifically including the claimant's "grantor"—had possession within the last five years.

Chase's claim readily satisfies each of the two statutory requirements. *First*, the claim is "founded upon . . . title." The claim, after all, is denominated quiet *title*, reflecting the substance of the dispute, which is whether the HOA conveyed

clear *title* to SFR, or whether Freddie Mac's Deed of Trust continued to encumber SFR's *title*. Thus, courts routinely apply NRS 11.070 to quiet-title claims brought by lienholders seeking to confirm the validity of security interests, as Chase does here. *E.g.*, *Bank of New York Mellon Trust Co., N.A. v. Jentz*, No. 2:15-cv-1167-RCJ-CWH, 2016 WL 4487841, at *2-3 (D. Nev. Aug. 24, 2016).[6] As a matter of law and logic, a claim whose legal "purpose" is to "quiet title to . . . [p]roperty" is necessarily "founded upon . . . title" to the property. *Id.* Had the legislature intended to limit NRS 11.070 narrowly to *claims of title* rather than to apply more broadly to any claim *founded upon title*, it could easily have done so, but it did not. In enacting the broader language, the legislature encompassed within NRS 11.070's scope all claims to determine the validity of deed-of-trust encumbrances on title.

Second, the "grantor" is the former homeowner/borrower—a person who was unquestionably "seized or possessed of the premises" at the time of the HOA Sale. A "grantor" in Nevada law includes a borrower who has executed a deed of trust to provide another party with a security interest in the property. *See* NRS 107.410 ("'Borrower' means a natural person who is a mortgagor or *grantor of a deed of trust under a residential mortgage loan*.") (emphasis added); *Rose v. First Fed. Sav. & Loan Ass'n of Nevada*, 777 P.2d 1318, 1319 (Nev. 1989) (grantor of deed of trust is party obligated to pay the loan). There is no dispute here that the borrower on the note and grantor of the deed of trust, which Chase is beneficiary of record, had possession of the Property up until the HOA Sale on March 1, 2013, less than five years before the amended complaint was filed. Because NRS 11.070 applies where *either* a quiet title plaintiff itself, "*or the … grantor of such person,* was seized or possessed of the premises in question," whether Chase was "seized or possessed of the premises," is irrelevant. NRS 11.070 (emphasis added).

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[6] *See also Wells Fargo Bank, N.A. v. United States*, No. 2:10-cv-1546-JCM-GWF 2013 WL 2551518, at *3 (D. Nev. June 10, 2013); *Ocwen Loan Servicing, LLC v. Operture, Inc.*, No. 2:17-cv-1026-GMN-CWH, 2018 WL 1092337, at *1 (D. Nev. Feb. 28, 2018).

Moreover, the Nevada Supreme Court's sole citation to NRS 11.070 in the last 40 years confirms that the statute covers claims where the claimant has a property interest other than title. In that case, *Bentley v. State*, the court considered the claims of intervenors whose dispute concerned *water rights*, not title. *See* No. 64773, 2016 WL 3856572 (Nev. 2016) (unpublished). The parties against whom the intervenors asserted their claims, the Bentleys, had built a structure diverting a greater share of the contested water to their property than they had drawn before. *Id.* at *10. The Nevada Supreme Court calculated the timeliness of the intervenors' claims based on the date that *the Bentleys* seized that larger amount of the water flow; it did not consider when the *intervenors* had possession to any of the claimed flow of water. *Id.* Thus, not only did the Nevada Supreme Court apply NRS 11.070 to claims involving property interests that were *not* title to real property, but it also calculated the limitations period based on when the target of the claim, not the claimant, had acquired possession of that property interest. Under SFR's interpretation of NRS 11.070, either fact would make the statute inapplicable to the claims of the intervenors in *Bentley*.

Nevada's lower courts have similarly followed the expansive reading of NRS 11.070, and have applied it to claims involving disputes over whether a lien continued to encumber a property, the same issue in dispute here. *E.g.*, *Raymer v. U.S. Bank N.A.*, No. 16-A-739731-C, 2016 WL 10651933, at *2 (Nev. Dist. Ct. Dec. 28, 2016). Similarly, the Ninth Circuit has cited to NRS 11.070 as providing a five-year limitations period to disputes between title owners and lienholders over the continuing existence of a lien, rather than the underlying title in the property. *See, e.g.*, *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1113 (9th Cir. 2016); *Scott v. MERS, Inc.*, 605 Fed. App'x 598, 600 (9th Cir. Feb. 17, 2015); *Bank of New York Mellon v. Traccia Cmty. Ass'n*, No. 2:17-cv-1802-JCM-CWH, 2018 WL 1459127, at *4 (D. Nev. Mar. 23, 2018); *Sifre v. Wells Fargo Bank*, No. 3:10-CV-00572-RCJ, 2011 WL 221816, at *2 (D. Nev. Jan. 19, 2011).

B. Chase's Quiet Title Claim Would Also Be Subject to the Five-Year Period Provided by NRS 11.080

SFR's assertion that the five-year statute of limitations provided under NRS 11.080 also does not apply to Chase's quiet title claim, Opp. at 12-13, is similarly belied by the plain language of the statute:

> No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement.

NRS 11.080. The text suggests that the limitations period applies to disputes about property interests other than title, as it encompasses "recovery of the possession thereof *other than mining claims*." Mining claims are not a subset of title to real property, but rather a distinct form of property interest. *See Mills v. United States*, 742 F.3d 400, 403 (9th Cir. 2014) (discussing different owners of legal title, mining rights, and possessory rights in land). The same is true of other property interests, such as a mortgage lien represented by a deed of trust, but those are not exempted from the statute. That the Nevada legislature expressly exempted a non-title interest from the statute confirms that it applies to disputes about a variety of property interests, not just legal title.

This interpretation is confirmed by decisions of the Nevada courts. Most recently, the Nevada Supreme Court cited NRS 11.080 in a case involving a dispute between a lienholder and a purchaser at an HOA Sale, the same dispute central to this case. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232 (Nev. 2017). Federal courts have cited NRS 11.080 in similar contexts. *See Scott*, 605 Fed. App'x at 600; *Bank of Am., N.A. v. Desert Canyon Homeowners Ass'n*, No. 2:17-cv-0663-MMD-NJK, 2017 WL 4932912, at *2 (D. Nev. Oct. 31, 2017); *Nationstar Mortg., LLC v. Falls at Hidden Canyon*

Homeowners Ass'n, No. 2:15-cv-1287-RCJ-NJK, 2017 WL 2587926, at *3 (D. Nev. June 14, 2017).

These decisions adopt a broad interpretation of NRS 11.080 to cover quiet title claims, such as that brought by Chase here, that seek to confirm the continuing existence of a deed of trust after an HOA Sale, as opposed to governing only title itself or possession of real property. Thus, the Court should reject SFR's claim that NRS 11.080 does not apply to Chase's quiet title claim.

C. Chase's Claim Is Not Subject to HERA's Three-Year Statute of Limitations

SFR contends that Chase's quiet title claim is actually a wrongful foreclosure tort claim subject to the three-year limitations period under 12 U.S.C. § 4617(b)(12)(A). Opp. at 10-11. As Chase explained in its Opposition to SFR's Motion for Summary Judgment, the provision SFR cites, 12 U.S.C. § 4617(b)(12)(A), only applies to claims filed by FHFA, not Freddie Mac or its servicers; FHFA is not a party here. *See* Chase's Opp. at 10-13. Even assuming that a three-year period applied, Chase timely pled its claims because the amended complaint relates back to the original complaint. *Id.* at 12. In any event, even if 12 U.S.C. § 4617(b)(12)(A) applied to Chase's claim, the statute of limitations for quiet title claims under that provision is six years, not three, because Chases' quiet title claim is most similar to a contract claim and is not a wrongful foreclosure action.

Chase's quiet title claim is not a tort under a theory of wrongful foreclosure. "A wrongful foreclosure claim challenges the authority behind the foreclosure." *McKnight Family, LLP v. Adept Mgmt. Servs.*, 310 P.3d 555, 559 (Nev. 2013). Here, Chase is not challenging the HOA's authority to conduct the HOA Sale, but rather the effect of the HOA Sale on its lien. The federal statute only protects the property interests of the Enterprises, not that of a borrower; when an Enterprise owns a deed of trust encumbering a property, as here, the statute does not preclude an HOA from foreclosing on its lien or change the limited superiority of that lien,

which allows the HOA to convey the borrower's title to an HOA sale purchaser. Rather, the Federal Foreclosure Bar merely protects Freddie Mac's property interest—here, the Deed of Trust—from extinguishment and thus preempts only one effect of the HOA Sale, not the HOA Sale itself. Accordingly, Chase challenges the *effect* of the HOA Sale on Freddie Mac's lien, not the HOA's authority to conduct the HOA Sale or whether the HOA Sale could convey title to SFR.

HERA's statute of limitations provision recognizes only two categories of claims—contract claims and tort claims. The Second Circuit, citing Section 4617(b)(12)'s broad language, has held that "Congress intended to prescribe *comprehensive* time limitations for '*any* action' that the Agency might bring as conservator." *See FHFA v. UBS Americas Inc.*, 712 F.3d 136, 143, 144 (2d Cir. 2013) (emphases in original). Accordingly, courts must determine whether any claim brought by the Conservator is best classified as arising in contract or in tort. *See In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*, 900 F. Supp. 2d 1055, 1067-68 (C.D. Cal. 2012).[7]

While a quiet title claim does not fit neatly into the "contract" or "tort" category, it has more in common with a contract claim. Relationships formed in contract, creating legal rights and interests in property, undergird actions for quiet title, even if the quiet title action does not require interpretation of these contracts. *See, e.g.*, *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir. 1995) (explaining that "a mortgage lien is an interest in property created by contract."). Here, Chase's assertion of the Federal Foreclosure Bar as a basis for its quiet title action is grounded in the contractual relationship between Freddie Mac, as the owner of the Loan, and Chase, as Freddie Mac's servicer of the Loan and record beneficiary of the Deed of Trust at the time of the HOA Sale. That relationship is governed by the contractual provisions of Freddie Mac's Guide. Therefore, even if Section

[7] There is no federal or state case law that classifies a quiet title claim as a subcategory of either tort or contract claims. To the contrary, several courts have expressly distinguished between these three categories of claims. *See Heyman v. Kline*, 344 F. Supp. 1081, 1086 (D. Conn. 1970).

4617(b)(12)(A) applied to Chase's quiet title claim, the claim would be subject to HERA's six-year statute of limitations for contract claims, and accordingly is timely.

V. Chase's Opposition to SFR's Motion to Strike

In addition to contesting Freddie Mac's ownership of the note and Deed of Trust, SFR seeks to exclude arguments related to the validity of the sale and documents disclosed in support of Chase's motion for summary judgment. Opp. at 12. SFR's arguments lack merit.

First, SFR argues that this Court should not consider Chase's argument regarding the validity of sale, erroneously claiming that this Court's prior October 26, 2013 order already addressed this issue. *See* Opp. at 5:24-6:2. However, this appears to be a sloppy copy/paste job on the part of SFR from another case as there is no such prior "October 26, 2013" order, and Chase's MSJ is premised entirely on the Federal Foreclosure Bar. Accordingly, Chase provides no further response to this argument.

SFR also argues that this Court should strike any facts and arguments that rely upon Mr. Meyer's declaration because, according to SFR, neither Mr. Meyer nor the documents were disclosed during discovery. *See* Opp. at 6:3-9. Again, SFR is incorrect. As part of its First Supplement to N.R.C.P. 16.1 Initial Disclosures ("First Supplement"), Chase identified a "Corporate Representative of Federal Home Loan Mortgage Corporation ("Freddie Mac")" as someone possessing discoverable information. *See* Exhibit 2, attached hereto. Mr. Meyer also provided a declaration in support of the Chase's motion for summary judgment filed on July 26, 2016. In support of the 2016 motion for summary judgment, Chase attached all of the same exhibits that SFR now contests (Exs. 7, 7-1 through 7-9, 10, 11, 24, and 27).

Chase maintains that these disclosures were timely, but even if they were not, such failure was harmless. *See* N.R.C.P. 37(c)(1). SFR did not object to these exhibits during the 2016 dispositive motion briefing, thus waiving its right to do so

now. Furthermore, SFR has not shown—and cannot show—how it has been harmed by these purported "untimely disclosures." SFR cannot claim it has been deprived of the ability to conduct discovery related to these documents when it has known about their existence for two years and vehemently opposed any efforts to re-open discovery following the remand of this case.

CONCLUSION

Chase respectfully requests that the Court grant its Motion for Summary Judgment.

DATED this 25th day of May, 2018.

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CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5, I hereby certify that on the 25th day of May, 2018, an electronic copy of the **JPMORGAN CHASE BANK N.A.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served on the following counsel of record via the Court's electronic service system:

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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10, ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JP MORGAN CHASE BANK National Association, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross Defendants.	

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1. My name is Dean Meyer. I have personal knowledge of and am competent to testify as to the matters stated herein by virtue of my position as Director, Loss Mitigation for Federal Home Loan Mortgage Corporation ("Freddie Mac"), a corporation organized and existing under the laws of the United States. This declaration supplements my declaration dated April 13, 2018 in this action.

2. Securitization is the process by which Freddie Mac bundles mortgage loans it has purchased into a pool and agrees to distribute funds received on loans in the pool to purchasers of pool certificates, according to a contractually defined schedule specific to each securitization. Through my work, I am familiar with the structure of Freddie Mac single-family securitizations as well as the process and instruments used to create them.

3. Freddie Mac creates various types of single-family securitizations. The simplest kind of Freddie Mac single-family securitization is a pass-through in which certificate purchasers are granted a proportionate right to all payments received on loans in the pool. Freddie Mac also creates more complex single-family securitizations in which different classes of certificates carry different preferences as to payment and different stated maturities. Freddie Mac also creates single-family securitizations in which certificates from one or more securitization are bundled into a new pool, with payments received into the pool distributed to purchasers of certificates in the new pool.

4. For its single-family securitizations, Freddie Mac currently customarily uses a common-law trust structure under which Freddie Mac itself serves as the trustee. Freddie Mac transfers the mortgages it has purchased to the pool and, as trustee, continues to hold title to them. Freddie Mac assumes contractually defined duties, including the duty to distribute payments on the pooled mortgages to the holders of the pool certificates. The instrument establishing the common-law trust for each Freddie Mac securitization can be found at http://www.freddiemac.com/mbs/html/legal_doc.html, and I have attached hereto as

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Exhibit 1 the current version of the instrument Freddie Mac uses to create pass-through securitizations, the PC Master Trust Agreement.

5. When Freddie Mac pools loans it owns or has purchased into its own securitization, Freddie Mac's databases continue to show the loans as active (*i.e.*, not liquidated) by Freddie Mac, because Freddie Mac holds legal title to the loans in the pool in its capacity as trustee. The holders of the pool certificates do not own the individual loans underlying the securitization. Rather, they have a pro rata undivided beneficial interest in the cash flows (primarily principal and interest payments) from the pool of loans backing the certificates. In addition, Freddie Mac generally maintains other indicia of dominion and control over the loans in the pool, such as the right to administer servicing of the loans, the right to remove loans from the pool under certain circumstances, and the obligation to guarantee principal and interest payments on securities backed by the pools.

6. Attached as Exhibit 2 is a true and correct redacted print-out generated from Freddie Mac's Corporate Data Warehouse providing data with respect to a mortgage loan identified in row two of the first column of page two of Exhibit 2 as "NBR_LOAN_MIDAS" or the "Freddie Mac Loan Number" ending in 6084 (the "Loan"). The print-out from Freddie Mac's MIDAS system attached as Exhibit 1 to my initial declaration reflects that this Loan is associated with the property located at 3263 Morning Springs Drive, Henderson, Nevada, 89074 which is at issue in this action.

7. Row three of the third column of page 2 of Exhibit 2 reflects that the Loan was securitized in "NBR_POOL" or "Pool Number" A60998. Additional information regarding Pool Number A60998 can be found at: http://www.freddiemac.com/mbs/html/sd_pc_lookup.html.

8. Row three of the sixth column of page 2 of Exhibit 2 reflects that the "DT_MRTG_RMVD" or "Date the Mortgage was Removed" from securitization was February 15, 2010. Accordingly, this Loan was removed from Pool Number A60998

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and placed in Freddie Mac's portfolio of loans on or about February 15, 2010. The Loan has not been placed into any other securitization pool since being removed from Pool Number A60998.

9. As noted in my initial declaration, I am familiar with certain Freddie Mac systems and databases. Those systems and databases include Freddie Mac's Corporate Data Warehouse. Entries in Freddie Mac's systems and corresponding databases are made at or near the time of the events recorded by, or from information transmitted by, persons with knowledge. Freddie Mac's systems and databases are maintained and kept in the course of Freddie Mac's regularly conducted business activity, and it is the regular practice of Freddie Mac to keep and maintain information regarding loans owned by Freddie Mac in Freddie Mac's databases. Freddie Mac's systems and databases consist of records that were made and kept by Freddie Mac in the course of its regularly conducted activities pursuant to its regular business practice of creating such records. These systems and databases are Freddie Mac's business records.

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

Executed on May 18, 2018.

Dean Meyer
Director, Loss Mitigation
Federal Home Loan Mortgage Corporation

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Exhibit 1

Freddie Mac

PC MASTER TRUST AGREEMENT

THIS PC MASTER TRUST AGREEMENT is entered into as of February 2, 2017, by and among Freddie Mac in its corporate capacity as Depositor, Administrator and Guarantor, Freddie Mac in its capacity as Trustee, and the Holders of the PCs offered from time to time pursuant to Freddie Mac's Offering Circular referred to herein.

WHEREAS:

(a) Freddie Mac is a corporation duly organized and existing under and by virtue of the Freddie Mac Act and has full corporate power and authority to enter into this Agreement and to undertake the obligations undertaken by it herein; and

(b) Freddie Mac may from time to time (i) purchase Mortgages, in accordance with the applicable provisions of the Freddie Mac Act, (ii) as Depositor, transfer and deposit such Mortgages into various trust funds that are established pursuant to this Agreement and that are referred to herein as "PC Pools," (iii) as Administrator, on behalf of the Trustee, create and issue hereunder, on behalf of the related PC Pool, PCs representing undivided beneficial ownership interests in the assets of that PC Pool, (iv) as Trustee, act as trustee for each such PC Pool, (v) as Guarantor, guarantee the payment of interest and principal for the benefit of the Holders of such PCs and (vi) as Administrator, administer the affairs of each such PC Pool.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties to this Agreement, do hereby declare and establish this Agreement and do hereby undertake and otherwise agree as follows with respect to the transfer of the Mortgages to various PC Pools, the issuance of the PCs and the establishment of the rights and obligations of the parties.

Definitions

The following terms used in this Agreement have the respective meanings set forth below.

Accrual Period: As to any PC and any Payment Date, (i) the calendar month preceding the month of the Payment Date for Gold PCs or (ii) the second calendar month preceding the month of the Payment Date for ARM PCs.

Administrator: Freddie Mac, in its corporate capacity, as administrator of the PC Pools created under this Agreement.

Agreement: This PC Master Trust Agreement, dated as of February 2, 2017, by and among Freddie Mac in its corporate capacity as Depositor, Administrator and Guarantor, Freddie Mac in its capacity as Trustee, and the Holders of the various PCs, as originally executed, or as modified, amended or supplemented in accordance with the provisions set forth herein. Unless the context requires otherwise, the term "Agreement" shall be deemed to include any applicable Pool Supplement entered into pursuant to Section 1.01 of this Agreement.

ARM: An adjustable rate Mortgage.

ARM PC: A PC with a Payment Delay of 75 days and which is backed by ARMs. ARM PCs include Deferred Interest PCs.

Book-Entry Rules: The provisions from time to time in effect, currently contained in Title 12, Part 1249 of the Code of Federal Regulations, setting forth the terms and conditions under which Freddie Mac may issue securities on the book-entry system of the Federal Reserve Banks and authorizing a Federal Reserve Bank to act as its agent in connection with such securities.

Business Day: A day other than (i) a Saturday or Sunday and (ii) a day when the Federal Reserve Bank of New York (or other agent acting as Freddie Mac's fiscal agent) is closed or, as to any Holder, a day when the Federal Reserve Bank that maintains the Holder's account is closed.

Conventional Mortgage: A Mortgage that is not guaranteed or insured by the United States or any agency or instrumentality of the United States.

Custodial Account: As defined in Section 3.05(e) of this Agreement.

Deferred Interest: The amount by which the interest due on a Mortgage exceeds the borrower's monthly payment, which amount is added to the unpaid principal balance of the Mortgage.

Deferred Interest PC: A PC representing an undivided beneficial ownership interest in a PC Pool that includes Mortgages providing for negative amortization.

Depositor: Freddie Mac, in its corporate capacity, as depositor of Mortgages into the PC Pools created under this Agreement.

Eligible Investments: Any one or more of the following obligations, securities or holdings maturing on or before the Payment Date applicable to the funds so invested:

(i) obligations of, or obligations guaranteed as to the full and timely payment of principal and interest by, the United States;

(ii) obligations of any agency or instrumentality of the United States (other than Freddie Mac, except as provided in subsection (ix) below) or taxable debt obligations of any state or local government (or political subdivision thereof) that have a long-term rating or a short-term rating, as applicable, from S&P, Moody's or Fitch in any case in one of its two highest rating categories for long-term securities or in its highest ratings category for short-term securities;

(iii) time deposits of any depository institution or trust company domiciled in the Cayman Islands or Nassau and affiliated with a financial institution that is a member of the Federal Reserve System, provided that the short-term securities of the depository institution or trust company are rated by S&P, Moody's or Fitch in the highest applicable ratings category for short-term securities;

(iv) federal funds, certificates of deposit, time deposits and bankers' acceptances with a fixed maturity of no more than 365 days of any depository institution or trust company, provided that the short-term securities of the depository institution or trust company are rated by S&P, Moody's or Fitch in the highest applicable ratings category for short-term securities;

(v) commercial paper with a fixed maturity of no more than 270 days, of any corporation that is rated by S&P, Moody's or Fitch in its highest short-term ratings category;

(vi) debt securities that have a long-term rating or a short-term rating, as applicable, from S&P, Moody's or Fitch, in any case in one of its two highest ratings categories for long-term securities or in its highest ratings category for short-term securities;

(vii) money market funds that are registered under the Investment Company Act of 1940, as amended, are entitled, pursuant to Rule 2a-7 of the Securities and Exchange Commission, or any successor to that rule, to hold themselves out to investors as money market funds, and are rated by S&P, Moody's or Fitch in one of its two highest ratings categories for money market funds;

(viii) asset-backed commercial paper that is rated by S&P, Moody's or Fitch in its highest short-term ratings category;

(ix) in the case of funds with respect to PCs issued on or after March 1, 2017, discount notes and other short-term debt obligations (in each case, with a stated final maturity, as of the related issue date, of one year or less) issued by Freddie Mac;

(x) repurchase agreements on obligations that are either specified in any of clauses (i), (ii), (iv), (v), (vi), (viii) or (ix) above or are mortgage-backed securities insured or guaranteed by an entity that is an agency or instrumentality of the United States; provided that the counterparty to the repurchase agreement is an entity whose short-term debt securities are rated by S&P, Moody's or Fitch in its highest ratings category for short-term securities; and

(xi) any other investment without options that is approved by Freddie Mac and is within the two highest ratings categories of the applicable rating agency for long-term securities or the highest ratings category of the applicable rating agency for short-term securities.

The rating requirement will be satisfied if the relevant security, issue or fund at the time of purchase receives at least the minimum stated rating from at least one of S&P, Moody's or Fitch. The rating requirement will not be satisfied by a rating that is the minimum rating followed by a minus sign or by a rating lower than Aa2 from Moody's.

Event of Default: As defined in Section 5.01 of this Agreement.

FHA/VA Mortgage: A Mortgage insured by the Federal Housing Administration or by the Department of Agriculture Rural Development (formerly the Rural Housing Service) or guaranteed by the Department of Veterans Affairs or the Department of Housing and Urban Development.

Final Payment Date: As to any PC, the first day of the latest month in which the related Pool Factor will be reduced to zero. The Administrator publishes the Final Payment Date upon formation of the related PC Pool.

Fitch: Fitch, Inc., also known as Fitch Ratings, or any successor thereto.

Freddie Mac: The Federal Home Loan Mortgage Corporation, a corporation created pursuant to the Freddie Mac Act for the purpose of establishing and supporting a secondary market in residential mortgages. Unless the context requires otherwise, the term "Freddie Mac" shall be deemed to refer to Freddie Mac acting in one or more of its corporate capacities, as specified or as provided in context, and not in its capacity as Trustee.

Freddie Mac Act: Title III of the Emergency Home Finance Act of 1970, as amended, 12 U.S.C. §§1451-1459.

Gold PC: A PC with a Payment Delay of 45 days and which is backed by fixed-rate Mortgages.

Guarantor: Freddie Mac, in its corporate capacity, as guarantor of the PCs issued by each PC Pool.

Guide: Freddie Mac's Single-Family Seller/Servicer Guide, as supplemented and amended from time to time, in which Freddie Mac sets forth its mortgage purchase standards, credit, appraisal and underwriting guidelines and servicing policies.

Holder: With respect to any PC Pool, any entity that appears on the records of a Federal Reserve Bank as a holder of the related PCs.

Monthly Reporting Period: The period, which period the Administrator has the right to change as provided in Section 3.05(d) of this Agreement, during which servicers report Mortgage payments to the Administrator, generally consisting of:

(i) in the case of all payments other than full prepayments on the Mortgages, the one-month period (A) ending on the 15th of the month preceding the related Payment Date for Gold PCs and (B) ending on the 15th of the second month preceding the related Payment Date for ARM PCs; and

(ii) in the case of full prepayments on the Mortgages (including repurchases of the Mortgages pursuant to Section 1.02(c) of this Agreement), the calendar month preceding the related Payment Date for Gold PCs and the second calendar month preceding the related Payment Date for ARM PCs; *provided, however*, that with respect to full prepayments on PCs issued before September 1, 1995, the Monthly Reporting Period generally is from the 16th of a month through the 15th of the next month.

Moody's: Moody's Investors Service, Inc., or any successor thereto.

Mortgage: A mortgage loan or a participation interest in a mortgage loan that is secured by a first or second lien on a one-to-four family dwelling and that has been purchased by the Depositor and transferred by the Depositor to the Trustee for inclusion in the related PC Pool. With respect to each PC Pool, the Mortgages to be included therein shall be identified on the books and records of the Depositor and the Administrator.

Mortgage Coupon: The per annum fixed or adjustable interest rate of a Mortgage.

MultiLender Swap Program: A program under which Freddie Mac purchases Mortgages from one or more sellers in exchange for PCs representing undivided beneficial ownership interests in a PC Pool consisting of Mortgages that may or may not be those delivered by the seller(s).

Negative Amortization Factor: With respect to PCs backed by Mortgages providing for negative amortization, a rounded (or, prior to the Negative Amortization Factors for the month of August 2016, truncated rather than rounded) eight-digit decimal number that reflects the amount of Deferred Interest added to the principal balances of the related Mortgages in the preceding month.

Offering Circular: Freddie Mac's Mortgage Participation Certificates Offering Circular dated July 19, 2016, as amended and supplemented by any Supplements issued from time to time, or any successor thereto, as it may be amended and supplemented from time to time.

Payment Date: The 15th of each month or, if the 15th is not a Business Day, the next Business Day.

Payment Delay: The delay between the first day of the Accrual Period for a PC and the related Payment Date.

PC: With respect to each PC Pool, a Mortgage Participation Certificate issued pursuant to this Agreement, representing a beneficial ownership interest in such PC Pool. The term "PC" includes a Gold PC or an ARM PC unless the context requires otherwise.

PC Coupon: The per annum fixed or adjustable rate of a PC calculated as described in the Offering Circular or the applicable Pool Supplement, computed on the basis of a 360-day year of twelve 30-day months.

PC Issue Date: With respect to each PC Pool, the date specified in the related Pool Supplement or, if not specified therein, the date on which Freddie Mac issues a PC in exchange for the Mortgages delivered by a dealer or other customer.

PC Pool: With respect to each PC, the corpus of the related trust fund created by this Agreement, consisting of (i) the related Mortgages and all proceeds thereof, (ii) amounts on deposit in the Custodial Account, to the extent allocable to such PC Pool, (iii) the right to receive payments under the related guarantee and (iv) any other assets specified in the related Pool Supplement, excluding any investment earnings on any of the assets of that PC Pool. With respect to each PC Pool, and unless expressly stated otherwise, the provisions of this Agreement will be interpreted as referring only to the Mortgages included in that PC Pool, the PCs issued by that PC Pool and the Holders of those PCs.

Person: Any legal person, including any individual, corporation, partnership, limited liability company, financial institution, joint venture, association, joint stock company, trust, unincorporated organization or governmental unit or political subdivision of any governmental unit.

Pool Factor: With respect to each PC Pool, a rounded (or, prior to the Pool Factors for the month of August 2016, truncated rather than rounded) eight-digit decimal calculated for each month by the Administrator which, when multiplied by the original principal balance of the related PCs, will equal their remaining principal amount. The Pool Factor for any month reflects the remaining principal amount after the payment to be made on the Payment Date in the same month for Gold PCs or in the following month for ARM PCs.

Pool Supplement: Any physical or electronic document or record (which may be a supplement to the Offering Circular or any other supplemental document prepared by Freddie Mac for the related PCs), which, together herewith, evidences the establishment of a PC Pool and modifies, amends or supplements the provisions hereof in any respect whatsoever. The Pool Supplement for a particular PC Pool shall be binding and effective upon formation of the related PC Pool and issuance of the related PCs, whether or not such Pool Supplement is executed, delivered or published by Freddie Mac.

Purchase Documents: The mortgage purchase agreements between Freddie Mac and its Mortgage sellers and servicers, which are the contracts that govern the purchase and servicing of Mortgages and which include, among other things, the Guide and any negotiated modifications, amendments or supplements to the Guide.

Record Date: As to any Payment Date, the close of business on the last day of (i) the preceding month for Gold PCs or (ii) the second preceding month for ARM PCs.

S&P: S&P Global Ratings, or any successor thereto.

Trustee: Freddie Mac, in its capacity as trustee of each PC Pool formed under this Agreement, and its successors and assigns, which will have the trustee responsibilities specified in this Agreement, as amended or supplemented from time to time.

Trustee Event of Default: As defined in Section 6.06 of this Agreement.

ARTICLE I

Conveyance of Mortgages; Creation of PC Pools

Section 1.01. Declaration of Trust; Transfer of Mortgages. The Depositor, by delivering any Mortgages pursuant to this Agreement, unconditionally, absolutely and irrevocably hereby transfers, assigns, sets over and otherwise conveys to the Trustee, on behalf of the related Holders, all of the Depositor's right, title and interest in and to such Mortgages, including all payments of principal and interest thereon received after the month in which the PC Issue Date occurs. Once Mortgages have been identified as being part of a related PC Pool for which at least one PC has been issued, they shall remain in that PC Pool unless removed in a manner consistent with this Agreement. Concurrently with the Depositor's transferring, assigning, setting over and otherwise conveying the Mortgages to the Trustee for a PC Pool, the Trustee hereby accepts the Mortgages so conveyed and acknowledges that it holds the entire corpus of each PC Pool in trust for the exclusive benefit of the related Holders and shall deliver to, or on the order of, the Depositor, the PCs issued by such PC Pool. The Administrator agrees to administer the related PC Pool and such PCs in accordance with the terms of this Agreement. On the related PC Issue Date and upon payment to the Depositor for any such PC by a Holder, such Holder shall, by virtue thereof, acknowledge, accept and agree to be bound by all of the terms and conditions of this Agreement.

A Pool Supplement shall evidence the establishment of a particular PC Pool and shall relate to specific PCs representing the entire beneficial ownership interests in such PC Pool. If for any reason the creation of a Pool Supplement is delayed, Freddie Mac shall create one as soon as practicable, and such delay shall not affect the validity and existence of the PC Pool or the related PCs. With respect to each PC Pool, the collective terms hereof and of the related Pool Supplement shall govern the issuance and administration of the PCs related to such PC Pool, and all matters related thereto, and shall have no applicability to any other PC Pool or PCs. As applied to each PC Pool, the collective terms hereof and of the related Pool Supplement shall constitute an agreement as if the collective terms of those instruments were set forth in a single instrument. In the event of a conflict between the terms hereof and the terms of a Pool Supplement for a PC Pool, the terms of the Pool Supplement shall control with respect to that PC Pool. A Pool Supplement is not considered an amendment to this Agreement requiring approval pursuant to Section 7.05.

Section 1.02. Identity of the Mortgages; Substitution and Repurchase.

(a) In consideration for the transfer of the related Mortgages by the Depositor to a PC Pool, the Depositor (i) shall receive the PCs issued by such PC Pool and (ii) may retain such PCs or transfer them to the related Mortgage seller or otherwise, as the Depositor deems appropriate.

(b) After the PC Issue Date but prior to the first Payment Date, the Depositor may, in accordance with its customary mortgage purchase and pooling procedures, adjust the amount and identity of the Mortgages to be transferred to a PC Pool, the PC Coupon and/or the original unpaid principal balance of the PCs and the Mortgages in the PC Pool, provided that any changes to the characteristics of the PCs shall be evidenced by an amendment or supplement to the related Pool Supplement.

(c) Except as provided in this Section 1.02 or in Section 1.03, once the Depositor has transferred a Mortgage to a particular PC Pool, such Mortgage may not be transferred out of such PC Pool, except (x) if a mortgage insurer exercises an option under an insurance contract to purchase such Mortgage or (y) in the case of repurchase by the Guarantor, the Administrator or the related Mortgage seller or servicer, under the following circumstances:

(i) The Guarantor may repurchase from the related PC Pool a Mortgage in connection with a guarantee payment under Section 3.09(a)(ii).

(ii) The Administrator may repurchase from the related PC Pool, or require or permit a Mortgage seller or servicer to repurchase, any Mortgage if a repurchase is necessary or advisable (A) to maintain servicing of the Mortgage in accordance with the provisions of the Guide, or (B) to maintain the status of the PC Pool as a grantor trust for federal income tax purposes.

(iii) The Guarantor may repurchase from the related PC Pool, or require or permit a Mortgage seller or servicer to repurchase, any Mortgage if (A) such Mortgage is 120 or more days delinquent, or (B) the Guarantor determines, on the basis of information from the related borrower or servicer, that loss of ownership of the property securing a Mortgage is likely or default is imminent due to borrower incapacity, death or hardship or other extraordinary circumstances that make future payments on such Mortgage unlikely or impossible.

(iv) The Guarantor may repurchase from the related PC Pool a Mortgage if a bankruptcy court approves a plan that materially affects the terms of the Mortgage or authorizes a transfer or substitution of the underlying property.

(v) The Administrator may require or permit a Mortgage seller or servicer to repurchase from the related PC Pool any Mortgage or (within six months of the issuance of the related PCs) substitute for any Mortgage a Mortgage of comparable type, unpaid principal balance, remaining term and yield, if there is (A) a material breach of warranty by the Mortgage seller or servicer, (B) a material defect in documentation as to such Mortgage or (C) a failure by a seller or servicer to comply with any requirements or terms set forth in the Guide and, if applicable, other Purchase Documents.

(vi) The Administrator shall repurchase from the related PC Pool any Mortgage or (within two years of the issuance of the related PCs) substitute for any Mortgage a Mortgage of comparable type, unpaid principal balance, remaining term and yield, if (A) a court of competent jurisdiction or a federal government agency duly authorized to oversee or regulate Freddie Mac's mortgage purchase business determines that Freddie Mac's purchase of such Mortgage was unauthorized and Freddie Mac determines that a cure is not practicable without unreasonable effort or expense or (B) such court or government agency requires repurchase of such Mortgage.

(vii) To the extent a PC Pool includes convertible ARMs or Balloon/Reset Mortgages (each, as defined in the Offering Circular), the Administrator shall repurchase from the related PC Pool or require or allow the Mortgage seller or servicer to repurchase such Mortgages (a) when the borrower exercises its option to convert the related interest rate from an adjustable rate to a fixed rate, in the case of a convertible ARM; and (b) shortly before such Mortgage reaches its scheduled balloon repayment date, in the case of a Balloon/Reset Mortgage.

(d) The purchase price of a Mortgage repurchased by a Mortgage seller or servicer shall be equal to the then unpaid principal balance of such Mortgage, less any principal on such Mortgage that the Mortgage seller or servicer advanced to the Depositor or the Administrator. The purchase price of a Mortgage repurchased by the Administrator or the Guarantor under this Agreement shall be equal to the then unpaid principal balance of such Mortgage, less any outstanding advances of principal on such Mortgage that the Administrator, on behalf of the Trustee, distributed to Holders. The Administrator, on behalf of the Trustee, agrees to release any Mortgage from the PC Pool upon payment of the applicable purchase price.

(e) In determining whether a Mortgage shall be repurchased from the related PC Pool as described in this Section 1.02, the Guarantor and the Administrator may consider such factors as they deem appropriate, including the reduction of administrative costs (in the case of the Administrator) or possible exposure as Guarantor under its guarantee (in the case of the Guarantor).

Section 1.03. Post-Settlement Purchase Adjustments

(a) The Administrator shall make any post-settlement purchase adjustments necessary to reflect the actual aggregate unpaid principal balance of the related Mortgages or other Mortgage characteristics as of the date of their purchase by the Depositor or their delivery to the Administrator, on behalf of the Trustee, in exchange for PCs, as the case may be.

(b) Post-settlement adjustments may be made in such manner as the Administrator deems appropriate, but shall not adversely affect any Holder's rights to monthly payments of interest at the PC Coupon, any Holder's pro rata share of principal or any Holder's rights under the Guarantor's guarantees. Any reduction in the principal balance of the Mortgages held by a PC Pool shall be reflected by the Administrator as a corresponding reduction in the principal balance of the related PCs with a corresponding principal payment to the related Holders, on a pro rata basis.

Section 1.04. Custody of Mortgage Documents. With respect to each PC Pool, the Administrator, a custodian acting as its agent (which may be a third party or a trust or custody department of the related seller or servicer), or the originator or seller of the Mortgage may hold the related Mortgage documents, including Mortgage notes and participation certificates evidencing the Trustee's legal ownership interest in the Mortgages. The Administrator may adopt and modify its policies and procedures for the custody of Mortgage documents at any time, provided such modifications are prudent and do not materially and adversely affect the Holders' interests.

Section 1.05. Interests Held or Acquired by Freddie Mac. Freddie Mac shall have the right to purchase and hold for its own account any PCs. Subject to Section 7.06, PCs held or acquired by Freddie Mac from time to time and PCs held by other Holders shall have equal and proportionate benefits, without preference, priority or distinction. In the event that Freddie Mac retains any interest in a Mortgage, the remaining interest in which is part of a PC Pool, Freddie Mac's interest in such Mortgage shall rank equally with that of the related PC Pool, without preference, priority or distinction. No Holder shall have any priority over any other Holder.

Section 1.06. Intended Characterization. It is intended that the conveyance, transfer, assignment and setting over of the Mortgages by the Depositor to the Trustee pursuant to this Agreement be a true, absolute and unconditional sale of the related Mortgages by the Depositor to the Trustee, and not a pledge of the Mortgages to secure a debt or other obligation of the Depositor, and that the Holders of the related PCs shall be the beneficial owners of such Mortgages. Notwithstanding this express intention, however, if the Mortgages are determined by a court of competent jurisdiction or other competent authority to be the property of the Depositor, then it is intended that: (a) this Agreement be deemed to be a security agreement within the meaning of Articles 8 and 9 of the Uniform Commercial Code; (b) the conveyances provided for in Section 1.01 shall be deemed to be (1) a grant by the Depositor to the Trustee on behalf of the related Holders of a security interest in all of the Depositor's right (including the power to convey title thereto), title and interest, whether now owned or hereafter acquired, in and to the related Mortgages, any and all general intangibles consisting of, arising from or relating to any of the foregoing, and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including without limitation all amounts from time to time held or invested in the Custodial Account and allocable to such Mortgages, whether in the form of cash, instruments, securities or other property and (2) an assignment by the Depositor to the Trustee on behalf of the related Holders of any security interest in any and all of the Depositor's right (including the power to convey title thereto), title and interest, whether now owned or hereafter acquired, in and to the property described in the foregoing clause (1); and (c) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from Persons holding such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Administrator, on

behalf of the Trustee of the related Holders, for the purpose of perfecting such security interest under applicable law.

Section 1.07. Encumbrances. Except as may otherwise be provided expressly in this Agreement, neither Freddie Mac nor the Trustee, shall directly or indirectly, assign, sell, dispose of or transfer all or any portion of or interest in any PC Pool, or permit all or any portion of any PC Pool to be subject to any lien, claim, mortgage, security interest, pledge or other encumbrance of any other Person. This Section shall not be construed as a limitation on Freddie Mac's rights with respect to PCs held by it in its corporate capacity.

ARTICLE II

Administration and Servicing of the Mortgages

Section 2.01. The Administrator as Primary Servicer. With respect to each PC Pool, the Administrator shall service or supervise servicing of the related Mortgages and administer, on behalf of the Trustee, in accordance with the provisions of the Guide and this Agreement, including management of any property acquired through foreclosure or otherwise, all for the benefit of the related Holders. The Administrator shall have full power and authority to do or cause to be done any and all things in connection with such servicing and administration that the Administrator deems necessary or desirable. The Administrator shall seek from the Trustee, as representative of the related Holders any consents or approvals relating to the control, management and servicing of the Mortgages included in any PC Pool and that are required hereunder.

Section 2.02. Servicing Responsibilities. With respect to each PC Pool, the Administrator shall service or supervise servicing of the related Mortgages in a manner consistent with prudent servicing standards and in substantially the same manner as the Administrator services or supervises the servicing of unsold mortgages of the same type in its portfolio. In performing its servicing responsibilities hereunder, the Administrator may engage servicers, subservicers and other independent contractors or agents. The Administrator may discharge its responsibility to supervise servicing of the Mortgages by monitoring servicers' performance on a reporting and exception basis. Except as provided in Articles V and VI and Sections 7.05 and 7.06 of this Agreement, Freddie Mac, as Administrator shall not be subject to the control of the Holders in the discharge of its responsibilities pursuant to this Article. Except with regard to its guarantee obligations pursuant to Section 3.09 with respect to a PC Pool, the Administrator shall have no liability to any related Holder for the Administrator's actions or omissions in discharging its responsibilities under this Article II other than for any direct damage resulting from its failure to exercise that degree of ordinary care it exercises in the conduct and management of its own affairs. In no event shall the Administrator have any liability for consequential damages.

Section 2.03. Realization Upon Defaulted Mortgages. With respect to each PC Pool, unless the Administrator deems that another course of action (e.g., charge-off) would be in the best economic interest of the Holders, the Administrator (or its authorized designee or representative) shall, as soon as practicable, foreclose upon (or otherwise comparably convert the ownership of) any real property securing a Mortgage which comes into and continues in default and as to which no satisfactory arrangements can be made for collection of delinquent payments. In connection with such foreclosure or conversion, the Administrator (or its authorized designee or representative) shall follow such practices or procedures as it deems necessary or advisable and consistent with general mortgage servicing standards.

Section 2.04. Automatic Acceleration and Assumptions.

(a) With respect to each PC Pool, to the extent provided in the Guide, the Administrator shall enforce the terms of each applicable Mortgage that gives the mortgagee the right to demand full payment of the unpaid principal balance of the Mortgage upon sale or transfer of the property securing the Mortgage

regardless of the creditworthiness of the transferee (a right of "automatic acceleration''), subject to applicable state and federal law and the Administrator's then-current servicing policies.

(b) With respect to each PC Pool, the Administrator shall permit the assumption by a new mortgagor of an FHA/VA Mortgage upon the sale or transfer of the underlying property, as required by applicable regulations. Any such assumption shall be in accordance with applicable regulations, policies, procedures and credit requirements and shall not result in loss or impairment of any insurance or guaranty.

Section 2.05. Prepayment Penalties. Unless otherwise provided in the Pool Supplement for a PC Pool, the related Holders shall not be entitled to receive any prepayment penalties, assumption fees or other fees charged on the Mortgages included in such PC Pool, and either the related servicer or the Administrator shall retain such amounts.

Section 2.06. Mortgage Insurance and Guarantees.

(a) With respect to each PC Pool, if a Conventional Mortgage is insured by a mortgage insurer and the mortgage insurance policy is an asset of such PC Pool, the related Holders acknowledge that the insurer shall have no obligation to recognize or deal with any Person other than the Administrator, the Trustee, or their respective authorized designees or representatives regarding the mortgagee's rights, benefits and obligations under the related insurance contract.

(b) With respect to each PC Pool, each FHA/VA Mortgage shall have in full force and effect a certificate or other satisfactory evidence of insurance or guaranty, as the case may be, as may be issued by the applicable government agency from time to time. None of these agencies has any obligation to recognize or deal with any Person other than the Administrator, the Trustee, or their respective authorized designees or representatives with regard to the rights, benefits and obligations of the mortgagee under the contract of insurance or guaranty relating to each FHA/VA Mortgage included in such PC Pool.

ARTICLE III

Distributions to Holders; Guarantees

Section 3.01. Monthly Reporting Period. For purposes of this Agreement with respect to any PC Pool, any payment or any event with respect to any Mortgage included in such PC Pool that is reported to the Administrator by the related servicer as having been made or having occurred within a Monthly Reporting Period shall be deemed to have been received by the Administrator or to have in fact occurred within such Monthly Reporting Period used by the Administrator for such purposes. Payments reported by servicers include all principal and interest payments made by a borrower, insurance proceeds, liquidation proceeds and repurchase proceeds. Events reported by servicers include foreclosure sales, payments of insurance claims and payments of guarantee claims.

Section 3.02. Holder's Undivided Beneficial Ownership Interest. With respect to each PC Pool, the Holder of a PC on the Record Date shall be the owner of record of a pro rata undivided beneficial ownership interest in the remaining principal balance of the Mortgages in the related PC Pool as of such date and shall be entitled to interest at the PC Coupon on such pro rata undivided beneficial ownership interest, in each case on the related Payment Date. Such pro rata undivided beneficial ownership interest shall change accordingly if any Mortgage is added to or removed from such PC Pool in accordance with this Agreement. A Holder's pro rata undivided beneficial ownership interest in the Mortgages included in a PC Pool is calculated by dividing the original unpaid principal balance of the Holder's PC by the original unpaid principal balance of all the Mortgages in the related PC Pool.

Section 3.03. Distributions of Principal. With respect to each PC Pool, the Administrator, on behalf of the Trustee, shall withdraw from the Custodial Account and shall distribute to each related Holder its pro rata share of principal collections with respect to the Mortgages in such PC Pool, including, if applicable, each Holder's pro rata share of the aggregate amount of any Deferred Interest that has been added to the principal balance of the related Mortgages; *provided, however*, that with respect to guarantee payments, the Guarantor's obligations herein shall be subject to its subrogation rights pursuant to Section 3.10. The Administrator may retain from any prepayment or delinquent principal payment on any Mortgage, for reimbursement to the Guarantor, any amount not previously received with respect to such Mortgage but paid by the Guarantor to the related Holders under its guarantee. For Mortgages purchased by the Depositor in exchange for PCs under its MultiLender Swap Program, the Depositor shall retain principal payments made on such Mortgages in the amount of any difference between the aggregate unpaid principal balance of the Mortgages as of delivery by the seller and the aggregate unpaid principal balance as of the PC Issue Date, and the Depositor shall purchase additional Mortgages with such principal payments; such additional Mortgages may or may not be included in the related PC Pool represented by the PCs received by the seller.

Section 3.04. Distributions of Interest. With respect to each PC Pool, the Administrator, on behalf of the Trustee, shall withdraw from the Custodial Account and shall distribute to each related Holder its pro rata share of interest collections with respect to the Mortgages included in such PC Pool, at a rate equal to the PC Coupon (excluding, if applicable, each Holder's pro rata share of any Deferred Interest that has been added to the principal balance of the related Mortgages). Interest shall accrue during the applicable Accrual Periods. The Administrator may retain from any delinquent interest payment on any Mortgage, for reimbursement to the Guarantor, any amount not previously received with respect to such Mortgage but paid by the Guarantor to the related Holders under its guarantee. With respect to each PC Pool, a partial month's interest retained by Freddie Mac or remitted to the related Holders with respect to prepayments shall constitute an adjustment to the fee payable to the Administrator and the Guarantor pursuant to Section 3.08(a) for such PC Pool.

Section 3.05. Payments.

(a) With respect to each PC Pool, distributions of principal and interest on the related PCs shall begin in the month after issuance for Gold PCs and in the second month after issuance for ARM PCs. The Administrator, on behalf of the Trustee, shall calculate, or cause to be calculated, for each PC the distribution amount for the current calendar month.

(b) On or before each Payment Date, the Administrator, on behalf of the Trustee, shall instruct the Federal Reserve Banks to credit payments on PCs from the Custodial Account to the appropriate Holders' accounts. The related PC Pool's payment obligations shall be met upon transmittal of the Administrator's payment order to the Federal Reserve Banks provided sufficient funds are then on deposit in the Custodial Account. A Holder shall receive the payment of principal, if applicable, and interest on each Payment Date on each PC held by such Holder as of the related Record Date.

(c) The Administrator relies on servicers' reports of mortgage activity to prepare the Pool Factors. There may be delays or errors in processing mortgage information, such as a servicer's failure to file an accurate or timely report of its collections of principal or its having filed a report that cannot be processed. In these situations the Administrator's calculation of scheduled principal to be made on Gold PCs may not reflect actual payments on the related Mortgages. The Administrator shall account for and reconcile any differences as soon as practicable.

(d) The Administrator reserves the right to change the period during which a servicer may hold funds prior to payment to the Administrator, as well as the period for which servicers report payments to the Administrator, including adjustments to the Monthly Reporting Period. Either change may change the time

at which prepayments are distributed to Holders. Any such change, however, shall not impair Holders' rights to payments as otherwise provided in this Section.

(e) The Administrator shall maintain one or more accounts (together, the "Custodial Account"), segregated from the general funds of Freddie Mac, in its corporate capacity, for the deposit of collections of principal (including full and partial principal prepayments) and interest received from or advanced by the servicers in respect of the Mortgages. Mortgage collections in respect of the PC Pools established by Freddie Mac under this Agreement or trust funds established by Freddie Mac pursuant to any other trust agreements may be commingled in the Custodial Account, provided that the Administrator keeps, or causes to be kept, separate records of funds with respect to each such PC Pool and other trust fund. Collections due to Freddie Mac, in its corporate capacity as owner of mortgages held in its portfolio, may also be commingled in the Custodial Account, provided that the Administrator may withdraw such amounts for remittance to Freddie Mac from time to time. Funds on deposit in the Custodial Account may be invested by the Administrator in Eligible Investments. Investment earnings on deposits in the Custodial Account shall be for the benefit of the Administrator, and any losses on such investments shall be paid by the Administrator. On each Payment Date, amounts on deposit in the Custodial Account shall be withdrawn upon the order of the Administrator, on behalf of the Trustee, for the purpose of making distributions to the related Holders, in accordance with this Agreement.

Section 3.06. Pool Factors.

(a) The Administrator, on behalf of the Trustee, shall calculate and make payments to Holders on each Payment Date based on the monthly Pool Factors (including Negative Amortization Factors) until such time as the Administrator determines that a more accurate and practicable method for calculating such payments is available and implements that method. Pursuant to Section 7.05(e), the Administrator may modify the Pool Factor methodology from time to time, without the consent of Holders. With respect to each PC Pool, the Administrator, on behalf of the Trustee, shall do the following:

(i) The Administrator shall publish or cause to be published for each month a Pool Factor with respect to each PC Pool. Beginning in the month after formation of a PC Pool, Pool Factors shall be published on or about the fifth Business Day of the month, which Pool Factors may reflect prepayments reported to the Administrator after the end of the related Monthly Reporting Period and before the publication of the applicable Pool Factors. However, the Administrator may, in its own discretion, publish Pool Factors on any other Business Day. The Pool Factor for the month in which the PC Pool is established is 1.00000000 and need not be published.

(ii) The Administrator shall distribute principal each month to a Holder of a Gold PC in an amount equal to such Holder's pro rata share of such principal, calculated by multiplying the original principal balance of the Gold PC by the difference between its Pool Factors for the preceding and current months.

(iii) The Administrator shall distribute principal each month to a Holder of an ARM PC in an amount equal to such Holder's pro rata share of such principal, calculated by multiplying the original principal balance of the ARM PC by the difference between its Pool Factors for the two preceding months.

(iv) The Administrator shall distribute interest each month in arrears to a Holder (assuming no Deferred Interest) in an amount equal to 1/12th of the applicable PC Coupon multiplied by such Holder's pro rata share of principal, calculated by multiplying the original principal balance of such Holder's PC by the preceding month's Pool Factor for Gold PCs or by the second preceding month's Pool Factor for ARM PCs.

(v) For any month that Deferred Interest has accrued on a Deferred Interest PC, the Administrator shall distribute principal (if any is due) to a Holder in an amount equal to such Holder's pro rata share of principal, calculated by (A) subtracting the preceding month's Pool Factor from the second preceding month's Pool Factor, (B) adding to the difference the Negative Amortization Factor for the preceding month and (C) multiplying the resulting sum by the original PC principal balance. The interest payment on the Deferred Interest PC in that month shall be (i) 1/12th of the PC Coupon multiplied by (ii) the original principal balance of the Holder's PC multiplied by (iii) the preceding month's Pool Factor minus the preceding month's Negative Amortization Factor.

(b) With respect to each PC Pool, a Pool Factor shall reflect prepayments reported for the applicable Monthly Reporting Period. The Administrator, on behalf of the Trustee, may also, in its discretion, reflect in a Pool Factor any prepayments reported after the end of the applicable Monthly Reporting Period. To the extent a given Pool Factor (adjusted as necessary for payments made pursuant to the Guarantor's guarantee of timely payment of scheduled principal on Gold PCs) does not reflect the actual unpaid principal balance of the related Mortgages, the Administrator shall account for any difference by adjusting subsequent Pool Factors as soon as practicable.

(c) In the case of a PC Pool that is comprised of ARMs, a Pool Factor shall be based upon the unpaid principal balance of the related Mortgages that servicers report to the Administrator for the Monthly Reporting Period that ended in the second month preceding the month in which the Pool Factor is published. The Administrator, on behalf of the Trustee, may also, in its discretion, include as part of the aggregate principal payment in any month any prepayments received after the Monthly Reporting Period that ended in the second month preceding the month in which the Pool Factor is published. To the extent a given Pool Factor does not reflect the actual aggregate unpaid principal balance of the Mortgages, the Administrator shall account for any difference by adjusting subsequent Pool Factors as soon as practicable.

(d) The Pool Factor method for a PC Pool may affect the timing of receipt of payments by related Holders but shall not affect the Guarantor's guarantee with respect to such PC Pool, as set forth in Section 3.09. The Guarantor's guarantee shall not be affected by the implementation of any different method for calculating and paying principal and interest for any PC Pool, as permitted by this Section 3.06.

Section 3.07. Servicing Fees; Retained Interest.

(a) To the extent provided by contractual arrangement with the Administrator, with respect to each PC Pool, the related servicer of each Mortgage included in such PC Pool shall be entitled to retain each month, as a servicing fee, any interest payable by the borrower on a Mortgage that exceeds the servicer's required remittance with respect to such Mortgage. Each servicer is required to pay all expenses incurred by it in connection with its servicing activities and shall not be entitled to reimbursement for those expenses, except as provided in Section 3.08(c). If a servicer advances any principal and/or interest on a Mortgage to the Administrator prior to the receipt of such funds from the borrower, the servicer may retain (i) from prepayments or collections of delinquent principal on such Mortgage any payments of principal so advanced, or (ii) from collections of delinquent interest on such Mortgage any payments of interest so advanced. To the extent permitted by its servicing agreement, the servicer is entitled to retain as additional compensation certain incidental fees related to Mortgages it services.

(b) With respect to a PC Pool, pursuant to the related Purchase Documents, a seller may retain each month as extra compensation a fixed amount of interest on a Mortgage included in such PC Pool. In such event, the related servicer shall retain each month as a servicing fee the excess of any interest payable by the borrower on such Mortgage (less the seller's retained interest amount) over the servicer's required remittance with respect to such Mortgage.

Section 3.08. Administration Fee; Guarantee Fee.

(a) Subject to any adjustments required by Section 3.04, with respect to any PC Pool, the Administrator and the Guarantor shall be entitled to receive from monthly interest payments on each related Mortgage a fee (to be allocated between the Administrator and the Guarantor as they may agree) equal to the excess of any interest received by the Administrator from the servicer over the amount of interest payable to the related Holders; *provided, however,* that the aggregate fee amount shall be automatically adjusted with respect to each PC Pool to the extent a Pool Factor does not reflect the unpaid principal balance of the Mortgages. Any such adjustment shall equal the difference between (i) interest at the applicable PC Coupon computed on the aggregate unpaid principal balance of the Mortgages for such month based on monthly principal payments actually received by the Administrator and (ii) interest at the applicable PC Coupon computed on the remaining balance of the Mortgages included in the PC Pool derived from the Pool Factor. The Administrator shall (i) withdraw the aggregate fee amount from the Custodial Account prior to distributions to the related Holders, (ii) retain its portion of the fee for the Administrator's own account and (iii) remit the remaining portion of the fee to the Guarantor as the guarantee fee. In addition, the Administrator is entitled to retain as additional compensation certain incidental fees on the Mortgages as provided in Section 2.05 and certain investment earnings as provided in Section 3.05(e).

(b) The Depositor shall pay all expenses incurred in connection with the transfer of the Mortgages, the establishment and administration of each PC Pool and the issuance of the PCs. Any amounts (including attorney's fees) expended by the Trustee or the Administrator (or the servicers on the Administrator's behalf) for the protection, preservation or maintenance of the Mortgages, or of the real property securing the Mortgages, or of property received in liquidation of or realization upon the Mortgages, shall be expenses to be borne pro rata by the Administrator and the Holders in accordance with their interests in each Mortgage. The Administrator, on behalf of the Trustee, may retain an amount sufficient to pay the portion of such expenses borne pro rata by the Depositor and the Holders from payments otherwise due to Holders, which may affect the timing of receipt of payments by Holders but shall not affect the Guarantor's obligations under Section 3.09.

(c) The Administrator shall reimburse a servicer for any amount (including attorney's fees) it expends (on the Administrator's behalf and with its approval) for the protection, preservation or maintenance of the Mortgages, or of the real property securing the Mortgages, or of property received in liquidation of or realization upon the Mortgages. Such expenses shall be reimbursable to the servicer from the assets of the related PC Pool, to the extent provided in the Guide.

(d) Any fees and expenses described above shall not affect the Guarantor's guarantee with respect to any PC Pool, as set forth in Section 3.09.

Section 3.09. Guarantees.

(a) With respect to each PC Pool, the Guarantor guarantees to the Trustee and to each Holder of a PC:

(i) the timely payment of interest at the applicable PC Coupon;

(ii) the full and final payment of principal on the underlying Mortgages on or before the Payment Date that falls (A) in the month of its Final Payment Date, for Gold PCs, or (B) in the month after its Final Payment Date, for ARM PCs; and

(iii) for Gold PCs only, the timely payment of scheduled principal on the underlying Mortgages.

In the case of Deferred Interest PCs, the Guarantor's guarantee of principal includes, and its guarantee of interest excludes, any Deferred Interest added to the principal balances of the related Mortgages. The Guarantor shall make payments of any guaranteed amounts by transfer to the Custodial Account for distribution to the related Holders, in accordance with Sections 3.03 and 3.04. The guarantees pursuant to

this Section will inure to the benefit of each PC Pool and its related Holders, and shall be enforceable by the Trustee of that PC Pool and by such Holders, as provided in Article V of this Agreement.

(b) The Guarantor shall compute guaranteed scheduled monthly principal payments on any Gold PC, subject to any applicable adjustments, in accordance with procedures adopted by the Guarantor from time to time. With respect to each PC Pool, any payment the Guarantor makes to the Administrator, on behalf of the Trustee, on account of the Guarantor's guarantee of scheduled principal payments shall be considered to be a payment of principal for purposes of calculating the Pool Factor for such PC Pool and the Holder's pro rata share of the remaining unpaid principal balance of the related Mortgages.

(c) The Guarantor's guarantees shall continue to be effective or shall be reinstated (i) in the event that any principal or interest payment made to a Holder is for any reason returned by the Holder pursuant to an order, decree or judgment of any court of competent jurisdiction that the Holder was not entitled to retain such payment pursuant to this Agreement and (ii) notwithstanding any provision hereof permitting fees, expenses, indemnities or other amounts to be paid from the assets of any PC Pool.

Section 3.10. Subrogation. With respect to each PC Pool, the Guarantor shall be subrogated to all the rights, interests, remedies, powers and privileges of each related Holder in respect of any Mortgage included in such PC Pool on which it has made guarantee payments of principal and/or interest to the extent of such payments. Nothing in this Section shall impair the Guarantor's right to receive distributions in its capacity as Holder, if it is a Holder of any PCs.

Section 3.11. Termination Upon Final Payment. Each PC Pool is irrevocable and will terminate only in accordance with the terms of this Agreement. Except as provided in Sections 3.05(e), 6.06 and 7.01, with respect to each PC Pool, Freddie Mac's and the Trustee's obligations and responsibilities under this Agreement shall terminate as to a PC Pool and its Holders upon (i) the full payment to such Holders of all principal and interest due to the Holders based on the Pool Factors or by reason of the Guarantor's guarantees or (ii) the payment to the Holder of all amounts held by Freddie Mac and the Trustee, respectively, and required to be paid hereunder; *provided, however*, that in no event shall any PC Pool created hereby continue beyond the expiration of 21 years from the death of the survivor of the descendants of Joseph P. Kennedy, the late ambassador of the United States to the Court of St. James's, living on the date hereof.

Section 3.12. Effect of Final Payment Date. The actual final payment on a PC may occur prior to the Payment Date specified in Section 3.09(a)(ii) due to prepayments of principal, including prepayments made in connection with the repurchase of any Mortgage from the related PC Pool.

Section 3.13. Payment Error Corrections. In the event of a principal or interest payment error, the Administrator, in its sole discretion, may effect corrections by the adjustment of payments to be made on future Payment Dates or in such other manner as it deems appropriate.

ARTICLE IV

PCs

Section 4.01. Form and Denominations. With respect to each PC Pool, the principal balances, PC Coupons and other characteristics of the PCs to be issued shall be specified in the related Pool Supplement. Delivery of the PCs of a PC Pool shall constitute the issuance of the PCs for that PC Pool. PCs shall be issued, held and transferable only on the book-entry system of the Federal Reserve Banks in minimum original principal amounts of $1,000 and additional increments of $1. PCs shall at all times remain on

deposit with a Federal Reserve Bank in accordance with the provisions of the Book-Entry Rules. A Federal Reserve Bank will maintain a book-entry recordkeeping system for all transactions in PCs with respect to Holders.

Section 4.02. Transfer of PCs. PCs may be transferred only in minimum original principal amounts of $1,000 and additional increments of $1. PCs may not be transferred if, as a result of the transfer, the transferor or the new Holder would have on deposit in its account PCs of the same issue with an original principal amount of less than $1,000. The transfer, exchange or pledge of PCs shall be governed by the fiscal agency agreement between Freddie Mac and a Federal Reserve Bank, the Book-Entry Rules and such other procedures as shall be agreed upon from time to time by Freddie Mac and a Federal Reserve Bank. A Federal Reserve Bank shall act only upon the instructions of the Holder in recording transfers of a PC. A charge may be made for any transfer of a PC and shall be made for any tax or other governmental charge imposed in connection with a transfer of a PC. Freddie Mac hereby assigns to the Administrator, on behalf of the Trustee, Freddie Mac's rights under each fiscal agency agreement with respect to PCs issued by any PC Pool.

Section 4.03. Record Date. The Record Date for each Payment Date shall be the close of business on the last day of the preceding month for Gold PCs and the second preceding month for ARM PCs. A Holder of a PC on the books and records of a Federal Reserve Bank on the Record Date shall be entitled to payment of principal and interest on the related Payment Date. A transfer of a PC made on or before the Record Date in a month shall be recognized as effective as of the first day of such month.

ARTICLE V

Remedies

Section 5.01. Events of Default. With respect to each PC Pool, an "Event of Default" means any one of the following events:

(a) Default by the Guarantor or the Administrator in the payment of interest or principal to the related Holders as and when the same shall become due and payable as provided in this Agreement, and the continuance of such default for a period of 30 days.

(b) Failure by the Guarantor or the Administrator to observe or perform any other covenants of this Agreement relating to their respective obligations, and the continuance of such failure for a period of 60 days after the date of receipt by such party of written notice of such failure and a demand for remedy by the affected Holders representing not less than 65 percent of the remaining principal balance of any affected PC Pool.

(c) The entry by any court having jurisdiction over the Guarantor or the Administrator of a decree or order for relief in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian or sequestrator (or other similar official) of the Guarantor or the Administrator or for any substantial part of its property, or for the winding up or liquidation of its affairs, if such decree or order remains unstayed and in effect for a period of 60 consecutive days.

(d) Commencement by the Guarantor or the Administrator of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent by the Guarantor or the Administrator to the entry of an order for relief in an involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Guarantor or the Administrator or for any substantial part of their respective properties, or any general assignment made by the Guarantor or the Administrator for the

benefit of creditors, or failure by the Guarantor or the Administrator generally to pay their debts as they become due.

The appointment of a conservator (or other similar official) by a regulator having jurisdiction over the Guarantor or the Administrator, whether or not such party consents to such appointment, shall not constitute an Event of Default.

Section 5.02. Remedies.

(a) If an Event of Default occurs and is continuing with respect to a PC Pool, the Holders of PCs representing a majority of the remaining principal balance of such PC Pool may, by written notice to Freddie Mac, remove Freddie Mac as Administrator and nominate its successor under this Agreement with respect to such PC Pool. The nominee shall be deemed appointed as Freddie Mac's successor as Administrator unless Freddie Mac objects within 10 days after such nomination. Upon such objection:

(i) The Administrator may petition any court of competent jurisdiction for the appointment of its successor; or

(ii) Any bona fide Holder that has been a Holder for at least six months may, on behalf of such Holder and all others similarly situated, petition any such court for appointment of the Administrator's successor.

(b) If a successor Administrator is appointed, the Administrator shall submit to its successor a complete written report and accounting of the Mortgages in the affected PC Pool and shall take all other steps necessary or desirable to transfer its interest in and administration of such PC Pool to its successor.

(c) Subject to the Freddie Mac Act, a successor may take any action with respect to the Mortgages as may be reasonable and appropriate in the circumstances. Prior to the designation of a successor, the Holders of PCs representing a majority of the remaining principal balance of any affected PC Pool may waive any past or current Event of Default.

(d) Appointment of a successor shall not relieve Freddie Mac, in its capacity as Guarantor, of its guarantee obligations as set forth in this Agreement.

Section 5.03. Limitation on Suits by Holders.

(a) With respect to any PC Pool, except as provided in Section 5.02, no Holder shall have any right to institute any action or proceeding at law or in equity or in bankruptcy or otherwise or seek any other remedy whatsoever against Freddie Mac or the Trustee with respect to this Agreement or the related PCs or Mortgages, unless:

(i) Such Holder previously has given the Trustee written notice of an Event of Default and the continuance thereof;

(ii) The Holders of PCs representing a majority of the remaining principal balance of any affected PC Pool have made a written request to the Trustee to institute an action or proceeding in its own name and have offered the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred;

(iii) The Trustee has failed to institute any such action or proceeding for 60 days after its receipt of the written notice, request and offer of indemnity described above; and

(iv) The Trustee has not received from such Holders any direction inconsistent with the written request described above during the 60-day period.

(b) No Holder shall have any right under this Agreement to prejudice the rights of any other Holder, to obtain or seek preference or priority over any other Holder or to enforce any right under this Agreement, except for the ratable and common benefit of all Holders of PCs representing interests in any affected PC Pool.

(c) For the protection and enforcement of the provisions of this Section, Freddie Mac, the Trustee and each and every Holder shall be entitled to such relief as can be given either at law or in equity. Notwithstanding the foregoing, no Holder's right to receive payment (or to institute suit to enforce payment) of principal and interest as provided herein on or after the due date of such payment shall be impaired or affected without the consent of the Holder.

ARTICLE VI

Trustee

Section 6.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing with respect to a PC Pool, the Trustee shall exercise the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee.

(c) The Trustee and its directors, officers, employees and agents may not be protected from liability which would otherwise be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of their respective duties or by reason of reckless disregard of obligations and duties under this Agreement, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any action taken, or not taken, by the Trustee in good faith pursuant to this Agreement or for errors in judgment; and

(iii) the Trustee shall not be required to take notice or be deemed to have notice or knowledge of any default or Event of Default, unless the Trustee obtains actual knowledge or written notice of such default or Event of Default. In the absence of such actual knowledge or notice, the Trustee may conclusively assume that there is no default or Event of Default.

(d) Every provision of this Agreement shall be subject to the provisions of this Section and Section 6.02.

(e) The Trustee shall not be liable for indebtedness evidenced by or arising under this Agreement, including principal of or interest on the PCs, or interest on any money received by it except as the Trustee may agree in writing.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law or the terms of this Agreement.

(g) No provision of this Agreement shall require the Trustee to expend, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(h) The Trustee, or the Administrator on its behalf, may, but shall not be obligated to, undertake any legal action that it deems necessary or desirable in the interest of Holders. The Trustee, or the Administrator on its behalf, may be reimbursed for the legal expenses and costs of such action from the assets of the related PC Pool.

Section 6.02. Certain Matters Affecting the Trustee.

(a) The Trustee, and any director, officer, employee or agent of the Trustee may rely in good faith on any certificate, opinion or other document of any kind which, prima facie, is properly executed and submitted by any appropriate Person respecting any matters arising hereunder. The Trustee may rely on any such documents believed by it to be genuine and to have been signed or presented by the proper Person and on their face conforming to the requirements of this Agreement. The Trustee need not investigate any fact or matter stated in such documents.

(b) Before the Trustee acts or refrains from acting, it may require an officer's certificate or an opinion of counsel, which shall not be at the expense of the Trustee. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or opinion of counsel. The right of the Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its willful misfeasance, bad faith or gross negligence in the performance of such act.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian or nominee.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, that the Trustee's conduct does not constitute willful misfeasance, bad faith or gross negligence. In no event shall the Trustee have any liability for consequential damages.

(e) The Trustee may consult with and rely on the advice of counsel, accountants and other advisors and shall not be liable for errors in judgment or for anything it does or does not do in good faith if it so relies. Any opinion of counsel with respect to legal matters relating to this Agreement and the PCs shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with any opinion of such counsel.

(f) Any fees, expenses and indemnities payable from the assets of any PC Pool to Freddie Mac, in its capacity as Trustee, in the performance of its duties and obligations hereunder shall not affect Freddie Mac's guarantee with respect to that PC Pool, as set forth in Section 3.09.

Section 6.03. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Agreement, the assets of the PC Pool or the PCs.

Section 6.04. Trustee May Own PCs. Subject to Section 7.06, the Trustee in its individual or any other capacity may become the owner or pledgee of PCs with the same rights as it would have if it were not the Trustee.

Section 6.05. Indemnity. Each PC Pool shall indemnify the Trustee and the Trustee's employees, directors, officers and agents, as provided in this Agreement, against any and all claims, losses, liabilities or expenses (including attorneys' fees) incurred by it in connection with the administration of this trust and the performance of its duties under this Agreement (to the extent not previously reimbursed above), including, without limitation, the execution and filing of any federal or state tax returns and information returns and being the mortgagee of record with respect to the related Mortgages. The Trustee shall notify the Administrator promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Administrator shall not relieve the related PC Pool of its obligations hereunder. A PC Pool shall not be required to reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misfeasance, bad faith or gross negligence.

The Trustee's rights pursuant to this Section shall survive the discharge of this Agreement.

Section 6.06. Replacement of Trustee. The Trustee may resign at any time. Any successor Trustee shall resign if it ceases to be eligible in accordance with the provisions of Section 6.09. In either case, the resignation of the Trustee shall become effective, and the resigning Trustee shall be discharged from its obligations with respect to the PC Pools created under this Agreement by giving 90 days' written notice of the resignation to the Depositor, the Guarantor and the Administrator and upon the effectiveness of an appointment of a successor Trustee, which may be as of a date prior to the end of the 90-day period. Upon receiving such notice of resignation, the Depositor shall promptly appoint one or more successor Trustees by written instrument, one copy of which is delivered to the resigning Trustee and one copy of which is delivered to the successor Trustee. The successor Trustee need not be the same Person for all PC Pools. If no successor Trustee has been appointed for a PC Pool, or one that has been appointed has not accepted the appointment within 90 days after giving such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Prior to an Event of Default, or if an Event of Default has occurred and has been cured with respect to a PC Pool, Freddie Mac cannot be removed as Trustee with respect to that PC Pool. If an Event of Default has occurred and is continuing while Freddie Mac is the Trustee, at the direction of Holders of PCs representing a majority of the remaining principal balance of such PC Pool, Freddie Mac shall resign or be removed as Trustee, and to the extent permitted by law, all of the rights and obligations of the Trustee with respect to the related PC Pool only, will be terminated by notifying the Trustee in writing. Holders of PCs representing a majority of the remaining principal balance of the PC Pool will then be authorized to name and appoint one or more successor Trustees. Notwithstanding the termination of the Trustee, its liability under this Agreement and arising prior to such termination shall survive such termination.

If a successor Trustee is serving as the Trustee, the following events are "Trustee Events of Default" with respect to a PC Pool:

(i) the Trustee fails to comply with Section 6.09;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

If at any time a Trustee Event of Default has occurred and is continuing, the Guarantor (or if an Event of Default has occurred and is continuing, the Depositor) may, and if directed by Holders of PCs representing a majority of the remaining principal balance of such PC Pool, shall, remove the Trustee as to such PC pool and appoint a successor Trustee by written instrument, one copy of which shall be delivered to the Trustee so removed and one copy of which shall be delivered to the successor Trustee, and the Guarantor (or if an Event of Default has occurred and is continuing, the Depositor) shall give written notice of the successor Trustee to the Holders affected by the succession. Notwithstanding the termination of the Trustee, its liability under this Agreement arising prior to such termination will survive such termination.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Depositor shall promptly appoint a successor Trustee that satisfies the eligibility requirements of Section 6.09.

The retiring Trustee agrees to cooperate with the Depositor and any successor Trustee in effecting the termination of the retiring Trustee's responsibilities and rights hereunder and shall promptly provide such successor Trustee all documents and records reasonably requested by it to enable it to assume the Trustee's functions hereunder.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Depositor, the Guarantor and the Administrator. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Agreement with respect to such PC Pool. The successor Trustee shall mail a notice of its succession to the related Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Depositor may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 6.07. Successor Trustee By Merger. If a successor Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee; provided, that such corporation or banking association shall be otherwise qualified and eligible under Section 6.09.

Section 6.08. Appointment of Co-Trustee or Separate Trustee.

(a) Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirement of any jurisdiction in which any part of a PC Pool may at the time be located, the Trustee shall have the power and may execute and deliver all instruments to appoint one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of such PC Pool and to vest in such Person or Persons, in such capacity and for the benefit of the related Holders, such title to such PC Pool, or any part thereof, and, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 6.09 and no notice to the related Holders of the appointment of any co-trustee or separate trustee shall be required under Section 6.06 hereof.

(b) With respect to each PC Pool, every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the related PC Pool or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article VI. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee.

(d) Any separate trustee or co-trustee may at any time constitute the Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

Section 6.09. Eligibility; Disqualification. Freddie Mac is eligible to act as the Trustee and is initially the Trustee for the PC Pools created under this Agreement. Any successor to Freddie Mac (i) at the time of its appointment as Trustee, must be reasonably acceptable to Freddie Mac and (ii) must be organized as a corporation or association doing business under the laws of the United States or any State thereof, be authorized under such laws to exercise corporate trust powers, have combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by federal or state financial regulatory authorities. If any successor Trustee shall cease to satisfy the eligibility requirements set forth in (ii) above, that successor Trustee shall resign immediately in the manner and with the effect specified in Section 6.06.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. Annual Statements. Within a reasonable time after the end of each calendar year, the Administrator (or its agent) shall furnish to each Holder on any Record Date during such year information that the Administrator deems necessary or desirable to enable Holders and beneficial owners of PCs to prepare their United States federal income tax returns, if applicable.

Section 7.02. Limitations on Liability. Neither Freddie Mac, in its corporate capacity, nor any of its directors, officers, employees, authorized designees, representatives or agents ("related persons") shall be liable to Holders for any action taken, or not taken, by them or by a servicer in good faith pursuant to this Agreement or for errors in judgment. This provision shall not protect Freddie Mac or any related person against any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. In no event shall Freddie Mac or any related person be liable for any consequential damages. Freddie Mac and any related person may rely in good faith on any document or other communication of any kind properly executed and submitted by any Person with respect to any matter arising under this Agreement. Freddie Mac has no obligation to appear in, prosecute or defend any legal action which is not incidental to its duties to service or supervise the servicing of the Mortgages in accordance with this Agreement and which in its opinion may involve any expense or liability for Freddie Mac. Freddie Mac may, in its discretion, undertake or participate in any action it deems necessary or desirable with respect to any Mortgage, this Agreement, the PCs or the rights and duties of the parties hereto and the interests of the Holders hereunder. In such event, the legal expenses and costs of such action and any resulting liability shall be expenses for the protection, preservation and maintenance of the Mortgages borne pro rata by Freddie Mac and Holders as provided in Section 3.08(b).

Section 7.03. Limitation on Rights of Holders. The death or incapacity of any Person having an interest in a PC shall not terminate this Agreement or any PC Pool. Such death or incapacity shall not entitle the legal representatives or heirs of such Person, or any Holder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding up of the related PC Pool, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 7.04. Control by Holders. With respect to any PC Pool, except as otherwise provided in Articles V and VI and Sections 7.05 and 7.06, no Holder shall have any right to vote or to otherwise control in any manner the operation and management of the Mortgages included in such PC Pool, or the obligations of the parties hereto. This Agreement shall not be construed so as to make the Holders from time to time partners or members of an association. Holders shall not be liable to any third person by reason of any action taken by the parties to this Agreement pursuant to any provision hereof.

Section 7.05. Amendment.

(a) Freddie Mac and the Trustee may amend this Agreement (including any related Pool Supplement) from time to time without the consent of any Holders to (i) cure any ambiguity or correct or supplement any provision in this Agreement, *provided, however,* that any such amendment shall not have a material adverse effect on any Holder; (ii) maintain the classification of any PC Pool as a grantor trust for federal income tax purposes; or (iii) avoid the imposition of any state or federal tax on a PC Pool; it being understood that any amendment permitting the repurchase of a Mortgage by Freddie Mac due to a delinquency of less than 120 days, other than in the circumstances described in Section 1.02(c)(iii), may not be adopted under this clause (a).

(b) Except as provided in Section 7.05(c), Freddie Mac and the Trustee may amend this Agreement as to any PC Pool, with the consent of Holders representing not less than a majority of the remaining principal balance of the affected PC Pool.

(c) Freddie Mac and the Trustee may not amend this Agreement, without the consent of a Holder, if such amendment would impair or affect the right of such Holder to receive payment of principal and interest on or after the due date of such payment or to institute suit for the enforcement of any such payment on or after such date.

(d) To the extent that any provisions of this Agreement differ from the provisions of any Freddie Mac Mortgage Participation Certificates Agreement or PC Master Trust Agreement dated prior to the date of

this Agreement, this Agreement shall be deemed to amend such provisions of the prior agreement, but only to the extent that Freddie Mac, under the terms of such prior agreement, could have effected such change as an amendment of such prior agreement without the consent of Holders of PCs thereunder; *provided, however,* that the trust declarations and related provisions set forth in Section 7.05(d) of the PC Master Trust Agreement dated as of December 31, 2007 are hereby reaffirmed with respect to each PC Pool created before December 31, 2007.

(e) Notwithstanding any other provision of this Section, (i) the Administrator (in its own discretion and in its own interest) and the Trustee (at the Administrator's direction) may amend this Agreement to reflect any modification in the Administrator's methodology of calculating payments to Holders, including any modifications described in Section 3.05(d) and Section 3.06(a) and the manner in which it distributes prepayments to Holders, (ii) the Administrator (in its own discretion and in its own interest) and the Trustee (at the Administrator's direction) may amend this Agreement to cure any inconsistency between this Agreement and the provisions of the Guide and (iii) the Depositor (in its own discretion and in its own interest) and the Trustee (at the Administrator's direction) may amend any Pool Supplement to make the adjustments described in Section 1.02(b) to the characteristics of the Mortgages to be transferred to a PC Pool or to the related PCs.

Section 7.06. Voting Rights.

If Freddie Mac is acting as Administrator or Trustee and an Event of Default has occurred and is continuing, any PCs held by Freddie Mac for its own account shall be disregarded and deemed not to be outstanding for purposes of exercising the remedies set forth in Section 5.02 and the second paragraph of Section 6.06.

Section 7.07. Persons Deemed Owners. With respect to each PC Pool, Freddie Mac, the Trustee, the Administrator and a Federal Reserve Bank (or any agent of any of them) may deem and treat the related Holder(s) as the absolute owner(s) of a PC and the undivided beneficial ownership interests in the Mortgages included in the related PC Pool for the purpose of receiving payments and for all other purposes, and none of Freddie Mac, the Trustee, the Administrator or a Federal Reserve Bank (nor any agent of any of them) shall be affected by any notice to the contrary. All payments made to a Holder, or upon such Holder's order, shall be valid, and, to the extent of the payment, shall satisfy and discharge the related PC Pool's payment obligations with respect to the Holder's PC. None of Freddie Mac, the Trustee, the Administrator or any Federal Reserve Bank shall have any direct obligation to any beneficial owner unless it is also the Holder of a PC.

Section 7.08. Governing Law. THIS AGREEMENT AND THE PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT TO PCs, SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES. INSOFAR AS THERE MAY BE NO APPLICABLE PRECEDENT, AND INSOFAR AS TO DO SO WOULD NOT FRUSTRATE THE PURPOSES OF THE FREDDIE MAC ACT OR ANY PROVISION OF THIS AGREEMENT OR THE TRANSACTIONS GOVERNED HEREBY, THE LOCAL LAWS OF THE STATE OF NEW YORK SHALL BE DEEMED REFLECTIVE OF THE LAWS OF THE UNITED STATES.

Section 7.09. Grantor Trust Status. No provision in this Agreement shall be construed to grant Freddie Mac, the Trustee or any other Person authority to act in any manner which would cause a PC Pool not to be treated as a grantor trust for federal income tax purposes.

Section 7.10. Payments Due on Non-Business Days. If the date fixed for any payment on any PC is a day that is not a Business Day, then such payment shall be made on the next succeeding Business Day, with the same force and effect as though made on the date fixed for such payment, and no interest shall accrue for the period after such date.

Section 7.11. Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, including any successor by operation of law, and permitted assigns.

Section 7.12. Headings. The headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 7.13. Notice and Demand.

(a) Any notice, demand or other communication required or permitted under this Agreement to be given to or served upon any Holder may be given or served (i) in writing by deposit in the United States mail, postage prepaid, and addressed to such Holder as such Holder's name and address may appear on the books and records of a Federal Reserve Bank or (ii) by transmission to such Holder through the communication system of the Federal Reserve Banks. Any notice, demand or other communication to or upon a Holder shall be deemed to have been sufficiently given or made, for all purposes, upon mailing or transmission.

(b) Any notice, demand or other communication which is required or permitted to be given to or served under this Agreement may be given in writing addressed as follows (i) in the case of Freddie Mac in its corporate capacity, to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attention: Executive Vice President — General Counsel and Secretary and (ii) in the case of the Trustee, to: Freddie Mac (as Trustee), 8200 Jones Branch Drive, McLean, Virginia 22102, Attention: Executive Vice President — General Counsel and Secretary.

(c) Any notice, demand or other communication to or upon Freddie Mac or the Trustee shall be deemed to have been sufficiently given or made only upon its actual receipt of the writing.

THE SALE OF A PC AND RECEIPT AND ACCEPTANCE OF A PC BY OR ON BEHALF OF A HOLDER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH PC OF ALL THE TERMS AND PROVISIONS OF THIS AGREEMENT (INCLUDING THE RELATED POOL SUPPLEMENT) AND THE AGREEMENT OF FREDDIE MAC, SUCH HOLDER AND SUCH OTHERS THAT THOSE TERMS AND PROVISIONS SHALL BE BINDING, OPERATIVE AND EFFECTIVE.

FEDERAL HOME LOAN MORTGAGE CORPORATION,
as Trustee

/s/ Carol Wambeke
Authorized Signatory

FEDERAL HOME LOAN MORTGAGE CORPORATION,
in its corporate capacity as Depositor, Administrator and Guarantor

/s/ Mark Hanson
Authorized Signatory

Exhibit 2

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	ID_LOAN_SYST_GEND	DT_ACCTG_CYCL	DT_SRCE_BEG	DT_SRCE_END	AMT_UPB_LIA	CD_LIA	CD_LOAN_SRCE_SYST	DT_LIA	NBR_LOAN_SRCE_SYST	NBR_POOL_PRE_ACCN	DT_LST_UPDT	FLAG_DEL	NBR_BATCH
2	[redacted]1610	2/15/2010	2/11/2010 3:58:17 AM	1/1/9999 12:00:00 AM	232031.22	H	1	2/11/2010	[redacted]6084	A60998	2/11/2010 3:59:55 AM	N	1

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	NBR_LOAN_MIDAS	ID_LOAN_SYST_GEND	NBR_POOL	DT_SRCE_BEG	DT_SRCE_END	DT_MRTG_RMVD	FLAG_GOLD_CONV	NBR_GRP	NBR_ORIGL_POOL	PCT_CURR_MRTG_POOL	PCT_ORIGL_POOLD	DT_LST_UPDT	FLAG_DEL	NBR_BATCH	DT_PAYF	RATE_NOTE
2	[redacted]6084	[redacted]1610	A60998	9/28/2006 2:01:16 AM	2/11/2010 7:44:48 AM	(NULL)	N	J850494	A60998	1	1	2/11/2010 6:51:01 AM	N	1	(NULL)	0.0675
3	[redacted]6084	[redacted]1610	A60998	2/11/2010 7:44:48 AM	1/1/9999 12:00:00 AM	2/15/2010	N	J850494	A60998	1	1	2/11/2010 6:51:01 AM	N	1	(NULL)	0.0675
4	[redacted]6084	[redacted]1610	ACCELO	2/11/2010 8:19:20 AM	1/1/9999 12:00:00 AM	(NULL)	N	Q870050	A60998	0	1	5/27/2016 12:00:00 PM	N	1	(NULL)	0.0675

EXHIBIT 2

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
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Attorneys for JP Morgan Chase Bank N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10, ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JP MORGAN CHASE BANK National Association, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross Defendants.	

JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1 DISCLOSURES

Plaintiff and Counter-Defendant JPMorgan Chase Bank, N.A. ("Chase"), through Ballard Spahr, LLP, its counsel of record, submits the following second supplement to its initial disclosures pursuant to N.R.C.P. 16.1. (**Bold text** indicates supplemented information.)

I. Individuals Likely to Have Discoverable Information

1. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR DEFENDANT SFR INVESTMENTS POOL 1, LLC ("SFR")
c/o Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
(702) 485-3300

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the transaction that is the subject of this litigation; communications and relationships defendant SFR had with Nevada Association Services, Inc. ("NAS"), Pebble Canyon Homeowner Association (the "Association"), and borrowers Robert M. and Christine V. Hawkins; the consideration, if any, paid at the Association sale that is the subject of this litigation; and any other matters related to the claims and defenses in this case.

2. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR CHASE
1111 Polaris Parkway
Columbus, Ohio 43240
Do not contact witness except through undersigned counsel

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding Chase's involvement with the subject property; notices related to the subject property; communications with defendant, NAS, the borrowers, and/or the Association, if any; and any other matters related to the claims and defenses in this case.

3. ROBERT M. HAWKINS
3263 Morning Springs Drive
Henderson, Nevada 89074

Chase anticipates that Mr. Hawkins will testify regarding his involvement with the subject property; notices related to the subject property; communications

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any; and any other matters related to the claims and defenses in this case

4. CHRISTINE V. HAWKINS
3263 Morning Springs Drive
Henderson, Nevada 89074

Chase anticipates that Ms. Hawkins will testify regarding her involvement with the subject property; notices related to the subject property; communications with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any; and any other matters related to the claims and defenses in this case.

5. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR PEBBLE CANYON HOMEOWNERS ASSOCIATION
c/o Taylor Association Management
259 N. Pecos Road, Suite 100
Henderson, Nevada 89074

Chase anticipates that the Rule 30(b)(6) Designee and the Custodian of Records will testify regarding the Association's involvement with the subject property; the Association's declarations of covenants, conditions and restrictions, bylaws, rules, procedures, policies, patterns, and practices, and understandings related to NRS Chapter 116.3116 et seq. (including, without limitation, the statute's notice and sale provisions); the Association's schedule of assessments, collections, and ledgers related to the subject property; notices related to the subject property; communications and relationships with the subject property's owner and/or residents, SFR, NAS, the Association sale purchaser, and Chase; the basis for the purported Association lien under which the subject property was offered for sale; the basis for purporting to extinguish the first deed of trust; the Association's and/or Board of Directors for the Association's compliance, if any, with the Association's governing documents and Nevada law; and any other matters related to the claims and defenses in this case.

6. RULE 30(b)(6) DESIGNEE AND/OR CUSTODIAN OF RECORDS FOR NAS
6244 West Desert Inn Road, Suite A
Las Vegas, Nevada 89146
(702) 804-8885

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records, will testify regarding NAS's and the Association's involvement with the subject property; notices related to subject property; the Association sale for the subject property; the Association's declarations of covenants, conditions and restrictions, bylaws, rules, procedures, policies, patterns, and NAS's practices, and understandings related to NRS Chapter 116.3116 et seq. (including, without limitation, the statute's notice and sale provisions); communications and relationships with the subject property's owner and/or residents, SFR, the Association, the Association sale purchaser, and Chase; the declaration of default by the Association, if any; the basis for the purported Association lien under which the subject property was offered for sale; the alleged Association foreclosure sale; the basis for purporting to extinguish the first deed of trust; and any other matters related to the claims and defenses in this case.

7. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**
PO BOX 2026
Flint, Michigan 48501

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the assignment of the deed of trust from MERS to Chase and Association foreclosure notices, if any, sent to MERS.

8. **THE AUCTIONEER AND SALE COORDINATOR FOR THE ASSOCIATION FORECLOSURE SALE**
c/o NAS
9500 W. Flamingo Road #101
Las Vegas, Nevada 89147

It is anticipated that the Association Foreclosure Sale auctioneer and sale coordinator will testify regarding the facts and circumstances of the Association Foreclosure Sale, including, without limitation, any announcements made regarding the Association's lien, the bidding that occurred at the sale, the sale participants, and the purchase price tendered at the sale.

9. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS**

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

FOR CLARK COUNTY ASSESSOR
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor, the Assessor's valuation methods, and the property's value.

10. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR CLARK COUNTY RECORDER
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor and recorded documents pertaining to the property.

11. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS FOR NEVADA STATE TREASURER
555 E. Washington Ave.
Suite 4600
Las Vegas, Nevada 89101

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the tax records and payments for the property.

Defendant incorporates all persons disclosed by all other parties and all persons identified in any disclosed document.

12. CORPORATE REPRESENTATIVE OF FEDERAL HOME LOAN MORTGAGE CORPORATION ("FREDDIE MAC")
c/o Russell J. Burke
Ballard Spahr LLP
100 N. City Parkway, Suite 1750
Las Vegas, Nevada 89106

It is anticipated that the Corporate Representative of Freddie Mac will testify regarding its ownership interest in the Deed of Trust and loan.

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

II. List of Documents[1]

	Document	Bates No.
1.	Appraisal Report, dated 02.13.11	Chase-Hawkin0001-0010
2.	Foreclosure Deed, recorded 03.06.13	Chase-Hawkins0011-0013
3.	Association Notice of Default, recorded 09.20.12	Chase-Hawkins0014-0015
4.	HOA Notice of Foreclosure, signed 02.01.13	Chase-Hawkins0016
5.	Assignment of Deed of Trust, recorded 10.27.09	Chase-Hawkins0017-0018
6.	Grant, Bargain and Sale Deed, recorded 06.12.06	Chase-Hawkins0019-0021
7.	Chase Notice of Default, recorded 10.27.09	Chase-Hawkins0022-0023
8.	Deed of Trust, recorded 06.12.06	Chase-Hawkins0024-0044
9.	Substitution of Trustee, recorded 10.27.09	Chase-Hawkins0045-0046
10.	**Escrow Activity**	**Chase-Hawkins0047-50**
11.	**Corporate Advance Activity**	**Chase-Hawkins0051-56**
12.	**FHFA Statement of December 22, 2014**	**Chase-Hawkins0057-59**
13.	**FHFA Statement of April 21, 2015**	**Chase-Hawkins0060**
14.	**FHFA Statement of August 28, 2015**	**Chase-Hawkins0061**
15.	**Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Pebble Canyon Homeowners Association, recorded February 08, 1991**	**Chase-Hawkins0062-94**
16.	**Foreclosure Addendum To Residential Lease Agreement**	**Chase-Hawkins0095**
17.	**Notice of Default and Election to Sell Under Homeowners Association Lien**	**Chase-Hawkins0096**
18.	**Notice of Foreclosure Sale by Pebble Canyon HOA**	**Chase-Hawkins0100-101**
19.	**Notice of Default and Election to Sell Under Deed of Trust**	**Chase-Hawkins0102-103**
20.	**Loan Policy of Title Insurance**	**Chase-Hawkins0104-117**

[1] Documents may include redactions of sensitive borrower information and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, only after a protective order is entered in the case.

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21.	Trustee's Sale Guarantee, dated March 6, 2012	Chase-Hawkins0118-128
22.	Note	Chase-Hawkins 0129-132
23.	Profile Inquiry	Chase-Hawkins0133-0134
24.	Loan Status Manager	Chase-Hawkins0135
25.	Documents verifying Chase's status as servicer	To be supplemented[2]
26.	Documents produced by National Association Services, Inc. pursuant to a subpoena duces tecum	HawkinsNAS00001-209
27.	Documents produced by HOA pursuant to a subpoena duces tecum	Chase-Hawkins_PebbleCreekHOA0001-0409
28.	Documents produced by Clark County Assessor pursuant to a subpoena duces tecum	Chase-Hawkins_TaxAssessor0001-0029

Documents may include redactions of the sensitive borrower and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, after a protective order is entered in this case. Chase does not waive any privilege or protection claim, including, without limitation, attorney-client privilege and work-product claims.

III. Computation of Any Category of Damages

In addition to the equitable relief sought in Chase's complaint, Chase seeks damages including, without limitation, reimbursement for all funds and resources Chase expended to preserve and/or maintain the property, including, without limitation, the following:

Date	*Amount*	*Item*
09/17/14	$301.61	County Tax
07/29/14	$302.37	County Tax
03/24/14	$1,744.00	Homeowners Insurance
02/18/14	$292.83	County Tax
12/17/13	$292.83	County Tax
09/09/13	$292.83	County Tax

[2] Documents will be supplemented once a protective order is agreed upon and filed.

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07/25/13	$546.31	County Tax
05/04/13	$80.00	Yard Maintenance
04/09/13	$80.00	Yard Maintenance
03/22/13	$80.00	Yard Maintenance
TOTAL	$4,012.78	

IV. Insurance Agreements

At this time, Chase is unaware of insurance coverage to satisfy a potential judgment in this case.

V. Reservations

Discovery is ongoing. Chase reserves: (a) its right to supplement any information in this disclosure; (b) all objections to the admissibility of documents and/or witnesses disclosed by any party; and (c) its right to use as evidence any documents and/or witness testimony disclosed by any party or filed in this action.

DATED this 6th day of May, 2016.

BALLARD SPAHR LLP

By:/s/ Russell J. Burke
Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of May, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1 DISCLOSURES, was served to the following parties in the manner set forth below:

Kim Gilbert Ebron Howard C. Kim, Esq. Diana S. Cline, Esq. Jacqueline A. Gilbert, Esq. 7625 Dean Martin Drive Suite 110 Las Vegas, NV 89139 Attorneys for SFR Investments Pool, LLC	

[ ] HAND DELIVERY

[ ] E-MAIL TRANSMISSION

[ ] U.S. MAIL, POSTAGE PREPAID

[ ] Certified Mail, Receipt No. _____,
Return receipt requested

[XX] Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Sarah H. Walton
An employee of BALLARD SPAHR LLP

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TAB 33

RPLY

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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	Case No. A-13-692304-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF COUNTER-MOTION TO STRIKE**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Counter-Defendant/Cross-Defendants	

SFR Investments Pool 1, LLC ("SFR") hereby files its Reply in Support of its Counter-Motion to strike. This Reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and such evidence and oral argument as may be presented

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at the time of hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

SFR's countermotion to strike can be granted because the Bank has not provided the Court with a valid reason to deny. In fact, the Bank's arguments against striking undisclosed witness and documents concede SFR's point, that these exhibits and witness were not disclosed pursuant to rules. As a result, SFR's countermotion should be granted.

II. PROCEDUREAL HISTORY

Pursuant to the Scheduling Order filed with this Court, the close of discovery was on or about May 2, 2016. The Bank served SFR with its First Supplemental Disclosures on May 6, 2016, which is after May 2, 2016, and late. The Bank served SFR with Second Supplemental Disclosures on July 26, 2016, which is also late as it is after the deadline. Finally, on April 13, 2018, the Bank yet again served SFR with supplemental disclosures, which are after the deadline expired and are late. SFR did not need to contest the whether the exhibits attached to the 2016 were properly before the Court because SFR had its ace, standing, which SFR won summary judgment. *See* Findings of Fact and Conclusions of Law filed on October 26, 2016. The Bank filed a Notice of Appeal ("NOA") on or about November 22, 2016. *See* NOA filed with this Court. Based on the Nevada Supreme Court's opinion in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. ___, 396 P.3d 754(Nev. 2017) ("*Nationstar*") The parties stipulated to remand back to District Court to brief **only the issues related** to §4617(j)(3) before the District Court. *See* Stipulation and Order, pg. 3 ¶ 10, filed on September 18, 2017, attached to SFR's MSJ as Exhibit B. *See also*, Stipulation to Remand filed with Nevada Supreme Court attached to SFR's MSJ as Exhibit C. To be clear, SFR did not need to agree to stipulate to remand. SFR agreed **only** because the Court's findings regarding the validity of the sale would remain. S

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III. LEGAL ARGUMENT

The Bank's Witness Must Be Denied as Untimely, Improper and Prejudicial.

The Bank's assertion that the witness and exhibits were used in a prior pleading before the Court is acceptable is false. SFR objections because the witness and exhibits were not disclosed properly pursuant to the rules. Here, discovery closed on May 2, 2016. The Bank produced a first supplemental disclosure on May 6, 2016, and a second disclosure on July 26, 2016, and a third supplemental disclosure April 13, 2018. These disclosures are all late as they are all after the May 2, 2016 deadline. This is prejudicial to SFR, because it was information that the Bank knew all along. The Bank states in its MSJ, that at time of the sale (March 1, 2013[1]) the FHFA had an interest in the note. *See* Bank's 2018 MSJ.

If this is true, then all witnesses and documents should have been timely disclosed, i.e. part of the Bank's initial disclosures. This is inherently prejudicial to SFR because it is a material change in the case, with information the Bank is now saying it knew all along. The Bank was forcing SFR in a position to file a motion to strike the late disclosures, when SFR was in possession of its ace, the argument that SFR won its 2016 summary judgment on, that the Bank did not have standing. SFR chose a strategy which, worked, SFR prevailed on summary judgment. To now, in 2018, have the Bank be allowed to use information that was not properly disclosed is prejudicial and harmful. NRCP 37(c)(1) provides the following:

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

NRCP 37(c)(1).

Here, SFR was deprived of an opportunity to defend itself on information that the Bank is stating it knew at the time of the sale, March 1, 2013, FHFA had an interest, yet waited until close of discovery to name a NRCP 30(b)(6) witness and did not name the witness properly. Pursuant

[1] *See* Foreclosure Deed attached to SFR's 2018 MSJ as Exhibit A-4.

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to the rules, the literal name of the witness needs to be in the disclosure, the Bank did not do that. SFR was deprived of the opportunity to defend itself. SFR was unable to notice the deposition of this witness, which is not harmless. Essentially, if the Court does not strike the witness, this is depriving a party of the chance to defend itself against information that the Bank knew all along. Thus, the Bank is without substantial justification for its failure to provide SFR with this information. NRCP 37(c)(1).

SFR faced an uphill battle in conducting discovery. The Bank failed to timely disclose information it claims in its msj that it knew all along. The witness and documents should have been produced by the Bank in its initial disclosures. *See* NRCP 16.1(a)(1)(B) and *see also*, NRCP 26(b). Pursuant to NRCP 26(b) (1) "Parties may obtain discovery regarding any matter…which is relevant to the subject matter involved in the pending action…" *Id*. As stated, these are germane to the Bank's claims. To the extent that there is any suggestion that SFR waived its objection, is baseless and not supported by any authority. *CF Edwards v. Emperor's Garden Rest*., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n. 38 (2006) (observing that a party is responsible for supporting its arguments with salient authority.) As such, the Bank should have produced them timely. Allowing the Bank to disclose this on the last day of discovery is akin to late because SFR was deprived of meaningful opportunity to defend itself, when it is information the Bank is stating it knew all along.

V. CONCLUSION

For these reasons, the Court should grant SFR's countermotion to strike

DATED this 29th day of May, 2018.

KIM GILBERT EBRON

/s/ Karen L. Hanks _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF ITS COUNTER-MOTION TO STRIKE** to the following parties.

Select All Select None

allard Spahr

Name	Email	Select
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/s/ Caryn R. Schiffman
An employee of Kim Gilbert Ebron

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TAB 34

TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JP MORGAN CHASE BANK NATIONL ASSOCIATION, Plaintiff, vs. SFR INVESTMENTS POOL 1 LLC, ET AL, Defendants.	)	Case No. A-13-692304-C Dept. No. 24

MOTIONS

Before the Honorable Jim Crockett

Tuesday, June 5, 2018, 9:00 a.m.

Reporter's Transcript of Proceedings

REPORTED BY:

BILL NELSON, RMR, CCR #191
CERTIFIED COURT REPORTER

APPEARANCES:

For the Plaintiff: Sylvia Semper, Esq.

For the Defendants: Karen Hanks, Esq.
Caryn Schiffman, Esq.

Las Vegas, Nevada, Tuesday, June 5, 2018

* * * * *

THE COURT: JP Morgan Chase Bank versus SFR Investments.

MS. HANKS: Karen Hanks here on behalf of SFR.

MS. SEMPER: Sylvia Semper on behalf of JP Morgan Chase Bank.

THE COURT: All right.

MS. HANKS: Karen Hanks and Caryn Schiffman.

THE COURT: Tell me, with regard to Cross-Defendants Christine and Robert Hawkins, are they out of the case now as it exists?

They were listed as being represented by Howard Kim.

MS. HANKS: We would have never represented them, Your Honor.

THE COURT: Right, it doesn't say you did.

My only concern was, that since they are not here today, I realize this is pretty much confined to just the people who are represented, but I just wondered what their status was.

MS. HANKS: Your Honor, I'm going to take a

guess that they were taken care of, otherwise the bank would not be able to appeal, but I don't have that knowledge firsthand, but that's my guess we would have gotten an order to show cause.

THE COURT: Okay.

So we have Plaintiff JP Morgan Chase Bank's motion for summary judgment and Defendant SFR's motion for summary judgment.

And then in addition to filing an opposition to JP Morgan's motion for summary judgment, SFR also fired a counter-motion to strike regarding the affidavit of I think his name was Myers and the documents that were attached.

It's probably a good motion to strike on the basis of the information was not disclosed in discovery, but I don't know that we need to get there.

In JP Morgan's opposition to SFR's motion for summary judgment first I think that JP Morgan is correct in their argument that they did own the loan and in accordance with the case of In Re: Montierth, M-o-n-t-i-e-r-t-h, the restatement third of property mortgages Section 5.4, I think that JP Morgan also had a property interest.

So I adopt the arguments and reasoning in

JP Morgan's opposition at pages 3 through 9 that Freddie Mac tolled the note and deed of trust at the time of the sale, rendering the federal foreclosure bar applicable at the time of the non-judicial HOA foreclosure sale.

Next we turn to the timeliness issue and whether or not the federal foreclosure bar is prevented from being asserted due to timeliness issues.

JP Morgan argues that the statute of limitations is no bar to JP Morgan because the statute of limitations they say applies to claims brought by the agency, which is to say FHFA, and since FHFA is not a party, the statute of limitations doesn't apply, only the quiet title statute of limitations applies.

So JP Morgan says that the three year or six-year statute of limitations only applies to claims that are brought by FHFA, all caps, not us, JP Morgan.

JP Morgan says, our claims are for quiet title, and that's a five-year statute of limitations.

Alternatively, JP Morgan says, if the three-year statute of limitations does apply, we claim that the doctrine of relation back protects us,

but SFR I think correctly argues that the federal foreclosure bar or facts and circumstances that would give rise to putting the Defendant on notice of it wasn't asserted in the original complaint.

So relation back doesn't save the day for JP Morgan.

It would be a new claim.

It would not be a restatement, or revision, or refinement of a claim that was originally made, so relation back doesn't help.

So I think that SFR is correct on their statute of limitations argument set forth in the reply brief, actually reiterated in the reply brief pages 3 through 4.

One of the reasons for that is, I think it's a compelling reason, it's logic.

If JP Morgan's position was correct, they are saying that if FHFA was a party, then the three-year statute would apply, and it's true that would bar this case from going forward, but FHFA is not a party.

We are, we claim the right to assert the federal foreclosure bar because we're a servicer acting in a representative capacity to the FHFA.

So the problem with that logic in my way of

thinking is this:

It would mean that the servicer who claims a derivative right to assert the federal foreclosure bar is actually in a superior position immune from the statute of limitations argument, and that would actually encourage the FHFA to not be a party and litigate its interests because to do so they would be foreclosed by the statute of limitations.

Instead, they step back and say, well we don't want to be a party because the statute of limitations would shut us out, but you guys go ahead and assert it in your capacity as your derivative representative capacity.

That would be like giving in a subrogation case the insurance company who is subrogating to the Plaintiff's claim a superior position to the Plaintiff, that just doesn't make sense.

So what that means is, that the federal foreclosure bar, even though it was applicable at the time of this sale, does not invalidate the HOA sale in this case.

The only opposition that JP Morgan had to SFR's motion for summary judgment was this ownership property, which I agree with JP Morgan, they did have the ownership property interest, and their second

objection was the statute of limitations.

JP Morgan I think is right on the ownership and property issue, but I believe that they are wrong on the statute of limitations.

So my inclination is to grant SFR's motion for summary judgment, since those are the only two things that JP Morgan objected to in terms of SFR's motion for summary judgment.

And by granting SFR's motion for summary judgment, the negates and renders moot JP Morgan's motion for summary judgment, so JP Morgan's motion for summary judgment would be denied too.

So that's my analysis, and I'm happy to hear from counsel for JP Morgan as to anything they would like to bring up that is not contained in their brief.

MR. SEMPER: Thanks, Your Honor.

One thing I wanted to clarify is that we have never conceded that the three-year rule would apply for FHFA, the three-year rule.

THE COURT: Okay.

Then tell me what would be the statute of limitations for FHFA.

MS. SEMPER: Six years, because it's a contract claim, not a tort claim.

The three years is a tort claim, that would be inapplicable here because it's not a tort claim, it's a claim for quiet title, and that essentially would rise out of the contractual right under the note and deed of trust.

So if we were to use FHFA's time line, it would be the six year, and that is included in our briefing, the three-year rule doesn't apply.

I would urge this Court that based on Great Eagle what the proper statute of limitations really is the five years under NRS 11.080, that's the one that we know the Nevada Supreme Court already decided it's five years, we're talking here about a quiet title claim.

I think it's all a red herring --

THE COURT: I know you are talking about a quiet title claim, and I know the statute of limitations for a quiet title claim is five years, but the problem is that it's predicated on what you contend is an improper non-judicial foreclosure sale that shouldn't have gone forward because it was invalidate by the federal foreclosure law, that's not breach of contract.

MS. SEMPER: Our remedies -- Or our right to the property arises from a contractual --

Obviously we haven't asserted the wrongful foreclosure, we're saying that there was never -- the sale that took place never extinguished our deed of trust, it's not wrongful foreclosure terms, we're saying what was conveyed through that sale was subject to the federal -- Freddie Mac's interest in the loan.

And then to the extent I understand that the argument with the relation back, but again I think that what is clear is that we never asserted a new claim, we are simply asserting a different basis.

Our claim was always from day one that the HOA sale did not extinguish Freddie Mac's property interest, the owner's interest.

What we did when we amended was --

THE COURT: Did you ever mention Freddie Mac or Fannie Mae in there?

MS. SEMPER: Freddie -- I understand the federal foreclosure bar is what we amended to explicitly include, but they were on notice from day one that we were asserting the sale didn't extinguish, and we basically clarified the basis for that, that's why that relates back, it wasn't a new claim, it wasn't a claim under a different set of rules, it was always the same argument, just a

different basis.

THE COURT: You know, given the Supreme Court's recent ruling that there has to be an affirmative relinquishment by FHFA, or Fannie Mae and Freddie Mac, it has to be an affirmative relinquishment, wouldn't that have been the issue to go on from the get go to stop the sale from going forward, enjoined it as an unauthorized and inappropriate mechanism to foreclose on this?

MS. SEMPER: I'm not sure exactly.

THE COURT: You say, it's not a new claim, you have been taking this position all the time?

MS. SEMPER: Correct.

THE COURT: Is there something in your brief that says that was your position all along?

MS. SEMPER: I think with a notice pleading state I think it was sufficient enough for the bank to say that the sale did not extinguish, that reasoning, and the basis.

I don't think we needed to set out our entire case in a pleading stage.

THE COURT: Here's why I think you have to to more than you did:

Because you say, we were claiming that that sale did not extinguish the first the deed of trust.