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 10

Respectfully submitted by:

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You go, okay that's the result you are looking for, it didn't extinguish it, but what's your theory?

I don't think notice was given to SFR if your theory was federal foreclosure bar.

MS. SEMPER: They knew at the time of the sale that there was a writ that could have been owned by --

THE COURT: I'm not talking about what they knew because that requires knowledge that goes beyond what is in the pleadings.

I'm saying, whether or not your pleading put them on notice, and I know your argument is they knew this, maybe you are right, but what I have to look at is, what did the pleading put them on notice of, and I don't think the Complaint put them on notice, that's why the relation back doctrine doesn't help you, it's whether or not the Supreme Court says the five-year or six-year statute of limitations applies, I think that is where it's going to pivot.

I think it's a three-year statute, and I don't think that the servicer can put itself in an elevated superior position to the FHFA in terms of the time limit.

MS. SEMPER: And I understand that, Your

Honor, but I also would urge the Court to look at Great Eagle on the fact their Court already said, it's five years, and it's a quiet title claim, they are within those parameters.

THE COURT: The difference in Great Eagle, it was the purchaser who was seeking to quiet title.

MS. SEMPER: I think that distinction is without a difference at the end of the day whether or not which party needs to quiet title, at the end of the day we're seeking a determination by the Court of our respective rights to the property, who is it that brings that I think is irrelevant, as long as it deals with the rights of the parties on that property.

THE COURT: Well, you can't say, whoever brings it is relevant, because if the party who brings it is subject to a shorter statute of limitations than the five-year quiet title statute, it's relevant who brings it, and I think that is what we're bumping up against here.

MS. SEMPER: Right.

And I think the main point is, that we have never conceded the three-year rule, nor do we think it applies because that is for tort claims, this is not a tort claim case, this is a quiet title case,

and I think it's clear under Great Eagle that we are dealing with a five-year statute of limitations.

THE COURT: You may by right, but I disagree.

Anything else?

MS. HANKS: Just for the record, for the appeal, Chase did not raise any argument as to an alternative statute of limitations in their opposition to our motion for summary judgment.

So that is why we put in our reply, the first time you see any alternate statute of limitations in their reply is in support of their motion for summary judgment.

So I want to make sure the record's clear if we go on appeal, SFR never had an opportunity to address the six-year statute of limitations argument because it was raised for the first time in the reply.

THE COURT: I agree.

MS. HANKS: I want to make sure that is clear when we go up we have to address that.

THE COURT: I think that is self-evident in the pleadings, but you are more than welcome to make this record regarding that.

Miss Semper.

MS. SEMPER: I would just like to add that in our opposition on page 10 we do specifically highlight this entire statute, and we do add in the case of the contract claim the longer of six years, so it's there.

I don't know how we get around the fact it wasn't there when it is there, we did include it in our opposition and did it on page 10 of our opposition to SFR's motion for summary judgment.

THE COURT: Anything else?

MS. HANKS: No, Your Honor.

THE COURT: I'm granting SFR's motion for summary judgment.

I'm denying JP Morgan's.

I'll ask counsel for SFR to prepare the order, ten days after you receive the transcript.

Is that sufficient?

MS. HANKS: Thank you, Your Honor.

THE COURT: All right.

Then I'd like you to circulate it to Miss Semper for approval as to form and content understanding full well you disagree with the ruling, but just the order accurately reflects what took place here today.

So ten days after you get the transcript

have the order in my office for my signature.

And anything else?

MS. HANKS: No, Your Honor.

MS. SEMPER: No.

THE COURT: Thank you.

THE CLERK: Your Honor, it looks like SFR has a counter-motion to strike.

THE COURT: I think the reason we don't need to get to that is that I do agree that Myers, and the documents he references, were apparently not disclosed in discovery, and I guess JP Morgan doesn't really contest, that they take the position, well, it's still a timely disclosure, even though it wasn't disclosed in discovery, so I don't know that it's necessary, but if it is necessary for me to rule on the motion to strike, I would grant the motion to strike as to the Myers affidavit, and as to the documents that were referenced by Myers that were not disclosed.

I just can't remember if there was more to it than that.

MS. HANKS: The motion to strike, no, that was the motion.

THE COURT: Okay.

So a separate order on that, okay?

MS. HANKS: Okay.

Thank you.

THE COURT: All right.

Miss Semper, did you want to address that?

MS. SEMPER: I would just say, the same is in our briefing, the fact is that we disclosed it back in July of 2016, they've known about it for more than two years, didn't object at that time.

They waived their right to object at this point, they've been aware.

When we were before Your Honor, we requested to reopen discovery, gave them opportunities to do so, and they opposed that, and now for them to say they are prejudiced belies logic when they had the opportunity to take discovery, and we would have been open with that.

So I don't think there was any prejudice or harm to them, the fact that was disclosed more than two years ago.

THE COURT: Let me just clarify.

Was Myers disclosed as a witness?

MS. SEMPER: He was, Your Honor, in our reply brief to our motion for summary judgment we did attach.

THE COURT: No, no, I mean within the

discovery cut off?

MS. SEMPER: Yes, in May of '16, so two months before the close of discovery, and before the dispositive motions were filed we served our first supplement, the initial disclosures, and we listed corporate representative of Freddie Mac.

THE COURT: So Myers wasn't disclosed by name?

MS. SEMPER: Correct, Your Honor.

However, he is a corporate representative, and to the extent they knew --

THE COURT: Were the documents he references in his affidavit disclosed?

MS. SEMPER: We noted the documents verifying Chase's status of servicer were pursuant to the rules, we did identify they existed, but we also said that we would agree to produce them once a protective order was entered.

So it's our opinion that we put them on notice that they existed, and that we were not willing to disclose them because they are proprietary and -- proprietary information, and then we did redact that information when we attached them, but it was available to them.

So yeah, there's no harm or prejudice

because they were aware those documents did exist.

THE COURT: So Myers was not disclosed by name within the discovery cut off, and the documents were not provided within the discovery cut off?

MS. SEMPER: A corporate representative was, correct, but not by name, but I don't think the rules require us to name every single witness, I think a corporate representative -- the rules allow us to essentially designate a corporate representative.

THE COURT: All right.

So a separate order on the motion to strike granting the motion to strike.

MS. HANKS: Thank you, Your Honor.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter in and for the State of Nevada, hereby certify that pursuant to NRS 2398.030 I have not included the Social Security number of any person within this document.

I further Certify that I am not a relative or employee of any party involved in said action, not a person financially interested in said action.

_____/s/ Bill Nelson_____

Bill Nelson, RMR, CCR 191

C E R T I F I C A T E

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191
Certified Court Reporter
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TAB 35

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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.	

(MS)

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☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT IN FAVOR OF SFR INVESTMENTS POOL 1, LLC

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This matter came before the Court for hearing on June 5, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment and Counter-Motion to Strike, and JPMorgan Chase Bank, N.A.'s ("Chase") Motion for Summary Judgment. Karen L. Hanks, Esq. and Caryn Schiffman, Esq. appeared on behalf of SFR. Sylvia Semper, Esq. appeared on behalf of Chase.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.[1]

FINDINGS OF FACT

1. On September 20, 2017, a Notice of Entry of Stipulation Requesting Reconsideration and Certification was filed with the Court.

2. As part of that Stipulation, the parties agreed that in light of *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, ____ Nev. _____, 396 P.3d 754 (Nev. 2017), this Court's earlier grant of summary judgment in favor of SFR, on the issue of whether (1) 12 U.S.C. § 4617(j)(3) preempts NRS Chapter 116; (2) whether Freddie Mac had a valid and enforceable property interest at the time of the Association foreclosure sale; and (3) whether Chase had a servicing agreement with Freddie Mac at the time of the Association foreclosure sale would be vacated.

3. The parties further stipulated that all other aspects of the Court's summary judgment ruling in favor of SFR would remain in place, with Chase retaining the right to challenge those other aspects in any future appeal.

4. As a result of this stipulation, on April 13, 2018, SFR and Chase filed summary judgment motions on the HERA issue.

5. On March 9, 2016, Chase filed its First Amended Complaint. This was the first time Chase alleged Freddie Mac had a property interest in the subject

[1] While Chase submitted this order to memorialize the Court's ruling, Chase does not concede or waive any argument it raised in its filed briefs or during oral argument.

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property commonly known as 3263 Morning Springs Drive, Henderson, Nevada 89074.

6. The Association foreclosure sale took place on March 1, 2013.

7. In support of its Motion for Summary Judgment Chase attached a declaration from Dean Meyer, with attached exhibits that were not disclosed during the course of discovery. Chase never disclosed Dean Meyer as a witness during the course of discovery. The documents attached as Ex. 10, 11, 24 and 27 to Chase's Motion were also never disclosed during the course of discovery.

9. As a result, SFR filed a counter-motion to strike these documents and the affidavit of Dean Meyer.

10. However, the Court adopts the arguments and reasoning in Chase's opposition to SFR's Motion for Summary Judgment at pages 3 through 9 where Chase asserted Freddie Mac's ownership of the note at the time of the Association foreclosure sale, which renders 12 U.S.C. § 4617(j)(3) applicable at the time of the Association foreclosure sale.

CONCLUSIONS OF LAW

Standard

A. 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*, 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. Hom*, 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

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[it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. 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, 1222 (1981).

Statute of Limitations

B. Under 12 U.S.C. § 4617(b)(12), any tort actions brought by the FHFA must be brought within three years from the date the claim arose. Here, the Association sale took place on March 1, 2013. As such, any tort claim brought by FHFA under HERA expired on March 1, 2016. Chase did not raise the HERA claim until March 9, 2016. Such claim is time-barred.

C. Chase argues that 12 U.S.C. § 4617(b)(12) only applies if FHFA is a party. Chase, however, claims that because Chase, rather than FHFA is asserting HERA in this case, then the three-year statute of limitations does not apply. The Court rejects this argument.

D. The problem with this argument is it would mean that a servicer who claims a derivative right to assert the federal foreclosure bar is actually in a superior position immune from the statute of limitations, 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.

E. Alternatively, Chase argues that its amended complaint should relate back to its original complaint. The Court rejects this argument. As SFR correctly points out, nothing in the original complaint alleged the federal foreclosure bar or facts and circumstances regarding a claimed federal interest that would put SFR on

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notice that HERA was at issue in this case. *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)).

Motion to Strike

G. Chase attached a declaration from Dean Meyer, with attached exhibits that were not disclosed during the course of discovery. The documents attached as Ex. 10, 11, 24 and 27 to Chase's Motion were also never disclosed during the course of discovery. Chase never disclosed Dean Meyer as a witness during the course of discovery.

H. The Court grants SFR's Motion to Strike.

ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that SFR's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust recorded in the Official Records of the Clark County Recorder as Instrument No. 20060612-0003526 was extinguished by the homeowners association foreclosure sale held on behalf of the Association.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase, its predecessors in interest and its successors and assigns, have no further right, title, or interest in real property located at 3263 Morning Springs Drive, Henderson, Nevada 89074, and are hereby permanently enjoined from taking any further action to enforce the now extinguished DOT, including but not limited to, clouding title, initiating, continuing to conduct, or taking any other action to foreclosure on, and

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from selling, or transferring the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property located at 3263 Morning Springs Drive, Henderson, Nevada 89074, APN 177-24-54-043 is hereby quieted in favor of SFR.

IT IS FURTHER ORDERED, ADJUDED, AND DECREED that JUDGMENT be entered in favor of SFR pursuant to this ORDER.

IT IS SO ORDERED.

DATED this 14 day of Aug., 2018.

DISTRICT COURT JUDGE

Not Approved 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; 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 AND ORDER

Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A. ("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 ("First MSJ").

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

5. Chase filed a notice of appeal on September 16, 2016 ("First Appeal").

6. On September 18, 2017, this Court signed and entered a stipulation for certification, certifying its intent to the Nevada Supreme Court to vacate the order on the First MSJs. 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).

7. After the granting of the stipulation for certification, on September 19, 2017, the Parties stipulated to dismiss the First Appeal and remand the case to the District Court for further consideration.

8. On October 3, 2017, the Nevada Supreme Court dismissed the First Appeal and remanded the case to District Court for further proceedings.

9. After the dismissal of the First Appeal, the Parties filed new motions for summary judgment ("Second MSJs"). On August 15, 2018, the Court ruled in SFR's favor on the Second MSJs and the notice of entry of order was entered on August 16, 2018 ("Final Order").

10. Subsequently, Chase filed a second appeal, which is currently pending ("Second Appeal").

11. In the Second Appeal, the Nevada Supreme Court issued an order to show cause on January 14, 2019 ("Show Cause Order"). In the order, the Nevada Supreme Court noted that although the District Court certified its intent to vacate the order on the First MSJs, the District Court never officially filed a document to vacate and as such, the order entered on August 23, 2016 still remains the final order in the case.

12. Accordingly, the Parties ask the Court to vacate the August 23, 2016 summary judgment order for the purpose of addressing the issues in the Order to Show Cause.

13. Further, the Parties agree to certify that the order entered on August 15, 2018, as final for purposes of appeal under N.R.C.P. 54(b).

Dated: January 30, 2019

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By: _____

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Dated: January 30, 2019

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ORDER

Based on the foregoing stipulation between plaintiff/counter-defendant JPMorgan Chase Bank, N.A. and defendant/counter-claimant SFR Investments Pool 1, LLC, and good cause appearing,

THE COURT HEREBY VACATES the order entered on August 23, 2016.

THE COURT FURTHER ORDERS that upon independent review of the papers on file herein and seeing no just cause for delay, the order entered on August 15, 2018 is final for purposes of appeal under N.R.C.P. 54(b).

Dated ~~January~~ FEB 5, 2019.

DISTRICT COURT JUDGE

MK

Submitted by:

BALLARD ~~SPAHR~~ LLP

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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; 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 AND ORDER DISMISSING THIRD CAUSE OF ACTION (UNJUST ENRICHMENT) WITH PREJUDICE

Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A. ("Chase") and Defendant/Counter-Claimant SFR Investments Pool 1, LLC ("SFR" and together with Chase, the "Parties") stipulate and agree to dismiss the third cause of action of Chase's Amended Complaint – unjust enrichment – with prejudice.

This dismissal does not impact Chase's other causes of action, declaratory relief and quiet title, all of which were resolved via the Court's summary judgment order dated August 15, 2018, leaving no open parties or claims unresolved at the District Court level.

It is further stipulated and agreed that the Court may enter an order dismissing such cause of action with prejudice, with each party to bear its own costs.

Dated: February 11, 2019

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Dated: February 11, 2019

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ORDER

Based on the foregoing stipulation, the Court hereby order that Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A.'s third cause of action – unjust enrichment – be dismissed with prejudice and without costs to any party.

It is further ordered that this dismissal order is supplementary to the Court's Findings of Fact and Conclusions of Law dated August 15, 2018 and the Courts order dated February 6, 2019, such that there remain no unresolved claims by any party before this Court.

DATED: this 12 day of February 2019.

DISTRICT COURT JUDGE

Submitted by:

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TAB 38

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. 77010

APPEAL

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

APPELLANT'S OPENING BRIEF

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Attorneys for Appellant

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant JPMorgan Chase Bank, N.A. is wholly owned by JPMorgan Chase & Co. No publicly held company owns 10% or more of JPMorgan Chase & Co.'s stock.

BALLARD SPAHR LLP appeared on appellant's behalf in the district court and is expected to appear on appellant's behalf in this Court.

Dated: April 12, 2019.

BALLARD SPAHR LLP

By: /s/ Matthew D. Lamb

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JURISDICTIONAL STATEMENT

The Court has jurisdiction under NRAP 3A(b)(1) because this is an appeal from a final judgment. The operative complaint filed by JPMorgan Chase Bank, N.A. ("Chase") names SFR Investments Pool 1, LLC ("SFR") as a defendant. Appellant's Appendix, Volume 1 at 001-007 ("1 AA 001-007"). SFR's counterclaim originally named Chase, Robert M. Hawkins, and Christine V. Hawkins as counter-defendants. 1 AA 024-034. SFR later stipulated to dismiss Mr. and Mrs. Hawkins. The district court entered summary judgment for SFR on the claims between SFR and Chase. 4 AA 625-630. Notice of entry of the summary judgment order was served on August 16, 2018. 4 AA 631-639. Chase filed a timely notice of appeal on September 17, 2018. 4 AA 640-642.

ROUTING STATEMENT

This appeal is presumptively retained by the Nevada Supreme Court because it raises a question of statewide public importance—namely, the applicable statute of limitations for a quiet title claim brought by the servicer of a loan owned by the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mae") after an HOA foreclosure sale. *See* NRAP 17(a)(12).

STATEMENT OF THE ISSUES

1. **Did the district court err by holding that Chase's argument under 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar"), a provision of the Housing and Economic Recovery Act ("HERA"), was "untimely" under 12 U.S.C. § 4617(b)(12)?**

   a. Does the date when Chase moved for leave to amend its complaint, thereby putting SFR and the district court on notice it would assert the Federal Foreclosure Bar, rather the date the district court allowed the amended complaint to be formally filed, drive the limitations analysis?

   b. Did Chase's assertion of the Federal Foreclosure Bar constitute a new claim to which a statute of limitations applies rather than a theory supporting Chase's existing quiet-title claim?

   c. Did Chase's amended complaint relate back to the original complaint?

   d. Did the district court apply the correct limitations provision, and if not, was the amended complaint timely under the applicable provision?

2. **Did the district court err to the extent it held that SFR's purported bona fide purchaser status overrode the effect of the Federal Foreclosure Bar?**

   a. Does SFR qualify as a bona fide purchaser under Nevada law?

   b. If Nevada's bona fide purchaser doctrine would negate the Federal Foreclosure Bar's effect, would it be preempted?

3. **To the extent that SFR's counter-motion to strike under N.R.C.P. 37(c)(1) was material to the parties' motions for summary judgment, did the district court err by granting the counter-motion?**

   a. Did the evidence that was not subject to SFR's counter-motion independently show that Freddie Mac owned the subject loan and that Chase was servicing the loan at the time of the subject foreclosure sale?

   b. If not, did the district court err by striking the relevant documents without considering whether the alleged non-disclosure was harmless and without applying the governing legal standard for case-dispositive discovery sanctions?

4. **Is Chase entitled to summary judgment in its favor?**

INTRODUCTION

This case involves circumstances familiar to the Court from dozens of other appeals in similar cases. Appellee SFR purchased property at a homeowners' association foreclosure sale (the "Sale"). Appellant Chase submitted evidence showing that Freddie Mac owned a Deed of Trust encumbering the property at that time, and argued that the Federal Foreclosure Bar therefore preempted state law that might otherwise have allowed the foreclosure sale to extinguish the Deed of Trust.

The district court "adopt[ed] the arguments and reasoning in Chase's opposition to SFR's Motion for Summary Judgment…where Chase asserted Freddie Mac's ownership of the note at the time of the [HOA] foreclosure sale" and noted that Freddie Mac's conservator, the Federal Housing Finance Agency ("FHFA"), did not consent to the extinguishment of Freddie Mac's Deed of Trust. 3 AA 536-542; 4 AA 627 ¶ 10. But instead of holding that the Federal Foreclosure Bar protected Freddie Mac's property interest, the district court awarded summary judgment to SFR, ruling that Chase's assertion of the Federal Foreclosure Bar was time-barred. 4 AA 628-629 ¶¶ B-E.

The district court's statute-of-limitations analysis is incorrect and should be reversed.

First, the simplest and narrowest ground for reversal is that the district court erred in concluding that Chase "did not raise the HERA claim" within three years—

the interval the district court incorrectly applied as the limitations period. The Sale took place on March 1, 2013, and Chase moved for leave to file its amended complaint (expressly referencing the Federal Foreclosure Bar and attaching the proposed amended complaint as an exhibit) on February 2, 2016—nearly a month *before* the three-year interval closed.

Second, the district court erred in undertaking a limitations analysis at all in relation to Chase's assertion of Federal Foreclosure Bar. Chase properly and timely pleaded a claim for quiet-title, for which the Federal Foreclosure Bar is a supporting *legal theory*. Statutes of limitation apply to claims, not theories, and a plaintiff is not required to plead the legal theories upon which it bases its claims.

Third, the district court erred in failing to relate the amended complaint back to Chase's initial pleading. Even if Chase's assertion of the Federal Foreclosure Bar constituted a free-standing claim, relation back would apply because the amended complaint asserts claims arising out of the same transaction or occurrence—the Sale—Chase initially pleaded.

Fourth, the district court applied the wrong limitations period. If asserting the Federal Foreclosure Bar amounts to a free-standing claim, HERA's six-year limitations period for claims not sounding in tort governs, both under the plain language of the statute and as a matter of federal policy. But even if HERA's tort-claim limitations provision applied, Chase's claim would still be timely—that

provision specifies *the longer of* three years or the applicable state law period, which is at least four years here.

The district court's decision includes a cursory statement arguably suggesting that SFR was protected by Nevada's bona fide purchaser doctrine. That is not correct. SFR does not qualify as a bona fide purchaser, but even if it did, the Federal Foreclosure Bar would preempt any state-law protection that would otherwise result.

The district court also granted SFR's motion to strike a portion of Chase's evidence because it was not disclosed in discovery. 4 AA 629 ¶¶ G-H. Even without the stricken evidence, the record supports an award of summary judgment in favor of Chase. To the extent the Court believes the stricken evidence is necessary, any late disclosure was harmless and could not support a case-dispositive sanction.

As the district court found, Freddie Mac owned the Deed of Trust and FHFA did not consent to release Freddie Mac's interest. The Federal Foreclosure Bar thus preserved Freddie Mac's deed of trust, notwithstanding the Sale. This Court should reverse the district court's decision and enter judgment for Chase.

STATEMENT OF THE CASE

Chase challenges the district court's order in favor of SFR's claims for quiet title and declaratory relief arising out of SFR's purchase of the subject property at the Sale. At the time of the Sale, Freddie Mac owned a deed of trust encumbering the property and its associated promissory note, and Chase served as the beneficiary of record of the deed of trust as Freddie Mac's contractually authorized servicer. Chase filed this lawsuit seeking a declaration that Freddie Mac's deed of trust survived the Sale. SFR contends that the Sale extinguished Freddie Mac's deed of trust.

After a hearing on the parties' motions for summary judgment, the district court adopted Chase's arguments that Freddie Mac owned the deed of trust at the time of the Sale and that FHFA did not consent to the extinguishment of Freddie Mac's property interest. However, the district court concluded that Chase's "HERA claim" was subject to a three-year limitations period under 12 U.S.C. § 4617(b)(12) because it amounted to a "tort action." The court reasoned that because Chase raised its "HERA claim" in its amended complaint—filed more than three years after the Sale—and the amended complaint did not relate back, Chase's claim was time-barred. Accordingly, the district court granted SFR's motion for summary judgment and denied Chase's motion for summary judgment. The district court also granted SFR's counter-motion to strike Freddie Mac's declaration and certain attached

documents that SFR argued were not disclosed in discovery, and briefly discussed Nevada's bona fide purchaser doctrine. This appeal followed.

STATEMENT OF FACTS

I. The Secondary Mortgage Market

Congress created Freddie Mac and Fannie Mae (together the "Enterprises") to support a nationwide secondary mortgage market. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Freddie Mac's federal statutory charter authorizes it to purchase and deal only in secured "mortgages," not unsecured loans. *See* 12 U.S.C. §§ 1451(d), 1454; *see also Lightfoot v. Cendant Mortg. Corp*., 137 S. Ct. 553, 557 (2017) (discussing Fannie Mae's role as purchaser of mortgages); *FHFA v. Nomura Holding Am., Inc.*, 873 F.3d 85, 105 (2d Cir. 2017) (same); *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017) (same). Freddie Mac has purchased millions of mortgages nationwide, including hundreds of thousands of mortgages in Nevada.

Although Freddie Mac owns a large number of mortgage loans through its purchases on the secondary market, it is not in the business of managing the mortgages themselves, such as handling day-to-day borrower communications. Instead, Freddie Mac contracts with servicers to act on its behalf; in that role, servicers often appear as record beneficiaries of deeds of trust. *See Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 396 P.3d 754, 757-58 (Nev. 2017) (acknowledging servicers' role); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011) (describing servicers' role); Restatement § 5.4 (the

"Restatement") cmt. c (discussing common practice where investors in secondary mortgage market designate servicer to be assignee of mortgage). In such situations, the note owner remains a secured creditor with a property interest in the collateral even if the recorded deed of trust names only the loan servicer. *E.g.*, *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL 1245886, at *1 (Nev. Mar. 14, 2019) (unpublished disposition) ("[T]his Court has recognized that the record beneficiary need not be the actual owner of the loan."); *Berezovsky v. Moniz*, 869 F.3d 923, 932 (9th Cir. 2017).

HERA established FHFA as the Enterprises' regulator, authorized FHFA's Director to place the Enterprises into conservatorships in certain circumstances, and enumerated the powers, privileges, and exemptions FHFA possesses as Conservator. In September 2008—at the height of the financial crisis—FHFA's Director placed the Enterprises into conservatorships, where they remain today.

The Federal Foreclosure Bar—a broad statutory "exemption," captioned "Property protection," within HERA—mandates that when the Enterprises are under FHFA conservatorship, "[n]o property of the Agency shall be subject to…foreclosure…without the consent of the Agency…" 12 U.S.C. § 4617(j)(3). Another HERA provision mandates that upon the inception of conservatorship, FHFA (i.e., the "Agency") succeeds by operation of law to "all rights, titles, powers, and privileges" of the entity in conservatorship "with respect to [its] assets," *id.*

§ 4617(b)(2)(A), thereby rendering all of the Enterprises' assets "property of the Agency" for the duration of the conservatorship, *id.* § 4617(j)(3). These statutory provisions exist to protect the conservatorships and, ultimately, U.S. taxpayers.

NRS 116.3116(2) grants homeowners' associations a superpriority lien for up to nine months of unpaid HOA dues (six months when the property is encumbered by an Enterprise lien). The statute permits properly conducted foreclosure sales of superpriority HOA liens to extinguish all junior interests, including prior-recorded security interests. *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014).

II. Facts Specific to the Property

In June 2006, Robert M. Hawkins and Christine V. Hawkins executed a promissory note memorializing their commitment to repay a $240,000 loan from GreenPoint Mortgage Funding, Inc. for the purchase of a property located at 3263 Morning Springs Drive in Henderson, Nevada (the "Property"). 3 AA 354. The note was secured by a deed of trust recorded against the Property on June 12, 2006 (the "Deed of Trust" and together with the corresponding note, the "Loan"). 3 AA 332. The Deed of Trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary of record solely as nominee for Lender and Lender's successors and assigns. *Id.* MERS, as nominee for Lender and Lender's successors

and assigns, recorded an assignment of its interest in the Deed of Trust to Chase in October 2009. 3 AA 516-517.

As evidenced by authenticated business records from both Freddie Mac and Chase, Freddie Mac purchased the Loan in September 2006 and has owned it ever since. 3 AA 320-330, 359-370, 508-514. The Sale at which SFR purchased the Property occurred on March 1, 2013. 3 AA 519. At the time of the Sale, Chase was the record beneficiary of the Deed of Trust in its capacity as Freddie Mac's servicer. 3 AA 320-330, 359-370, 508-514. Chase is the current record beneficiary of the Deed of Trust and continues to service the Loan for Freddie Mac.

At no time did FHFA consent to the extinguishment or foreclosure of Freddie Mac's property interest through the Sale. 3 AA 523 ("FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.").

III. Procedural History

On November 27, 2013, Chase filed a complaint seeking a declaration that the Deed of Trust survived the Sale. 1 AA 001-007. SFR filed a counterclaim asserting that the Sale extinguished the Deed of Trust. 1 AA 024-034. On February 2, 2016, Chase moved for leave to amend its complaint; the motion expressly referenced the Federal Foreclosure Bar and included as an exhibit the proposed amended complaint,

which directly invoked the Federal Foreclosure Bar as a theory supporting the previously pleaded quiet-title claim. 1 AA 049-068. The amended complaint referenced Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide") and provided a link to an online version of the Guide. 1 AA 060-061 ¶ 13. The district court granted the motion as unopposed on March 8, 2016. 1 AA 069-070. Chase formally filed the amended complaint on March 9, 2016. 1 AA 071-081.

On April 21, 2016, SFR deposed Chase's N.R.C.P. 30(b)(6) representative, who repeatedly testified that Freddie Mac owned the Loan. 1 AA 094-101. On May 2, 2016, Chase served discovery responses stating that "the Federal Home Loan Mortgage Corporation owns the [Deed of Trust] and the loan at issue." 1 AA 109 (Response to Request No. 4). Also on May 2, 2016, Chase supplemented its N.R.C.P. 16.1 disclosures to include Freddie Mac's corporate representative. 1 AA 122.[1] The supplement also disclosed business records from Chase's internal recordkeeping system demonstrating that Freddie Mac owned the Loan and that Chase was Freddie Mac's servicer (the "Chase Records"). 1 AA 124 (Item No. 25).[2]

[1] Due to an error, several pages of Chase's May 2, 2016 supplement were omitted. Chase re-served the full supplement on May 6, 2016. The version included in Chase's appendix is the latter version.

[2] Chase disclosed the Chase Records with the intention of producing copies after a protective order was entered. 1 AA 124, n.7. Chase ultimately produced copies on July 26, 2016 during summary judgment briefing. 2 AA 195-201. Pursuant to N.R.C.P. 16.1(a)(1)(A)(ii), Chase satisfied any disclosure obligation on May 2, 2016 when it identified the Chase Records by "category and location."

Further, the supplement included business records from Freddie Mac that independently showed that Freddie Mac owned the Loan and Chase serviced the Loan (the "Freddie Mac Records"). 1 AA 127-129. The Freddie Mac Records primarily consisted of screenshots from Freddie Mac's MIDAS recordkeeping system. 1 AA 127-128. Discovery closed on May 2, 2016. 1 AA 036. SFR did not subpoena Freddie Mac for documents or testimony at any point. On June 28, 2016, Chase and SFR agreed to a stipulation to extend the dispositive motion deadline. 1 AA 130-133. Under the heading of "Discovery that Remains to be Completed," the parties listed the item "Supplement initial disclosures." 1 AA 131.

In July 2016, both Chase and SFR moved for summary judgment. 1 AA 134-190. To demonstrate that Freddie Mac owned the Loan and that Chase serviced the Loan, Chase submitted the previously disclosed Chase Records. 2 AA 195-201. The Chase Records were authenticated by a declaration from Evan L. Grageda, a Chase employee (the "Grageda Declaration"). 2 AA 203-206. Chase also submitted the previously disclosed Freddie Mac Records. 2 AA 241-248. The Freddie Mac Records were authenticated by a declaration from Dean Meyer, Director of Loss Mitigation for Freddie Mac (the "Meyer Declaration"). 2 AA 235-240. The Meyer Declaration referred to the previously disclosed Guide, among other things, to explain the relationship between Freddie Mac and its servicers. 2 AA 236-239 ¶¶ 2, 5.d, 5.h, 5.i, 5.j. SFR made various arguments in response to Chase's evidence but

did not raise any objections under N.R.C.P. 37(c)(1). Nor did SFR argue that Chase's arguments under the Federal Foreclosure Bar were precluded by 12 U.S.C. § 4617(b)(12) or any other statute of limitations.

The district court ruled in SFR's favor, holding that Chase lacked standing to raise the Federal Foreclosure Bar. 2 AA 258-267. Chase then appealed to this Court. *See JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 71337. Following this Court's decision in *Nationstar Mortgage*, the parties agreed to dismiss the appeal upon the district court's reconsideration of its order.

On remand, SFR again chose not to seek any discovery from Freddie Mac. When Chase moved to reopen discovery, 2 AA 268-274, SFR filed an opposition, 2 AA 275-286. Chase ultimately withdrew the motion. 2 AA 287-289. The parties filed cross-motions for summary judgment on April 13, 2018. 2 AA 290-314, 3 AA 524-533. Chase submitted the same copies of the Chase Records it had used in 2016. 3 AA 319-325. Chase also resubmitted the Grageda Declaration from 2016. 3 AA 327-330. For purposes of its 2018 motion, Chase obtained reprinted copies of the Freddie Mac Records. Therefore, the Freddie Mac Records attached to Chase's 2018 motion show different retrieval dates than the copies of those records attached to Chase's 2016 motion. However, the 2018 copies are substantively identical to the 2016 copies. *Compare* 2 AA 241-248 *with* 3 AA 365-370, 507-508. Chase also submitted an updated but largely identical version of the Meyer Declaration. 3 AA

359-364. There were no relevant changes to the portions of the declaration discussing the Freddie Mac Records. In addition to the Freddie Mac Records, the 2018 Meyer Declaration included relevant sections of the Guide as exhibits. 3 AA 371-506. As noted above, Chase had disclosed the Guide and provided a link to the Guide in its amended complaint filed in 2016. Finally, the Meyer Declaration included a new document: a Mortgage Payment History Report. 3 AA 510-514. The document showed that Chase was reporting payment information for the Loan to Freddie Mac at the time of the Sale. *Id.* Thus, it served as another piece of evidence that Freddie Mac owned the Loan and Chase serviced the Loan at the time of the Sale. 3 AA 363-364 ¶ 5.k.

SFR filed a counter-motion to strike various exhibits to Chase's 2018 summary judgment motion, claiming that they were not disclosed in accordance with N.R.C.P. 16.1. 4 AA 553. Notably, SFR's motion did not seek to strike the Chase Records or the Grageda Declaration. The only items that SFR moved to strike and that are potentially relevant to this appeal are the 2018 Meyer Declaration and the exhibits attached to it. As noted above, these exhibits included the previously-disclosed Freddie Mac Records, certain sections of the previously-disclosed Guide, and the Mortgage Payment History Report. 3 AA 365-514.[3]

[3] SFR also moved to strike several other documents that are not material to the 2018 summary judgment motions or the current appeal.

After full briefing and a hearing, the district Court granted SFR's motion for summary judgment, granted SFR's counter-motion to strike, and denied Chase's motion for summary judgment. 4 AA 625-630. The district court agreed with Chase that Freddie Mac owned the Loan at the time of the Sale and that the Federal Foreclosure Bar applied. 4 AA 627, ¶ 10. However, the district court agreed with SFR that Chase's "HERA claim" was time-barred under 12 U.S.C. § 4617(b)(12). 4 AA 628-629, ¶¶ B-E. The district court also granted SFR's counter-motion to strike to the extent that it was material to the parties' summary judgment motions. 4 AA 615, 629 ¶¶ G-H. Chase filed this timely appeal. 4 AA 640-642.

SUMMARY OF ARGUMENT

The district court erred in holding that Chase did not timely invoke the Federal Foreclosure Bar and in suggesting that SFR could take advantage of Nevada's bona fide purchase doctrine. Further, to the extent that SFR's counter-motion to strike was material to the parties' summary judgment motions, the district court abused its discretion by granting the counter-motion.

The district court's holding that Chase's Federal Foreclosure Bar argument was time-barred under 12 U.S.C. § 4617(b)(12) because Chase purportedly "did not raise the HERA claim" within three years of the Sale is incorrect for four primary reasons, each of which independently warrants reversal.

First, Chase *did* "raise the HERA claim" within three years. The Sale took place on March 1, 2013, and Chase moved for leave to file its amended complaint (expressly referencing the Federal Foreclosure Bar and attaching the proposed amended complaint as an exhibit) on February 2, 2016—nearly a month *before* the three-year interval closed. Notice is the touchstone of timeliness, and this Court should adopt the majority rule that the date of the motion for leave (which places the defendant on notice of the amended claims)—not the date leave is granted and the amended pleading filed (which is irrelevant to notice)—drives the limitations analysis.

Second, Chase asserted a quiet-title claim against SFR in its initial complaint, filed on November 27, 2013, less than a year after the March 1, 2013 Sale. The amended complaint invoked the Federal Foreclosure Bar as a legal theory supporting the quiet-title claim Chase asserted in its initial pleading—not as a new, free-standing claim. Thus, a proper statute-of-limitations analysis would consider only the interval between the Sale and the date of Chase's *initial* pleading asserting a quiet-title claim.

Third, even if the date leave is granted (rather than the date leave is sought) is what matters for timeliness purposes, and even if Chase's invocation of the Federal Foreclosure Bar were deemed tantamount to a new claim and therefore relevant to a statute-of-limitations analysis, that "claim" arises out of the same transaction or occurrence alleged in Chase's original pleading—the Sale and its purported effect on the Deed of Trust—and thus relates back.

Fourth, even if there were no relation back, Chase's quiet-title claim would be timely under 12 U.S.C. § 4617(b)(12), either under the six-year minimum period specified for non-tort claims, or under the tort provision's adoption of the state-law period whenever it is "longer" than three years, as it is here.

No matter what analytical route the Court follows, Chase's assertion of the Federal Foreclosure Bar cannot be deemed untimely. Accordingly, this Court should reverse the district court's limitations ruling.

To the extent the district court made any ruling on Nevada's bona fide purchaser doctrine, that doctrine cannot negate the Federal Foreclosure Bar. SFR does not qualify as a bona fide purchaser, but even if it did, the Federal Foreclosure Bar would still supersede any state-law doctrine that would negate Freddie Mac's interest.

As for the order granting SFR's counter-motion to strike the Meyer Declaration and the exhibits attached to it, the Court need not review this ruling. The Chase Records and the Grageda Declaration—which are not affected by the counter-motion—independently show that Freddie Mac owned the Loan and that Chase serviced the Loan. However, to the extent the Court believes it is necessary to consider the Meyer Declaration and its exhibits, the Court should reverse the grant of SFR's counter-motion. The district court abused its discretion when it failed to consider whether Chase's alleged violation of N.R.C.P. 16.1 was harmless and when it failed to apply the governing legal standard for case-dispositive discovery sanctions. Under any reasonable application of these standards, it was inappropriate to exclude the Meyer Declaration and its exhibits.

Given the district court's correct finding that Freddie Mac owned the Loan at the time of the Sale and that FHFA did not consent to the extinguishment of Freddie Mac's property interest, this Court should conclude that the Federal Foreclosure Bar applies and enter judgment in favor of Chase.

STANDARD OF REVIEW

An order denying summary judgment is reviewed de novo. *Physicians Ins. Co. of Wis., Inc. v. Williams*, 279 P.3d 174, 175 (Nev. 2012); *Wood v. Safeway*, 121 P.3d 1026, 1030 (Nev. 2005). A district court's decision to exclude evidence under N.R.C.P. 37(c) is reviewed for abuse of discretion. *See Young v. Johnny Ribeiro Bldg., Inc.*, 787 P.2d 777, 779 (Nev. 1990). However, "a somewhat heightened standard of review" applies to case-concluding sanctions. *Id.*

ARGUMENT

I. Chase's Federal Foreclosure Bar arguments were not time-barred.

The district court incorrectly ruled that Chase's assertion of the Federal Foreclosure Bar was time-barred. The district court reasoned that (1) "Chase did not raise the HERA claim" until March 9, 2016—a few days more than three years after the Sale—when the district court granted Chase's motion to file an amended complaint; (2) the amended complaint did not relate back to the original complaint; and (3) the three-year default limitations period that HERA specifies for tort claims applied. 4 AA 628-629 (citing 12 U.S.C. § 4617(b)(12)). Every element of that analysis is erroneous, and as a result, the judgment should be reversed.

A. Chase asserted the Federal Foreclosure Bar *within* three years of the Sale.

The simplest and narrowest reason that the district court's time-bar ruling is incorrect is that the district court incorrectly computed the interval between the Sale and Chase's assertion of the Federal Foreclosure Bar.

The record leaves no doubt that Chase expressly asserted the Federal Foreclosure Bar, and thereby put SFR and the district court on notice of the argument, when Chase filed its motion to amend the complaint on February 2, 2016—*before* three years had passed since the March 1, 2013 Sale. Although the district court did not grant that motion and thereby deem the amended complaint formally filed until a few days *after* three years had passed, a proper limitations

analysis turns on the date Chase filed the motion for leave—not the date the district court granted that motion—rendering the claim timely. Thus—even under the district court's flawed premises that invoking the Federal Foreclosure Bar amounts to offering a new claim, that relation back does not apply, and that the applicable limitations period was three years (all of which are discussed below)—Chase's assertion of the Federal Foreclosure Bar "claim" was timely.

Although Chase is not aware of any cases in which this Court has addressed the timeliness of an amended complaint in these precise circumstances, "[a] number of courts have addressed the situation where the petition for leave to amend the complaint has been filed prior to the expiration of the statute of limitations, while the entry of the court order and the filing of the amended complaint have occurred after the limitations period has expired." *Mayes v. AT&T Information Sys., Inc.*, 867 F.2d 1172, 1173 (8th Cir. 1989) (citing cases). "In such cases, the amended complaint is deemed filed within the limitations period." *Id.*; *accord Pimentel v. Cty. of Fresno*, No. 1:10-cv-01736, 2011 WL 350288, at *4 (E.D. Cal. Feb 2, 2011) ("Pursuant to California law, the filing of a motion to amend along with a proposed amended complaint tolls the statute of limitations."). That rule is sensible; "[a]s a party has no control over when a court renders its decision regarding the proposed amended complaint," it follows that the statute of limitations is properly tolled when

a motion for leave to amend is filed. *Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993).

The same notions of fairness and justice undergirding those cases apply under Nevada law. N.R.C.P. 15(a) allows amendment as of right within a certain time period and instructs courts to permit amendment "freely" where "justice so requires." Furthermore, this Court has endorsed the view that "NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." *Gardner v. Eighth Judicial Dist. Ct.*, 405 P.3d 651, 654 (Nev. 2017) (citation omitted). In fact, this Court has gone further than the federal and California cases cited above, permitting a plaintiff to amend even though it filed the relevant motion *after* the statute of limitations had run. For example, in *Tehansky v. Wilson*, the Court allowed the plaintiff to amend to correct a non-jurisdictional and inadvertent defect in the complaint "in the interest of justice." 428 P.2d 375, 375 (Nev. 1967) (quotation omitted).

Where a plaintiff moves to amend its pleading before any applicable statute of limitations has run, the plaintiff should not be barred from pursuing the amended complaint simply because the court did not decide the motion in time to avoid the statute of limitations. Where, as here, developments in the law make clear that a

plaintiff's claim is supported by an alternative legal theory, such a construction puts the plaintiff in a worse position than it would have been had it waited and filed its original complaint on the day it filed its motion to amend. That cannot be the law. Nevada's "basic underlying policy [is] to have each case decided upon its merits" unless a procedural rule clearly precludes it. *See Franklin v. Bartsas Realty, Inc.*, 598 P.2d 1147, 1149 (Nev. 1979) (citation omitted). And Nevada's "rules of civil procedure are intended to allow the court to reach the merits of claims, rather than to dispose of claims on technical niceties." *Jackson v. Groenendyke*, 369 P.3d 362, 365 (Nev. 2016) (internal quotation marks and citation omitted). As such, the Rules ought not be construed to countenance a judicial "pocket veto" of a motion to amend. To rule otherwise could foreclose a plaintiff's meritorious claims based not on its own conduct or on any factor within its control, but on the vagaries of the presiding judge's docket and schedule.

The rule the district court implicitly adopted—that the timeliness of a claim turns on the date an amended complaint is formally filed, regardless of whether the plaintiff put the defendant and the court on notice of the claim by moving for leave to amend (and attaching the proposed amended complaint) before the limitations period ran out—would distort the civil litigation process and waste judicial resources. Without the assurance that a motion to amend will toll the statute of limitations, plaintiffs will have to take drastic measures to attempt to protect their

claims if there is any possibility that the motion to amend will not be ruled on prior to the running of the limitations period. A plaintiff in such circumstances would be all but forced either to file a separate, parallel action that would have to be consolidated with the first, or to dismiss the initial case without prejudice under N.R.C.P. 41(a)(1) and re-file a *new* complaint within the limitations period.[4] The legal system was not designed to require plaintiffs to limbo under the statute of limitations though such procedural contortions; a straightforward rule that considers an amended complaint to be timely if a proper motion to amend was filed within the limitations period is more efficient, more economical, and more just.

If the Court is unwilling to adopt that approach—which the great majority of American jurisdictions follow[5]—it should instead apply the doctrine of equitable

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[4] Such extraordinary measures would not only be inefficient, they could also be ineffective, leaving the plaintiff with no practical way to assert an unquestionably timely claim. For example, if a plaintiff has already taken a dismissal, it may not voluntarily dismiss the action without prejudice by right. N.R.C.P. 41(a)(1). And where, as here, jurisdiction is *in rem*, a parallel action arguably could be jurisdictionally barred and the underlying complaint arguably could be deemed a legal nullity. A rule that could, in any circumstances, leave a plaintiff with no practical vehicle to assert an indisputably timely claim would be plainly inconsistent with fundamental fairness and substantial justice.

[5] To Chase's knowledge, the only jurisdictions to have clearly held that the date of an amended complaint's formal filing controls even where a motion for leave to amend was filed within the limitations period are Virginia and Mississippi. *See Ahari v. Morrison*, 654 S.E.2d 891, 893 (Va. 2008) ("[U]ntil the circuit court granted leaved for Ahari to amend her complaint, the statute of limitations continued to run with regard to the cause of action asserted against the new defendants."); *Wilner v.*

tolling and hold that Chase's Federal Foreclosure Bar argument was timely. "Equitable tolling operates to suspend the running of a statute of limitations when the only bar to a timely filed claim is a procedural technicality," there is no prejudice to the defendant, and "the interests of justice so require." *State Dept. of Taxation v. Masco Builder Cabinet Grp.*, 265 P.3d 666, 671 (Nev. 2011) (quotation omitted).

Each element is met here. The only basis for dismissal of Chase's claim is a procedural technicality—the district court did not rule on the motion to amend until eight days after the statute of limitations expired. There is no danger of prejudice to SFR, because SFR was made aware of the Federal Foreclosure Bar argument before the limitations period expired, and the tolling of the statute for a period of seven days—during which time Chase was merely waiting for the district court to rule—did not materially impact SFR's ability to litigate this case. Finally, the interests of justice require tolling: Chase was diligent in pursuing an amendment to incorporate the evolving legal landscape relating to HERA cases, and it did not control the

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White, 929 So.2d 315, 319 (Miss. 2006) ("The filing of a motion to amend does not toll the statute of limitations until the trial court rules on the motion.").

Despite their broad language, those decisions are readily distinguishable and probably would not control in the circumstances presented here, as each involved an amendment that purported to add new defendants to a case, not to assert a new theory or claim against an existing defendant. As a result—and unlike here—it is not at all clear that the parties against which the claims were asserted received timely notice. In any event, neither the Virginia court nor the Mississippi court grounds its analysis in any notion of substantial justice, and Nevada should not adopt their highly formalist, outlier approach.

district court's timing in ruling on the motion to amend. Accordingly, the Court should find that the three-year period, if applicable, was equitably tolled.

The fact that Chase did not make this particular argument below does not preclude this Court from ruling in Chase's favor. This Court routinely allows litigants to assert new and different theories and authority to support the basic legal positions they took in district court proceedings. *See, e.g.*, *Premier One Holdings, Inc. v. Red Rock Financial Services, LLC*, No. 73369, 2018 WL 5617923, at *2 n.2 (Oct. 29, 2018) (unpublished disposition). In that case, this Court rejected the argument that "respondents waived any nonmutual claim preclusion arguments on appeal because they did not specifically argue nonmutual claim preclusion or discuss [the governing precedent] below," in part because respondent did "generally raise the issue of claim preclusion below, and…nonmutual claim preclusion is a form of claim preclusion." *Id*. Here, likewise, Chase generally argued its claim was timely, though it did not specifically argue that the motion for leave to amend made it so.

Premier One is one of many decisions by this Court confirming that the waiver rule "is not absolute." *Archon Corp. v. Eighth Judicial Dist. Ct.*, 407 P.3d 702, 708 (Nev. 2017). Courts have the authority to make an exception to the waiver rule if, for instance, the issue presented is purely legal and does not depend on a fully developed factual record. *Bastidas v. Chappell*, 791 F.3d 1155, 1161 (9th Cir. 2015); *see also State ex rel. State Bd. of Equalization v. Barta*, 188 P.3d 1092, 1098

n.24 (Nev. 2008) (recognizing that "exceptions to the rule of waiver exist for purely legal or constitutional issues"). Because the question of whether the date of the motion for leave or the date of the amended complaint's filing controls is a purely legal question, this Court should exercise its discretion to review and decide the issue.

It is also "well established" that this Court has the discretion to "consider relevant issues *sua sponte* in order to prevent plain error." *Bradley v. Romeo*, 716 P.2d 227, 228 (Nev. 1986). That discretion is appropriately exercised in cases such as this one, where allowing the district court's judgment to stand "would be plain error," *W. Indus., Inc. v. General Ins. Co.*, 533 P.2d 473, 478 (Nev. 1975), and where the party's substantial rights would otherwise be adversely affected, *see Thomas v. Hardwick*, 231 P.3d 1111, 1112 (Nev. 2010). The district court's error here is plain: the timeliness of Chase's Federal Foreclosure Bar argument turns on the date it filed its motion to amend and proposed amended complaint, not the date on which the amended complaint became operative by court order. That error substantially impacts Chase's rights because it deprives Chase of dispositive legal arguments that were timely asserted.

B. Because the Federal Foreclosure Bar is a legal theory, not a claim, Chase's amended pleading is not relevant to a statute of limitations analysis.

The district court considered Chase's HERA argument under an incorrect premise, labeling the argument a "HERA claim," when in fact Chase asserted HERA as a *legal theory* supporting its existing quiet-title claim. Claims are subject to limitations periods; legal theories are not. *See Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578 (1995) ("'Notice pleading' requires plaintiffs to set forth the facts which support a legal theory, but does not require the legal theory relied upon to be correctly identified.").

In fact, this Court has rejected an argument that invoking the Federal Foreclosure Bar as a defense was equivalent to asserting a standalone claim; in *Nationstar Mortgage*, where the issue was whether a servicer had standing to raise a perceived violation of a federal law (HERA), the Court concluded that Nationstar was "not attempting to use the Supremacy Clause to assert an action against SFR," but rather "Nationstar ha[d] merely argued that Freddie Mac's property is not subject to foreclosure while it is in conservatorship under federal law." 396 P.3d at 757. Because SFR's quiet title claim was properly before the court, there was no question that the court could evaluate the merits of the argument that the Federal Foreclosure Bar provided the rule of decision. *Id*. The same is true for Chase's assertion of the Federal Foreclosure Bar as a legal theory here.

It is undisputed that Chase timely pleaded a quiet-title claim in its initial complaint, filed less than a year after the Sale. There is also no question that quiet title is a proper cause of action under Nevada law. *See Chapman v. Deutsche Bank Nat'l Trust. Co.*, 302 P.3d 1103, 1105-07 (Nev. 2013). Chase is entitled to assert any legal theory to support that claim in later briefing or at trial. Because Chase's quiet-title claim was properly before the district court, the district court could evaluate the merits of Chase's argument that the Federal Foreclosure Bar provided the rule of decision in deciding that claim. *Id.* Chase cannot be time-barred from asserting any legal theory, including the Federal Foreclosure Bar, in support of its claim.

C. Chase's arguments under the Federal Foreclosure Bar relate back to its initial complaint.

Chase's invocation of the Federal Foreclosure Bar would be timely even if it had been asserted as a new claim, or is deemed to constitute one, because the amendment would relate back to the original, timely filed complaint.

"Whenever the claim or defense asserted in the amended pleading [arises] 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." N.R.C.P. 15(c) (2018). In determining whether an amendment "relates back" to a party's original pleadings, the Nevada Supreme Court considers whether those initial pleadings provided "fair notice of the fact situation" that gave rise to the amendment.

Nelson v. City of Las Vegas, 665 P.2d 1141, 1146 (Nev. 1983). Stated differently, 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…" *Id*. (emphasis added). Finally, "NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the amended party will be put to no disadvantage." *Costello v. Casler*, 254 P.3d 631, 634 (Nev. 2011).

Chase's initial complaint asserted a claim for quiet title. 1 AA 006. 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 Sale—and asks the court to answer the same question: whether the Sale extinguished the Deed of Trust. Thus, Chase's original pleadings put SFR on notice of Chase's claim that the Deed of Trust survived the Sale. The amendment relates back.

This Court's recent decision in *Jackson* is instructive. 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.'" 369 P.3d at 365 (quoting *Costello*, 254 P.3d at 634). 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. Because Chase is not asserting a new claim but rather a new *basis* for its original quiet-title claim, its invocation of the Federal Foreclosure Bar necessarily arises out of the same facts as the original action—a determination of the effect of the Sale on the Deed of Trust.

Nor does it matter that the amendment invoked a statute that applies to Chase's claim by virtue of Chase's status as the contractual representative of Freddie Mac, the party whose interests the Federal Foreclosure Bar protects. Even assuming that fact is relevant, and that Chase's assertion of the Federal Foreclosure Bar is the procedural equivalent of amending to add a party asserting the same underlying claim,[6] such amendments are still governed by the "same transaction or occurrence test" and are routinely granted. *Costello*, 254 P.3d at 636 ("[W]hen…a plaintiff timely files a complaint that names a deceased defendant instead of the decedent's estate, the decedent's insurer had notice and knowledge of the action within the statute of limitations, and there is no resulting prejudice to the decedent's estate, an amended complaint naming the estate will relate back to the date of the original pleading.").

[6] To be clear, this Court has squarely and correctly held that neither Freddie Mac nor FHFA must be a party to claims in which the Federal Foreclosure Bar is asserted. *Nationstar Mortgage*, 396 P.3d at 758.

D. Chase's claim is timely under HERA's six-year period for non-tort claims or the state-law period HERA's tort provision would adopt.

The district court erred in concluding that Chase's "HERA claim" was untimely under HERA's three-year limitations period for tort claims. Chase's claim is instead subject to HERA's six-year limitations period for contract-based actions. Even if this Court concludes that Chase's claims sound in tort they are still timely; HERA requires that the Court apply the *longer* of the three-year period or the state-law period. The applicable state-law period is the five-year limitation period for quiet-title claims provided under NRS 11.070 or 11.080, or the four-year "catch-all" period under NRS 11.220. As Chase filed its original complaint and the amended complaint well within the four-year period, its assertion of the Federal Foreclosure Bar is timely.

1. HERA's six-year limitations period for non-tort claims governs.

The district court held that HERA's three-year statute of limitations provision applies to Chase's claims. *See* 12 U.S.C. § 4617(b)(12). That is wrong. The district court's flawed conclusion ignored the plain text of the statute, which confirms that HERA's *six-year* limitations period is applicable here. Section 4617(b) discusses the powers and duties of FHFA when acting as conservator or receiver, and Section 4617(b)(12)(A) provides a limitations 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).

Two interpretive questions arise. The first is whether HERA's statute of limitations applies where a servicer, rather than FHFA itself, asserts the Federal Foreclosure Bar. The second is whether Chase's quiet-title claim is properly categorized as a "contract" or a "tort" claim for the purposes of 2 U.S.C. § 4617(b)(12)(A).

a. FHFA need not be a party to a case for HERA's statute of limitations to apply.

Neither Chase nor SFR has appealed the district court's conclusion that HERA's limitations provision applies even though FHFA is not a party to the case, but to the extent SFR may change course and dispute the point now, the district court was correct that FHFA need not be a party. 4 AA 628. While HERA's limitations provision refers to actions "brought by the Agency as conservator," 12 U.S.C. § 4617(b)(12), courts routinely apply the substantively identical statute applicable to FDIC receiverships to claims in which some other party—typically an assignee—

asserts a statutory protection that attached to property of the conservatorship or receivership.

In the leading case, the Fifth Circuit held that "assignees of the FDIC…are entitled to the same six year period of limitations as the FDIC [receiver]" under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. *FDIC v. Bledsoe*, 989 F.2d 805, 811 (5th Cir. 1993); *see also Nat'l Enters., Inc. v. Barnes*, 201 F.3d 331 (4th Cir. 2000) (citing *Bledsoe*); *Remington Invs., Inc. v. Kadenacy*, 930 F. Supp. 446, 450 (C.D. Cal. 1996) (same). After carefully analyzing one of the few contrary decisions, the Ninth Circuit adopted the *Bledsoe* rule. *U.S. v. Thornburg*, 82 F.3d 886, 891 (9th Cir. 1996) (adopting *Bledsoe* and declining to follow *Wamco, III, Ltd. v. First Piedmont Mortg. Corp.*, 856 F. Supp. 1076 (E.D. Va. 1994)).

Bledsoe specifically rejects the position that the "plain statutory language" prohibits parties other than the conservator or receiver from invoking the limitations provision. 989 F.2d at 809. And in adopting the *Bledsoe* rule in *Thornburg*, the Ninth Circuit notes that *Wamco*—the contrary case the Ninth Circuit rejected—purports to rely on the FDIC statute's "plain terms." 82 F.3d at 891 (quoting *Wamco*, 856 F. Supp. at 1086). Other cases adopting the *Bledsoe* rule have similarly considered and rejected the "plain language" analysis. *E.g.*, *Remington Invs.*, 930 F. Supp. at 450 (rejecting argument that "plain language of the statute" limits provision

to claims brought by FDIC); *Inv. Co. v. Reese*, 875 P.2d 1086 (N.M. 1994) (rejecting "plain language" argument that because statute "refers only to the FDIC in its capacity as conservator or receiver…[and] makes no mention of any subsequent holders, assigns, transferees, private parties or anyone else," only FDIC is entitled to invoke provision); *Tivoli Ventures, Inc. v. Baumann*, 870 P.2d 1244, 1248-49 (Colo. 1994) (rejecting argument that "the plain language of the federal statute clearly limits the statute to actions brought by the [FDIC] and does not extend to private [parties].").

Thus, even where protected property has been *assigned out* of a conservatorship or receivership, any party that is entitled to assert statutory protections that attached while the property was *still in* the conservatorship or receivership is *also* entitled to the benefit of the limitations provision—regardless of whether the conservator or receiver joins that action as a party. The decisions typically speak in terms of the relationship between the assignee and the assignor, often stating that the assignee "stands in the shoes" of the assignor. *E.g.*, *Bledsoe*, 989 F.2d at 810. But the same concept is equally apt when expressed in terms of the right attaching to the protected property, *i.e.*, "running with the land." *See East Lake Towers Corporate Center L.P. v. Scott Paper Co.*, 347 F. Supp. 2d 629, 633 (E.D. Wisc. 2004) (right that "automatically transfers to the purchaser" is one that "runs with the land").

This case is even stronger than assignment-based decisions; here, unlike in those cases, the protected property—Freddie Mac's Deed of Trust—remains *in the conservatorship*. *See Thornburg*, 82 F.3d at 891 (fact that protected entity maintains at least some interest in protected property "presents an even more compelling" case than where entirety of protected entity's interest has been assigned, as in *Bledsoe*). And as with the FDIC limitations provision, recognizing that HERA's statute of limitations-extender provision attaches to property protected by the Federal Foreclosure Bar "facilitate[s] Congress' policy of protecting failed institutions' assets." *See Bledsoe*, 989 F.2d at 811.

Indeed, restricting HERA's limitations provision to claims brought directly by the Conservator would "serve only to shrink the private market for the assets of [the entities in conservatorship, and] would require [FHFA] to hold onto and prosecute all [claims] for which the state statute of limitations has expired because [the underlying] obligations would be worthless to anyone else." *Id.*; *see also Interim Capital LLC v. Herr Law Grp., Ltd.*, No. 2:09-cv-01606-KJD-LRL, 2011 WL 7047062 at *10 (D. Nev. Oct. 21, 2011) (similarly analyzing and applying *Bledsoe*'s reasoning). That undesirable outcome would burden FHFA and undermine Congress's goals in creating FHFA—"foster[ing] liquid, efficient, competitive, and resilient national housing finance markets." *See* 12 U.S.C. § 4617(b)(2)(B)(iv).

At bottom, there is no sound legal or policy rationale to require the Conservator to participate directly in every case when other parties have ample standing to invoke the Federal Foreclosure Bar, as Freddie Mac and Chase unquestionably do here. Indeed, this Court has definitively held that "the servicer of a loan owned by [Freddie Mac]" may raise the Federal Foreclosure Bar, and that "neither Freddie Mac nor the FHFA need be joined as a party." *Nationstar Mortgage*, 396 P.3d at 758.

b. Chase's quiet-title claim is properly considered a contract claim under HERA's statute of limitations.

HERA's statute of limitations provision expressly acknowledges only two categories of claims—contract claims and tort claims. The Second Circuit, citing Section 4617(b)(12)'s broad language, has nevertheless 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 to which the provision applies 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]

[7] Chase is not aware of any 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).

Chase's quiet-title claim fits more naturally into HERA's contract category because it seeks to validate a contractually created interest in the Property. The mortgage lien here "is an interest in property created by contract," which secures the grantor's contractual obligation to repay the amount owed. *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir. 1995). Although Chase's action to protect the Deed of Trust is not one to enforce the contract directly, it arises from the same contractual relationship and obligations. Indeed, the claim is grounded in the contractual relationship between the borrower and the lender when creating the Loan.

By contrast, Chase's quiet-title claim bears no significant similarity to any tort-based claim, including a claim for wrongful foreclosure. Those two claims involve different elements, different parties, and different remedies. Regarding elements, "[t]o prevail on a wrongful foreclosure tort claim, a plaintiff must prove that *the foreclosing party did not have a legal right to foreclose on the property*." *Hines v. Nat'l Default Servicing Corp.*, No. 62128, 2015 Nev. Unpub. LEXIS 973, at *5 (July 31, 2015) (emphasis added). The Federal Foreclosure Bar does not affect the HOA's "legal right to foreclose on the property"—it prescribes the effect a proper foreclosure can have on certain interests in the property—and Chase therefore does not argue and need not prove that the HOA "did not have a legal right to foreclose." As to parties, a wrongful foreclosure claim necessarily involves the foreclosing party—here, the HOA—but the quiet-title claim here is pleaded against

the title-holder, not the foreclosing HOA. And as to remedy, a wrongful foreclosure claim may support monetary relief, *see* 59 C.J.S. Mortgages § 650, while a quiet-title claim seeks only a declaration of superior title to a property interest, *see McKnight Family, LLP v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013). As Chase's quiet-title claim lacks any material similarity to a wrongful-foreclosure claim, the claim cannot plausibly be characterized as more tort-like than contract-like.

But even assuming Chase's quiet-title claim could plausibly fall into *either* the tort or the contract category, the contract provision would govern. This Court must look to *federal* policy—because HERA is a *federal* statute—to determine which limitations period applies. *See Vincent Murphy Chevrolet Co., Inc. v. U.S.*, 766 F.2d 449, 451 (10th Cir. 1985) ("Title 28 U.S.C. § 2409a, because it is a federal statute, must be interpreted in accordance with principles of federal law, and while federal courts may properly look to state law as an aid in…[their interpretation of federal statutes], such state law should be compatible with the purpose of the legislation so as to find the rule that will best effectuate federal policy.") (alterations and citations omitted); *cf. Kenaitze Indian Tribe v. Alaska*, 860 F.2d 312, 316 (9th Cir. 1988) (rejecting argument that deference was owed to state interpretation of federal statute).

As the Ninth Circuit has explained, "[w]hen choosing between multiple potentially-applicable statutes, as a matter of federal policy the longer statute of

limitations should apply." *Wise v. Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 n.2 (9th Cir. 2010) (noting that federal policy should determine which state statute of limitations applied to an ERISA benefits claim); *accord FDIC v. Former Officers & Directors of Metro. Bank*, 884 F.2d 1304, 1307 (9th Cir. 1989) (where there is a "'substantial question' which of two conflicting statutes of limitation to apply, the court should apply the longer") (citation omitted). Hence, even if the Court perceived some uncertainty as to whether Chase's quiet-title claim falls more neatly into the tort or the contract clause of HERA's limitations provision, federal policy would direct the Court to apply the contract clause.

Therefore, the six-year statute of limitations for contract claims under Section 4617(b)(12)(A) applies to Chase's quiet-title claim. Since the Sale took place in March 2013, and Chase filed its quiet-title claim in November 2013, Chase's claim is timely.[8]

2. Alternatively, the claim is timely under HERA's "tort" provision, which adopts the otherwise-applicable state-law period.

Even if HERA's "tort" provision is assumed to govern, it adopts "the longer of" the three-year period or the relevant period under state law. 12 U.S.C. § 4617(b)(12)(A)(ii). Here, state law specifies a five-year period, and there is no

[8] Chase's claim is still timely even if the period is calculated from the date of Case's amended complaint, which was filed on March 9, 2016.

credible argument for any period shorter than four years. Accordingly, Chase's claim is timely under Section 4617(b)(12)(A).

a. Nevada's five-year statute of limitations applies to Chase's quiet title claim.

Chase's quiet-title claim is timely under either NRS 11.070 or 11.080. Specifically, NRS 11.070 provides a five-year limitations period for quiet-title claims to allow "anyone with an interest in the property to sue to determine adverse claims," "even if that person does not have title to or possession of the property." *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, NRS 11.070 applies to claims (1) "*founded upon the title* to real property," where (2) "*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" within five years before the challenged action. NRS 11.070 (emphases added).

Chase's claim readily satisfies each of the two statutory requirements. *First*, the claim is "founded upon…title" to the property. After all, the claim is denominated quiet *title*, reflecting the substance of the dispute: whether the Sale conferred clear *title* to SFR, or whether Freddie Mac's deed of trust continued to encumber SFR's *title*. Courts routinely apply NRS 11.070 to quiet-title claims brought by lienholders seeking to confirm the validity of security interests, as Chase

did 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).[9]

Second, the "grantor" here is the former homeowner/borrower—a person who was unquestionably "seized or possessed of the premises" at the time of the 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 loan). There is no dispute here that the borrower on the note and grantor of the deed of trust had possession of the Property up until the Sale in March 2013, less than five years before Chase filed its complaint in November 2013.[10] Thus, NRS 11.070 applies to Chase's quiet-title claim here.

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[9] *See also 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); *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). Some courts have incorrectly held otherwise, concluding that such claims were not "founded upon title." *See, e.g.*, *Nationstar Mortg. LLC v. Keynote Props., Inc.*, No. 2:18-cv-0762, 2019 WL 266288 (D. Nev. Jan. 18, 2019) (rejecting argument that quiet-title claim is subject to NRS 11.070 or 11.080).

[10] Even considering March 9, 2016 as the relevant date, Chase's claim is timely.

Indeed, Nevada's lower courts and federal courts have applied NRS 11.070 to claims involving disputes over the continuing existence of a lien, the same issue in dispute here. *See, e.g.*, *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016); *Raymer v. U.S. Bank N.A.*, No. 16-A-739731-C, 2016 WL 10651933, at *2 (Nev. Dist. Ct. Dec. 28, 2016).

Chase's claim is also timely under NRS 11.080's five-year statute of limitations, which states:

> 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 thereof.

NRS 11.080's broad statutory language demonstrates that its scope includes various types of property-dispute claims, including lien disputes.

Indeed, this Court cited NRS 11.080 in a case involving a dispute between a lienholder and a purchaser at an HOA foreclosure, 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. *E.g.*, *Scott v. MERS, Inc.*, 605 F. App'x 598, 600 (9th Cir. 2015). Such decisions adopt a broad interpretation of NRS 11.080 to cover quiet-title claims, such as Chase's claim, which seeks to confirm the survival of a deed of trust after an HOA foreclosure.

Thus, even if this Court were to conclude that Chase's quiet-title cause of action was a tort claim for the purposes of HERA—or indeed, if the Court were to conclude that the HERA statute of limitations did not apply at all—Chase's claim would be timely under the five-year state-law period under NRS 11.070 or 11.080.

b. In no event could the applicable limitations period be less than four years.

Even assuming for argument's sake that HERA's "tort" provision governs and that Nevada's quiet-title limitations periods do not apply, Nevada's four-year "catch-all" limitations period would still render Chase's claim timely. NRS 11.220 provides that "[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued." The statute thus sets a minimum statute of limitations "for all actions otherwise unprovided for." *Alper v. Clark Cty.*, 571 P.2d 810, 813 (Nev. 1977). Courts have held that quiet-title claims substantially similar to those raised by Chase were subject to this four-year provision in circumstances in which the servicer or Enterprise did not argue that HERA's provision applied, and the court erroneously determined that those claims were not subject to Nevada's five-year limitations provisions. *See, e.g., Ocwen Loan Serv'g, LLC v. SFR Invs. Pool 1, LLC*, No. 2:17-cv-01757-JAD-VCF, 2018 WL 2292807, at *4-5 (D. Nev. May 18, 2018); Order, *Fannie Mae v. Ayres*, No. 2:17-cv-01799-JAD-CWH, ECF No. 26, at *5-6 (D. Nev. Jun. 4, 2018).

No plausible argument supports a limitations period shorter than four years, and therefore under any potentially applicable rule, Chase's assertion of the Federal Foreclosure Bar was timely.

II. SFR cannot rely on Nevada's bona fide purchaser statutes to avoid Freddie Mac's federally protected Deed of Trust.

A. SFR is not a bona fide purchaser under Nevada law.

The district court's decision includes a cursory statement suggesting that SFR may have been protected by Nevada's bona fide purchaser doctrine. That is not correct. SFR does not qualify as a bona fide purchaser, but even if it did, the Federal Foreclosure Bar would preempt any state-law protection that would otherwise result.

Because SFR had actual or constructive notice that an Enterprise held an interest in the Deed of Trust, it cannot be a bona fide purchaser. SFR acknowledges that the Deed of Trust and its assignments were recorded at the time of the Sale. 4 AA 555-556. The recorded instruments put SFR on notice of a potentially adverse Enterprise interest. The Deed of Trust stated that the note "can be sold one or more times without prior notice to Borrower." 3 AA 342. And the face of the Deed of Trust identifies it as a "**NEVADA**--Single Family--Fannie Mae/Freddie Mac **UNIFORM INSTRUMENT WITH MERS**," indicating that an Enterprise might have an interest in the instrument. 3 AA 332 (emphasis original). Absent any countervailing evidence, where the deed of trust is recorded and indicates it is an Enterprise "uniform instrument," there can be no "genuine dispute" that the bona

fide purchaser statutes do not defeat the application of the Federal Foreclosure Bar. *See SFR Invs. Pool 1, LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *2 n.3.

Furthermore, to clarify whether the Deed of Trust was owned by an Enterprise, SFR could have reached out to FHFA, whose role as the Enterprises' Conservator was well-known. Indeed, HOA sale purchasers are now routinely asking FHFA whether a given property to be foreclosed on is encumbered by an Enterprise lien, and have received timely and complete answers to their inquiries. SFR, by contrast, did nothing.

B. Nevada's bona fide purchaser doctrine cannot supersede the Federal Foreclosure Bar.

Even if SFR qualified as a bona fide purchaser under Nevada law, the Federal Foreclosure Bar would preempt the Nevada statutes to the extent they would otherwise allow SFR to take title to the Property free-and-clear of Freddie Mac's deed of trust.

As this Court recently recognized, "authority suggest[s] that the Federal Foreclosure Bar would preempt Nevada's law on bona fide purchasers." *Nationstar Mortg., LLC v. Guberland LLC-Series 3*, No. 70546, 2018 WL 3025919, at *2 n.3 (Nev. June 15, 2018) (unpublished disposition) (citing *In re Montierth*, 354 P.3d 648 (Nev. 2015)). Federal courts have since concluded that the Federal Foreclosure Bar preempts Nevada's bona fide purchaser statutes under these circumstances. *See,*

e.g., *Nev. Sandcastles, LLC v. Nationstar Mortg., LLC*, No. 2:16-cv-1146-MMD-NJK, 2019 WL 427327, at *3 (D. Nev. Feb. 4, 2019); *U.S. Bank Home Mortg. v. Jensen*, No. 3:17-cv-0603-MMD-VPC, 2018 WL 3078753, at *2 (D. Nev. June 20, 2018) ("the Federal Foreclosure Bar preempts Nevada's bona fide purchaser statute").

The reasoning behind these decisions is compelling: Because the Federal Foreclosure Bar protects Freddie Mac's property interest regardless of whether Freddie Mac's name appears in any recorded documents, "[a]llowing Nevada's law on bona fide purchasers to control in this case would be 'an obstacle to Congress's clear and manifest goal of protecting the Agency's assets in the face of multiple potential threats, including threats arising from state foreclosure law.'" *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451-APG-PAL, 2018 WL 2023123, at *3 (D. Nev. May 1, 2018) (quoting *Berezovsky*, 869 F.3d at 931).

III. To the extent SFR's counter-motion to strike is material to the parties' motions for summary judgment, the Court should reverse the order granting the counter-motion.

For purposes of this appeal, the Court does not need to address whether the district court erred by granting SFR's counter-motion to strike the Meyer Declaration and its exhibits. As explained below, the Chase Records and the Grageda Declaration—which are not affected by the counter-motion—independently prove that Freddie Mac owned the Loan and that Chase serviced the

Loan. However, to the extent the Court believes it is necessary to consider the Meyer Declaration and its exhibits, the Court should reverse the grant of SFR's counter-motion. The district court abused its discretion when it failed to consider whether Chase's alleged violation of N.R.C.P. 16.1 was harmless and when it failed to apply the governing legal standard for case-dispositive discovery sanctions. Under any reasonable application of these standards, it was inappropriate to exclude the Meyer Declaration and its exhibits.

A. SFR's counter-motion is immaterial because the Chase Records and the Grageda Declaration independently prove that Freddie Mac owned the Loan.

Although SFR asked the district court to strike the Meyer Declaration and the attached exhibits, it did *not* ask the court to strike the Chase Records or the Grageda Declaration. The latter materials are sufficient by themselves to support summary judgment in favor of Chase. In his declaration, Grageda states that he is a Legal Specialist III for Chase and is therefore qualified to testify about Chase's recordkeeping systems and databases. 3 AA 328, ¶¶ 1-2. He also authenticates the Chase Records and confirms they are business records exempt from the hearsay rule. 3 AA 328-329, ¶¶ 3, 5(c)-(d); *see also* NRS 51.135. In turn, the document "Loan Transfer History" contained in the Chase Records shows that Freddie Mac acquired ownership of the Loan on or about October 1, 2006 and continued owning the Loan through the time of the Sale on March 1, 2013. 3 AA 320, 329 ¶ 5(c). The document

"MAS1/AQN1" contained within the Chase Records shows that Washington Mutual Bank, FA—Chase's predecessor in interest—began servicing the Loan on or about September 1, 2006 and that Chase continued servicing the loan through the time of the Sale. 3 AA 322-325, 329 ¶ 5(d).

Thus, Chase can establish that Freddie Mac owned the Loan and that Chase serviced the Loan through the Grageda Declaration and Chase Records. The district court implicitly recognized this by holding that Freddie Mac owned the Loan, 4 AA 627 ¶ 10, notwithstanding the fact that it granted SFR's counter-motion to strike the Meyer Declaration and its exhibits. Therefore, Chase is entitled to summary judgment without the need for this Court to review the district court's decision on the counter-motion.

B. To the extent the Meyer Declaration and its exhibits are necessary to show that Freddie Mac owned the Loan, the district court abused its discretion by excluding them.

To the extent the Court believes the Meyer Declaration and its exhibits are necessary to prove Freddie Mac's ownership of the Loan, the Court should reverse the order granting the counter-motion. The district court abused its discretion when it failed to consider whether Chase's alleged violation of N.R.C.P. 16.1 was harmless and when it failed to apply the elevated legal standard for case-dispositive discovery sanctions. Under a proper application of N.R.C.P. 37, the district court could not exclude the Meyer Declaration and its exhibits.

1. N.R.C.P 37(c)(1) strictly limits case-dispositive sanctions and precludes sanctions where the alleged non-disclosure is substantially justified or harmless.

A party must provide "[a] copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b)[.]" N.R.C.P. 16.1(a)(1)(B) (2018). The parties must provide these disclosures after their early case conference and must supplement them "at appropriate intervals[.]" N.R.C.P. 26(e)(1) (2018).

"If a party fails to make a disclosure required by Rule 16.1(a) or 16.2(a), any other party may move to compel disclosure and for appropriate sanctions." N.R.C.P. 37(a)(2)(A) (2018). "The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." *Id.* Rule 37(c)(1) identifies the remedies a court may impose for a party's failure to disclose:

> 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. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions…

N.R.C.P. 37(c)(1) (2018) (emphasis added). Thus, a district court may not exclude evidence—or impose any other sanction—if the failure to disclose was substantially

justified or harmless. "Limiting the automatic sanction to violations 'without substantial justification,' coupled with the exception for violations that are 'harmless,' is needed to avoid unduly harsh penalties in a variety of situations: e.g., the inadvertent omission from a Rule 26(a)(1)(A) disclosure of the name of a potential witness known to all parties[.]" Fed. R. Civ. P. 37, 1993 Adv. Cmte. Note to subdivision (c). To determine whether a failure to disclose is substantially justified or harmless, courts consider such factors as the importance of the evidence, whether the party against whom it is offered is prejudiced or surprised, that party's ability to discover the evidence, whether the non-disclosure was willful or in bad faith, and whether exclusion of the evidence would disrupt trial. *See Lanard Toys Ltd. v. Novelty, Inc.*, 375 Fed. App'x 705, 713 (9th Cir. 2010); *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 597 (4th Cir. 2003); *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003).

Case-concluding sanctions under N.R.C.P. 37 "should be used only in extreme situations." *Nev. Power Co. v. Fluor Ill.*, 837 P.2d 1354, 1359 (Nev. 1992). Generally, these sanctions "must be supported by an express, careful and preferably written explanation of the court's analysis of certain pertinent factors that guide the district court in determining appropriate sanctions." *Blanco v. Blanco*, 311 P.3d 1170, 1174 (Nev. 2013) (internal quotation marks omitted). Nevada courts consider several factors when deciding whether to impose case-dispositive sanctions:

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Young, 787 P.2d at 780 (citations omitted). As explained below, neither SFR nor the district court engaged in any such analysis here.

2. SFR did not certify that it met and conferred with Chase before filing its counter-motion.

As an initial matter, the district court erred in granting SFR's counter-motion to strike because SFR did not certify that it had met and conferred with Chase before filing the counter-motion. *See* N.R.C.P. 37(a)(2)(A) (2018) ("The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action."). For this reason alone, the Court should reverse the order granting the counter-motion.

3. Any violation of N.R.C.P. 16.1 was harmless.

The district court did not appear to consider whether Chase's allegedly late disclosure was harmless. The court apparently believed that any document disclosed in violation of N.R.C.P. 16.1 automatically had to be excluded. This failure to apply

the governing legal standard is reason by itself to reverse the district court's judgment.

In any event, Chase's alleged violation of N.R.C.P. 16.1 was indeed harmless. Chase has asserted that Freddie Mac owns the Loan and has invoked the Federal Foreclosure Bar since at least February 2, 2016, when Chase moved for leave to amend its complaint. 1 AA 049-068. The amended complaint specifically referred to the Guide—one of the challenged exhibits to the Meyer Declaration—and provided a link to an online version of the Guide. 1 AA 060 ¶ 13. During subsequent discovery in 2016, Chase reiterated that Freddie Mac owned the loan through the testimony of Chase's N.R.C.P. 30(b)(6) witness and through written discovery responses. 1 AA 094-101, 109. On May 2, 2016, Chase disclosed Freddie Mac's corporate representative, the Freddie Mac Records, and the Chase Records (which are not in dispute). 1 AA 122-129. On June 28, 2016, Chase and SFR stipulated to extend the dispositive motion deadline and noted a need to supplement initial disclosures. 1 AA 131. When the parties filed their original summary judgment motions in July 2016, Chase attached copies of the Meyer Declaration and the Freddie Mac Records that are materially identical to the copies of those documents SFR is now challenging. 2 AA 241-248. By the time the first appeal was dismissed and the case was remanded, the Meyer Declaration, the Freddie Mac Records, and the Guide had been disclosed for roughly two years. The only document that is

arguably material and that Chase did not disclose before the prior appeal was the Mortgage Payment History Report. However, the Court need not consider this document to enter summary judgment for Chase because the Meyer Declaration, the Freddie Mac Records, and the Guide are sufficient for that purpose. Further, any violation of N.R.C.P 16.1 involving the Mortgage Payment History Report was also harmless for the reasons explained above.

To summarize, SFR has known for more than three years that Chase is relying on the Federal Foreclosure Bar and that Freddie Mac's ownership of the Loan is a central issue. SFR sought and obtained discovery from Chase related to these issues. But for whatever reason, SFR declined to subpoena documents or deposition testimony directly from Freddie Mac. There is little reason to think that SFR would have behaved differently if Chase had disclosed the Meyer Declaration and Freddie Mac Records in early 2016 rather than mid-2016. Even if this delay in disclosing a subset of relevant documents was a violation of N.R.C.P. 16.1, any such violation was harmless. *See Capanna v. Orth*, 432 P.3d 726, 733-34 (Nev. 2018) (affirming denial of defendant's Rule 37(c)(1) motion to exclude evidence of future damages where defendant knew that plaintiff was seeking such damages and where defendant was able to challenge them); *Firefly Partners, LLC v. Reimann*, No. 69116, 2017 Nev. Unpub. LEXIS 962 (Oct. 30, 2017) (unpublished disposition) (where defendant "had notice of the future damages claimed by [plaintiff] and their amount before the

close of discovery," district court properly denied N.R.C.P. 37(c)(1) motion to strike evidence of such damages).

Notably, SFR has extensive experience litigating the Federal Foreclosure Bar—experience which dates back to before the 2016 summary judgment briefing in this case. *See, e.g., Fed. Hous. Fin. Agency v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-01338-GMN-CWH, 2016 U.S. Dist. LEXIS 59309, at *19-22 (D. Nev. Apr. 30, 2016) (entering summary judgment pursuant to Federal Foreclosure Bar); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-cv-02046-JAD-PAL, 2015 U.S. Dist. LEXIS 133254, at *6-10 (D. Nev. Sep. 28, 2015) (citing Federal Foreclosure Bar in denying motion to dismiss by SFR). Freddie Mac and its servicers have routinely utilized Freddie Mac's business records in litigation against SFR for several years. SFR cannot claim to be surprised that such information exists and is being used here. Further, any "surprise" that SFR may have felt at the disclosure of the relevant information in 2016 has clearly dissipated in the intervening years.

4. Any violation of N.R.C.P. 16.1 clearly did not rise to a level that justified case-dispositive sanctions.

Even if Chase's alleged violation of N.R.C.P. 16.1 was not harmless, the district court still abused its discretion. As explained above, Chase argues that the Chase Records and the Grageda Declaration are independently sufficient to support summary judgment for Chase. But if, *arguendo*, the Meyer Declaration and its attachments are needed to prove Freddie Mac's ownership of the Loan, the district

court's order striking these materials was necessarily a case-dispositive sanction. Therefore, the district court was required to consider the *Young* factors before it entered this sanction. The district court abused its discretion by failing to do so. Had the district court properly applied the *Young* factors, it would not have found that this case presents the "extreme" situation that justifies case-concluding sanctions. *See Nev. Power Co.*, 837 P.2d at 1359.

SFR has not shown that Chase willfully withheld evidence—indeed, Chase disclosed the Chase Records and Freddie Mac Records while discovery was still open. Chase later signaled its willingness to reopen discovery; however, SFR actively opposed the idea. Further, SFR would not be prejudiced by the imposition of a lesser sanction. For example, in lieu of striking the Meyer Declaration and its exhibits, the Court could simply permit SFR to take further discovery about Freddie Mac's interest in the Loan and the Property. This would allow SFR to fully explore the challenged documents, assuming that SFR is actually interested in doing so. Further, the severity of the district court's sanction is disproportionate to Chase's alleged violation of N.R.C.P. 16.1. Chase disclosed the Meyer Declaration, the Freddie Mac Records, and the Guide between February and July of 2016. Even if Chase was required to disclose all of this evidence in February 2016, when Chase first moved to amend its complaint, this does not support a sanction that

singlehandedly changes the outcome of the case. Finally, the district court's order hinders Nevada's policy favoring adjudication on the merits.

As the Nevada federal district court explained when denying a very similar motion to strike filed by SFR, "having to litigate the case on the merits is not prejudice." *Capital One, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-01324-KJD-PAL, 2018 U.S. Dist. LEXIS 168658, at *4 (D. Nev. Sep. 28, 2018). The court in *Capital One* noted that the only "prejudice" SFR might suffer would be the inability to conduct additional discovery into the allegedly late-disclosed items. *See id.* The court also noted there had been extensive delays due to a litigation stay—in the same way there have been lengthy delays in this case due to the successive appeals. *See id.* In light of these facts, the court in *Capital One* denied SFR's request to strike the relevant documents while also giving the parties the option of submitting a motion or stipulation to reopen discovery. *See id.* at *4-5. Here, as in *Capital One*, SFR is trying to win the case on a technicality because it cannot win on the merits.

Therefore, to the extent that SFR's counter-motion to strike is material to the district court's summary judgment ruling, the Court should reverse the order granting the counter-motion.

IV. The district court should have entered summary judgment for Chase.

In cases presenting identical fact patterns, this Court, the Ninth Circuit, and dozens of state and federal trial courts in Nevada have held that an HOA foreclosure

sale cannot extinguish the Enterprises' property interests while they are in conservatorship. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363, 367-68 (Nev. 2018); *A&I LLC Series 3 v. Fannie Mae*, No. 71124, 2018 WL 3387787, at *1 (Nev. July 10, 2018) (unpublished disposition); *FHFA v. SFR*, 893 F.3d 1136, 1152 (9th Cir. 2018); *Berezovsky*, 869 F.3d at 930-31; *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426, 427-28 (9th Cir. 2017) (unpublished); *Saticoy Bay, LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, 699 F. App'x 658, 658-59 (9th Cir. 2017).

Further, this Court has recognized that Freddie Mac maintains its property interest as a loan owner when its servicer appears as the record beneficiary of the deed of trust. *See Montierth*, 354 P.3d at 651; *Guberland LLC-Series 3*, 2018 WL 3025919 at *2-3 (citing *Montierth*); Restatement § 5.4. Pursuant to these authorities, Freddie Mac's ownership of the loan and the appearance of its servicer, Chase, as record beneficiary at the time of the Sale ensured that Freddie Mac maintained a property interest.

In support of its underlying claim, Chase submitted the Chase Records, the Freddie Mac Records, and provisions of the Guide explaining the terms of the contractual relationship between Freddie Mac and its servicers, which established Freddie Mac's property interest. This evidence is admissible and is substantially identical to what this Court and the Ninth Circuit have held is sufficient evidence to

establish an Enterprise's property interest. *See SFR v. Green Tree*, 2018 WL 6721370 at *1; *Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428.

Given that the uncontroverted evidence establishes the Federal Foreclosure Bar's applicability, this Court should reverse the district court's judgment and hold that the Federal Foreclosure Bar protected Freddie Mac's property interest from extinguishment here, such that SFR did not take title to the Property free-and-clear of Freddie Mac's deed of trust. *See Iliescu v. Steppan*, 394 P.3d 930, 936 (Nev. 2017) (reversing and remanding for judgment in favor of respondent); *Sloat v. Turner*, 563 P.2d 86, 90 (Nev. 1977) (similar).

CONCLUSION

This Court should reverse the district court and enter judgment in Chase's favor.

Dated: April 12, 2019.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in normal Times New Roman 14 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or more, and contains 13,613 words excluding the parts of the brief exempted by NRAP 32(a)(7)(C).

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

/ / /

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I certify that on April 12, 2019, I filed **Appellant's Opening Brief**. Service will be made on the following through the Court's electronic filing system:

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TAB 39

IN THE SUPREME COURT OF NEVADA

Case No. 77010

JP MORGAN CHASE BANK, N.A.,

Appellant,

v.

SFR INVESTMENT POOL 1, LLC,

Respondent.

Appeal from the Eighth Judicial District Court, Department XXIV
The Honorable Jim Crocket, District Judge
District Court Case No. A-13-692304-C

BRIEF OF AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY IN SUPPORT OF APPELLANT AND REVERSAL OF THE DISTRICT COURT'S JUDGMENT

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae the Federal Housing Finance Agency ("FHFA" or "the Agency") respectfully supports JP Morgan Chase Bank, N.A. ("Chase") in this appeal. The district court's ruling against Chase, and this appeal, will directly impact the interests of entities operating under FHFA's conservatorship—Freddie Mac and Fannie Mae (together, the "Enterprises")—and the interests of FHFA as the Enterprises' Conservator and regulator.

The Enterprises are federally chartered entities that Congress created to enhance the nation's housing-finance market. They own millions of mortgages nationwide, including hundreds of thousands in Nevada.

In 2008, Congress enacted the Housing and Economic Recovery Act ("HERA"), which established FHFA as an independent agency of the federal government and as the Enterprises' regulator. *See* 12 U.S.C. § 4511 *et seq*. HERA vests FHFA with the power to place the Enterprises into conservatorship or receivership under statutorily defined circumstances, mandating that as Conservator, FHFA succeeds to all "rights, titles, powers, and privileges" of an entity in conservatorship with respect to its assets. 12 U.S.C. § 4617(b)(2)(A). On September 6, 2008, FHFA's Director placed the Enterprises into FHFA's conservatorship, where they remain today.

When FHFA acts in its capacity as Conservator, its actions are deemed non-governmental for many substantive purposes. While this brief addresses FHFA's statutory powers as Conservator, FHFA submits the brief exclusively in its capacity as an agency of the United States.[1] In that capacity, FHFA has an interest in this case because if appellee SFR Investments Pool 1, LLC ("SFR") prevails on appeal and this Court were to leave the lower court's decision intact, it would significantly hinder the Enterprises' abilities to fulfill their statutory missions and could hamper FHFA in effectuating its powers to ensure that the Enterprises are effectively supporting the secondary mortgage market.

[1] Under the Nevada Rules of Appellate Procedure, FHFA is permitted, as an agency of the United States, to file this amicus curiae brief without consent of the parties or leave of court, and without a corporate disclosure statement. Nev. R. App. P. 26.1, 29(a).

INTRODUCTION

This case involves a fact pattern familiar to the Court: a Nevada homeowners' association's ("HOA") non-judicial foreclosure and sale of real property for unpaid dues owed by the former homeowner (the "HOA Sale"). In this case, like many others, appellee SFR purchased the property at the HOA Sale. Under Nevada law, such HOA sales—if properly conducted—can extinguish all other preexisting lien interests in the underlying property, including deeds of trust. *See* NRS § 116.3116(2) (the "State Foreclosure Statute"). But a federal statute precludes that result here, as Freddie Mac owned the deed of trust at the time of the HOA Sale. Under 12 U.S.C. § 4617(j)(3), which this Court often refers to as the "Federal Foreclosure Bar," while an Enterprise is in FHFA's conservatorship, its "property," including lien interests, is not "subject to . . . foreclosure."

Here, the key question before the Court is whether Chase's assertion of the Federal Foreclosure Bar was time-barred. It was not.

The foreclosure sale in this case took place on March 1, 2013. The district court held that a three-year limitations period applied and ruled that Chase had not asserted the Federal Foreclosure Bar within that time because Chase first did so in an amended complaint that was formally filed March 9, 2016—a few days after the three-year deadline imposed by the district court. 1 AA 071-81.

But on February 2, 2016—weeks *before* the court-imposed three-year deadline—Chase moved for leave to file the amended complaint; the motion clearly explained that Chase intended to assert the Federal Foreclosure Bar, and it included as an exhibit the proposed amended complaint doing so expressly. 1 AA 049-68. The district court's limitations ruling therefore depends entirely on the premise that the date the amended complaint was formally filed—not the date Chase sought leave to file it—drives the limitations analysis.

That premise is mistaken, as are several other elements of the district court's limitations analysis. Chase's assertion of the Federal Foreclosure Bar was not time-barred, and the district court therefore erred in awarding judgment to SFR. This Court should reverse.

ARGUMENT

The district court's holding that Chase's claims were time-barred under 12 U.S.C. § 4617(b)(12)(A) is incorrect for at least five reasons.

First, even if Chase had to assert the Federal Foreclosure Bar within three years of the March 2013 HOA Sale, Chase did that, moving in February 2016 for leave to file an amended complaint asserting the Federal Foreclosure Bar. The filing of that motion tolled any limitations period until the amended complaint was formally filed; as a result, Chase's assertion of the Federal Foreclosure Bar was timely.

Second, Chase invoked the Federal Foreclosure Bar as a legal theory supporting its claims, not as a separate, free-standing claim to which a limitations period could apply.

Third, even if Chase's assertion of the Federal Foreclosure Bar was a separate claim, it would relate back to the original pleading because it arises out of the same transaction or occurrence initially pled. Nev. R. Civ. P. 15(c).

Fourth, even if Chase's assertion of the Federal Foreclosure Bar was deemed a new quiet-title claim and neither tolling nor relation back were appropriate, Chase's assertion of the Federal Foreclosure Bar would be timely under HERA, which provides a minimum limitations period of six years for claims not sounding in tort. If HERA is assumed to govern, the claims would therefore be timely.

Fifth, even if HERA's tort provision applies in this case, the limitations period is the *longer* of the state-law period or three years. Here, there is no plausible argument that the period could be shorter than the four years NRS 11.220 provides as a catch-all.

Sound policy supports applying HERA's six-year limitations period to preserve Chase's claim. Congress empowered FHFA to facilitate the Enterprises' statutory mission while in conservatorship. *See* 12 U.S.C. §§ 4513, 4617. Applying the longer limitations period authorized by HERA helps FHFA do so and

furthers an important government interest.

Chase timely pled its quiet-title claim asserting the Federal Foreclosure Bar, and this Court should reverse the district court's incorrect holding that the claim was time-barred.

Additionally, the district court's cursory reference to Nevada's bona fide purchaser doctrine in its 2016 order granting summary judgment cannot provide an alternative ground for affirmance. 2 AA 264. SFR is not a bona fide purchaser—SFR had constructive notice that an Enterprise owned the property's deed of trust. What is more, even if SFR was a bona fide purchaser, the Federal Foreclosure Bar and its protections would preempt Nevada's bona fide purchaser doctrine here. Bona fide purchaser doctrine therefore cannot save the district court's flawed judgment, and this Court should reverse it.

I. Chase Moved to Amend Within Three Years, and Therefore Its Assertion of the Federal Foreclosure Bar Cannot Be Time-Barred

The simplest and narrowest ground upon which to reverse is that Chase properly asserted the Federal Foreclosure Bar within three years of the March 1, 2103, HOA Sale. No one contends that the applicable limitations period is shorter than three years—nor could they—so Chase's invocation of the Federal Foreclosure Bar was unquestionably timely if it occurred by March 1, 2016.

The record unequivocally shows that Chase first put SFR and the district court on notice of its intent to assert the Federal Foreclosure Bar by no later than February 2, 2016, when Chase filed its Motion for Leave to Amend Complaint. In that motion, Chase discusses—in great depth—that it is seeking to amend in order to include the Federal Foreclosure Bar in its complaint. 1 AA 052-53. Chase also attached a copy of the proposed amended complaint as an exhibit to the motion. 1 AA 058-68. While Chase filed the motion to amend well *before* three years had passed since the HOA Sale, the district court did not grant the motion until March 8, 2016—a few days *after* three years had elapsed. 1 AA 069-70. Chase diligently filed the amended complaint the very next day, on March 9, 2016.

The district court erred in applying the date Chase's amended complaint was filed, instead of the date Chase moved for leave to file it, when considering the statute of limitations. It would be contrary to precedent, policy, and principles of fairness for Chase to forfeit a claim or theory it timely moved for leave to assert in an amended complaint that Chase timely provided to SFR, simply because Nevada's rules precluded Chase from formally filing the amended complaint until the district court granted leave, an event over which Chase exercised no control.

As Chase discussed in its opening brief before this Court, most courts that have reached this issue agree that the relevant date for a statute of limitations consideration is the date a party moves to amend its complaint, not the date that its

motion is granted and the amended complaint is formally deemed filed. Chase Br. at 20-21. While this Court has not, to FHFA's knowledge, decided this exact issue in the past, it has treated the filing of a motion to amend as the relevant event for statutes of limitations, *see, e.g.*, *Burnett v. C.B.A. Sec. Service, Inc.*, 107 Nev. 787, 789 (Nev. 1991) (denying a motion to amend because the *motion* was not filed timely), and has stated that motions to amend—rather than actual amendments being granted—can toll other deadlines, *see Rogoff v. Johnson*, No. 74179, 2017 WL 5905701, at *1 (Nev. Nov. 29, 2017) (unpublished disposition) (holding that "a timely-filed motion to amend will toll the time to appeal" a decision).

The policy justifications for statutes of limitations would be better served by considering the date a party moves to amend the complaint, rather than the date the motion is granted. Statutes of limitations are "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944). And, under Nevada's notice-pleading standard, the "purpose of a complaint" is to ensure that parties have "adequate notice of the nature of the claim and relief sought." *Branda v. Sanford*, 97 Nev. 643, 648 (Nev. 1981). Here, SFR was on notice of Chase's intent to assert the Federal Foreclosure Bar from the moment Chase moved to amend its complaint; Chase discussed its

intent to assert the Bar in its motion and attached a copy of the amended complaint to the motion, 1 AA 049-68, as required by the rules of that court. The motion itself serves the statute of limitations' purpose—avoiding delay and surprises—and should therefore be the relevant date for considering whether an amendment is timely.

The district court's decision to consider the amended complaint's filing, rather than the motion's filing, as the event driving the limitations analysis also goes against our legal system's notions of justice and fairness. Since its founding, this Court has consistently rejected the notion that substantive rights should turn upon "technical niceties" reminiscent of outmoded common-law pleading requirements. *E.g.*, *Hansen-Neiderhauser, Inc. v. State Tax Comm.*, 81 Nev. 307 (1965). Indeed, less than a year after Nevada achieved statehood, this Court aptly noted that "We are not disposed to be more rigid than the [19th-century] courts of England in requiring nicety and precision in pleadings." *Levey v. Fargo*, 1 Nev. 415 (1865). It would be patently unjust if a party could timely file a motion putting an existing defendant on notice of a new claim, only to see the claim forfeited as untimely because a court did not, or due to the press of other business could not, rule on the motion until after the limitations period ran, and this Court should not place its imprimatur on that result.

Aside from the district court's decision here, we know of no decision of any American court applying that draconian rule—as Chase notes, the few decisions that include language broad enough to encompass such an outcome are readily distinguished because they involved amendments that purported to add *new defendants*. Chase Br. at 23 n.5. Because "the interests of justice so require," *State Dept. of Taxation v. Masco Builder Cabinet Grp.*, 265 P.3d 666, 671 (Nev. 2011) (quotation omitted), this Court should hold that a claim asserted in an amended complaint against an existing defendant is timely if a proper motion for leave to amend the complaint was filed within the limitations period, and on that basis reverse the district court's ruling that Chase's assertion of the Federal Foreclosure Bar was untimely.

II. The Federal Foreclosure Bar is a Legal Theory Supporting Chase's Quiet-Title Claim

Even if the Court opts to make Nevada an outlier on the issue of tolling the limitations period during the pendency of a motion for leave to amend a complaint, Chase's assertion of the Federal Foreclosure Bar here was timely because limitations periods only apply to claims, not the legal theories underlying those claims. *See Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev. 2009) (the "true nature of the *claim*" determines the applicable statute of limitations (emphasis added)). FHFA endorses Chase's arguments on this issue, which are independent of any

application of HERA's limitations provision.

III. Chase's Assertion of the Federal Foreclosure Bar Was Timely Under the Relation-Back Doctrine

Even assuming Chase's assertion of the Federal Foreclosure Bar is a claim or defense subject to a statute of limitations, it was timely raised under the relation-back doctrine. Nevada Rule of Civil Procedure 15(c) provides that an amendment setting forth a claim or defense "ar[ising] out of the conduct, transaction, or occurrence" described in the original pleading "relates back to the date of the original pleading." Because Chase's invocation of the Federal Foreclosure Bar is based upon the same occurrence as the quiet-title claim alleged in the original pleading—the March 2013 HOA Sale—that argument "relates back" to the date of original pleading and is thus timely. FHFA endorses Chase's arguments on this issue, which again are independent of any application of HERA's limitations provision.

IV. Chase's Claim is a "Contract Claim" for Purposes of HERA, and Therefore is Timely

Even if Chase's assertion of the Federal Foreclosure Bar is deemed a new quiet-title claim, it would be timely under the limitations provision in HERA, 12 U.S.C. § 4617(b)(12)(A).

Although that statute refers to actions "brought by the Agency as conservator," 12 U.S.C. § 4617(b)(12), courts routinely apply the substantively

identical statute applicable to FDIC receiverships to claims in which another party—typically an assignee—asserts a statutory protection that attached to property of the conservatorship or receivership. The leading case on this issue, *FDIC v. Bledsoe*, 989 F.2d 805, 811 (5th Cir. 1993), found that "assignees of the" agency were entitled to "the same six year period of limitations as the" agency. And, after carefully considering and analyzing one of the few contrary decisions, the Ninth Circuit adopted the *Bledsoe* rule. *U.S. v. Thornburg*, 82 F.3d 886, 891 (9th Cir. 1996) (adopting *Bledsoe* and declining to follow *Wamco, III, Ltd. v. First Piedmont Mortg. Corp.*, 856 F. Supp. 1076 (E.D. Va. 1994)).[2] Accordingly, HERA's limitations provision applies to Chase's quiet-title claim.

HERA states that its limitations periods apply to "any action," but then specifies that for "any contract claim," the applicable period is "the longer of . . . the 6-year period beginning on the date on which the claim accrues; or . . . the period applicable under State law," and for "any tort claim, the longer of" three years or the state-law period. 12 U.S.C. § 4617(b)(12)(A). As Chase explained in its brief before this Court, because the provision covers "any action," it applies to

[2] While the parties below may have argued that HERA's limitations should not apply to claims brought by servicers, FHFA does not challenge the district court's decision that HERA's limitations periods apply to such claims.

every cognizable claim, regardless of label or theory—even those that do not sound clearly in either contract or tort. Chase Br. at 36.

For purposes of the HERA limitations provision, the quiet-title claim at issue here is properly viewed as more akin to a contract claim than a tort claim. As Chase discussed in its opening brief, the cause of action seeks to validate a contractually created interest in the Property and does not bear any resemblance to a tort-based claim. Chase Br. at 36-38. And even if there were a substantial question whether the claim is more tort-like or contract-like, Ninth Circuit precedent confirms that the longer, "contract" period should apply as a matter of federal policy. *See Wise v. Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 n.2 (9th Cir. 2010); *FDIC v. Former Officers & Directors of Metro. Bank*, 884 F.2d 1304, 1307 (9th Cir. 1989); *Guam Scottish Rite Bodies v. Flores*, 486 F.2d 748, 750 (9th Cir. 1973). This Court should therefore apply the six-year statute of limitations prescribed by HERA.

Applying the longer, six-year limitations period is also consistent with HERA's underlying policy goals of protecting the conservatorships, maximizing the Enterprises' ability to realize value from their assets, and facilitating their statutory mission while in conservatorship. *See* 12 U.S.C. §§ 4513, 4617. More specifically, HERA authorized FHFA to "preserve and conserve" Enterprise assets, 12 U.S.C. § 4617(b)(2)(B)(iv). HERA's statute of limitations facilitates FHFA and

the Enterprises' ability to minimize potential losses by preserving claims that would otherwise have been lost due to shorter limitations periods. *See Federal Deposit Insurance Co. v. RBS Sec. Inc.*, 798 F.3d 244, 249-50 (5th Cir. 2015) (describing similar benefits associated with an identical FIRREA provision); *Bledsoe*, 989 F.2d at 811 (same). This longer limitations period puts the Enterprises on firmer financial footing by allowing them to more fully protect their assets in the manner Congress envisioned. And when the Enterprises are on firmer financial footing—with the protections Congress granted the conservatorships—they are better able to fulfill their statutory mission of facilitating the secondary mortgage market.

V. Even if Chase's Claim is Deemed a "Tort Claim" for HERA Purposes, It Is Still Timely Because HERA Adopts the Longer State-Law Period

HERA states that the limitations period for "any tort claim" shall be "the longer of" three years or "the period applicable under State law." 12 U.S.C. § 4617(b)(12)(A)(ii). Assuming, *arguendo*, that Chase's claims were "tort" claims, the claims would still be timely because—as Chase has explained persuasively—the relevant state-law period under the applicable Nevada statutes, NRS 11.070 and 11.080 (which govern quiet-title claims), would be five years. Even if Chase's claims were deemed outside NRS 11.070 and 11.080, Nevada law specifies a four-year catch-all limitations period for claims that do not fall into any

statutorily enumerated category. NRS 11.220. There is no plausible argument against Chase's amended complaint being timely under the catch-all provision, which HERA can only extend, not shorten. Thus, even under HERA's "tort" provision—which has no proper application here—Chase's assertion of the Federal Foreclosure Bar was timely.

VI. SFR Is Not a Bona Fide Purchaser, But Even If It Were, the Federal Foreclosure Bar Would Preempt Any State-Law Protection

In its original 2016 order granting SFR's motion for summary judgment, the district court included one sentence suggesting that SFR may be a bona fide purchaser and that this status may protect SFR from any claim based on Freddie Mac's interest in the Property, grounding that suggestion on the fact that Freddie Mac was not the deed of trust's record beneficiary at the time of the HOA Sale. 2 AA 264. To whatever extent that discussion might constitute a holding, it would be erroneous.

The plain language of Nevada's bona-fide-purchaser statutes makes clear that SFR was not a bona fide purchaser, as the deed of trust was undisputedly recorded prior to the HOA Sale. *See* NRS 111.180. NRS 111.325, which generally governs bona fide purchaser status, does not govern what interests must be recorded in order to be valid. In fact, this Court recently concluded that "NRS 111.325 does not support [the] position that the purported transfer of the loan to

[an Enterprise] need[s] to be recorded." *CitiMortgage v. TRP Fund*, 2019 WL 1245886, at *2. And this Court has also confirmed that Freddie Mac's interest was "perfected" and therefore properly recorded under Nevada law when Freddie Mac's servicer, Chase, appeared as beneficiary of record on Freddie Mac's behalf. *In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015).

At the time of the HOA Sale, the deed of trust and its assignment to Chase were recorded. *See* 3 AA 515-17. The recorded deed of trust and assignment put SFR on notice of a potentially adverse Enterprise interest. The deed of trust's language indicating that it is a "Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS," APP000185, provide notice that the instrument might be owned by an Enterprise. *CitiMortgage v. TRP Fund*, 2019 WL 1245886, at *1 (holding that since the deed of trust states that it is a "Fannie Mae/Freddie Mac UNIFORM INSTRUMENT, . . . we cannot conclude that [HOA sale purchaser] purchased the property without notice of Fannie Mae's potential interest in the property"); *SFR v. Green Tree*, 2018 WL 6721370, at *2 n.3; *Guberland*, 2018 WL 3025919, at *1 n.2. It should have come as no surprise to SFR that the property it purchased at the HOA foreclosure sale might be subject to a deed of trust owned by Freddie Mac.

Further, Fannie Mae and Freddie Mac are by far the largest actors in the mortgage industry, especially in the aftermath of the recent housing crisis. In

2008, the Enterprises' "mortgage portfolios had a combined value of $5 trillion and *accounted for nearly half of the United States mortgage market*." *Perry*, 864 F.3d at 599-600 (emphasis added). Since 2012, "Fannie and Freddie, among other things, collectively purchased at least 11 million mortgages." *Id.* at 602. Accordingly, "[t]he position held in the home mortgage business by Fannie Mae and Freddie Mac make[s] them *the dominant force* in the market." *Town of Babylon v. FHFA*, 699 F.3d 221, 225 (2d Cir. 2012) (emphasis added) (internal quotation marks omitted); *see Nomura*, 873 F.3d at 105 (same). Given the publicly recorded documents and the Enterprises' dominant role in the mortgage industry, SFR cannot deny that Freddie Mac's ownership of the deed of trust was foreseeable at the time it purchased the Property, nor can it claim to be ignorant of the federal law governing and protecting the conservatorships. *See del Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir. 1982). Allowing SFR to cloak itself with bona fide purchaser status and ignore the significant chance that a property purchased at a foreclosure sale was subject to an interest owned by one of the Enterprises would contravene Congress's clear and manifest goal to protect FHFA's assets. *See Berezovsky*, 869 F.3d at 931.

Additionally, SFR cannot plausibly claim to have lacked any practical means of ascertaining whether Freddie Mac in fact had an interest in the deed of trust. FHFA has publicly and repeatedly confirmed that, upon inquiry, it will state

whether an entity in conservatorship holds an interest in a given property.[3] SFR's problem is that it never made the inquiry.

But even if SFR were to be considered a bona fide purchaser, applying the state bona-fide-purchaser doctrine to extinguish Freddie Mac's federally protected interest would clearly conflict with the Federal Foreclosure Bar. Indeed, this Court acknowledged that federal courts have held that the Federal Foreclosure Bar preempts Nevada's bona fide purchaser statutes under these circumstances. *See Guberland*, 2018 WL 3025919, at *2 n.3 (citing *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451, 2018 WL 2023123, at *3 (D. Nev. May 1, 2018)). The federal decision *Guberland* cites concluded that, because Nevada's bona fide purchaser law was an obstacle to Congress' goal of protecting FHFA's assets, "Nevada's law on bona fide purchasers is preempted by the federal foreclosure bar." *GDS Fin. Servs.*, 2018 WL 2023123, at *3.[4]

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[3] *See, e.g.*, FHFA Amicus Br. 15-16, *Nationstar Mortgage* v. *Guberland, LLC - Series 3*, No. 70546 (Nev. 2018), Appellees' Suppl. Br. 6-7, *SFR Investments Pool 1, LLC* v. *Green Tree Servicing*, No. 72010 (Nev. 2018); Appellees' Br. 19 n.6, *Alessi & Koenig* v. *Fed Hous. Fin. Agency*, No. 18-16166 (9th Cir. 2018).

[4] Many courts have reached the same conclusion. *E.g.*, *Pine Barrens*, 2019 WL 1446951, at *6; *Bank of America, N.A. v. Palm Hills Homeowners Ass'n, Inc.*, No. 2:16-cv-614-APG-GWF, 2019 WL 958378, at *2 (D. Nev. Feb. 26, 2019); *Nevada Sandcastles, LLC v. Nationstar Mortg., LLC*, No. 2:16-cv-1146-MMD-NJK, 2019 WL 427327, at *3 (D. Nev. Feb. 4, 2019); *Fannie Mae v. Vegas Prop. Servs., Inc.*, No. 2:17-cv-1798-APG-PAL, 2018 WL 5300389, at *2 (D. Nev. Oct. 25, 2018); *Nationstar Mortg. LLC v. Haus*, No. 2:17-cv-1762-JCM-CWH, 2018 WL 5268603, at *4 (D. Nev. Oct. 23, 2018); *Residential Credit Solutions, Inc. v.*

Accordingly, even if SFR would otherwise qualify as a bona fide purchaser under Nevada law—and, as discussed above, it would not—SFR could not rely on any purported bona fide purchaser status to avoid the protection Congress provided to Freddie Mac's interests during conservatorship; the Federal Foreclosure Bar preempts Nevada law to whatever extent it would otherwise permit the extinguishment of Freddie Mac's property interest while Freddie Mac is in FHFA conservatorship.

CONCLUSION

For these reasons, FHFA supports Chase's request that this Court reverse the district court's decisions.

DATED April 19, 2019.

FENNEMORE CRAIG, P.C.
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LV Real Estate Strategic Inv. Grp. LLS Series 5112, No. 2:17-cv-84-JCM-NJK, 2018 WL 4258498, at *4 (D. Nev. Sept. 6, 2018); *U.S. Bank Home Mortg. v. Jensen*, No. 3:17-cv-0603-MMD-VPC, 2018 WL 3078753, at *2 (D. Nev. June 20, 2018).

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on April 19, 2019, a true and correct copy of the **BRIEF OF AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY IN SUPPORT OF APPELLANT AND REVERSAL OF THE DISTRICT COURT'S JUDGMENT**, was transmitted electronically through the Court's e-filing system to the attorney(s) associated with this case.

Role	Party Name	Represented By
Appellant	PMorgan Chase Bank, National Association	Holly A. Priest (Ballard Spahr LLP/Las Vegas) Joel E. Tasca (Ballard Spahr LLP/Las Vegas)
Respondent	SFR Investments Pool 1, LLC	Diana S. Ebron (Kim Gilbert Ebron) Jacqueline A. Gilbert (Kim Gilbert Ebron) Karen L. Hanks (Kim Gilbert Ebron)

/s/ Pamela Carmon
An Employee of Fennemore Craig, P.C.

ATTORNEY'S CERTIFICATE
PURSUANT TO NEVADA RULE OF APPELLATE PROCEDURE 28.2

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman typeface; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 4,281 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: April 19, 2019.

FENNEMORE CRAIG, P.C.

By: */s/ Leslie Bryan Hart*
Leslie Bryan Hart, Esq. (SBN 4932)

TAB 40

Case No. 77010

IN THE SUPREME COURT OF NEVADA

JP MORGAN CHASE BANK, National Association, a national association Appellant, vs. SFR INVESTMENTS POOL 1, LLC, Respondent.	Electronically Filed Jul 12 2019 11:51 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692304-C

RESPONDENT'S SUPPLEMENTAL APPENDIX

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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

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

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

EXHIBIT A-1

Deed of Trust

Ex. A-1

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

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DTIM 13

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

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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

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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.

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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

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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

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

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STATE OF NEVADA
COUNTY OF Clark

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

Mail Tax Statements To:
Robert H. 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

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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

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

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., IT'S 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. 1024137 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

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: Jatoshi S Brazil
Jatoshi S 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: Helen P Tubbs
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

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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.

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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.

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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

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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.

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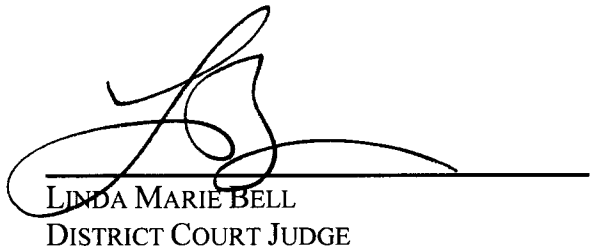
III. Conclusion

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
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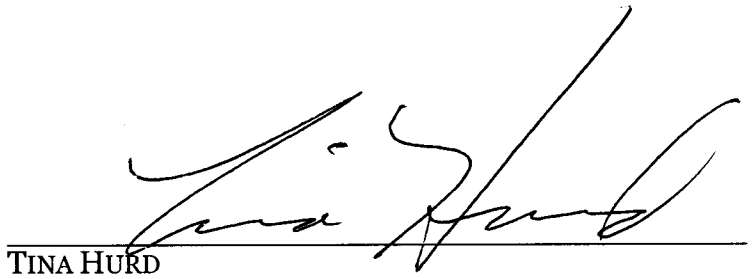
CERTIFICATE OF SERVICE

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 12/20/2018
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT C

Stipulation to Remand

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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Dated: September 19, 2017.

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By: /s/ Jacqueline A. Gilbert
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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:

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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 5, 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

MS

Submitted by:

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EXHIBIT D

Stipulation and Order Requesting Reconsideration and Certification

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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; 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

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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

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of July, 2019. Electronic service of the foregoing **Respondent's Supplemental Appendix** shall be made in accordance with the Master Service List as follows:

Master Service List

Docket Number and Case Title: 77010 - JPMORGAN CHASE BANK, NAT'L ASS'N VS. SFR INV.'S POOL 1, LLC
Case Category Civil Appeal
Information current as of: Jul 12 2019 11:04 p.m.

Electronic notification will be sent to the following:

Jacqueline Gilbert
Karen Hanks
Holly Priest
Joel Tasca
Leslie Bryan-Hart
John Tennert

Dated this 12th day of July, 2019.

/s/ Caryn R. Schiffman
An employee of KIM GILBERT EBRON

TAB 41

Case No. 77010

IN THE SUPREME COURT OF NEVADA

JP MORGAN CHASE BANK, National Association, a national association Appellant, vs. SFR INVESTMENTS POOL 1, LLC, Respondent.	Electronically Filed Jul 12 2019 11:48 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692304-C

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

Respondent, SFR Investments Pool 1, LLC, is a privately held limited liability company and there is no publicly held company that owns 10% or more of SFR Investments Pool 1, LLC's stock.

In District Court, SFR Investments Pool 1, LLC was represented by Howard C. Kim, Esq., Jacqueline A. Gilbert, Esq., Diana S. Ebron, Esq., Karen L. Hanks, Esq. and Caryn R. Schiffman, Esq. of Kim Gilbert Ebron fka Howard Kim & Associates. The same attorneys represent Respondent on appeal.

DATED this 12th day of July, 2019.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
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INTRODUCTION

This case presents ***one*** issue for this Court: whether HERA's[1] three-year statute of limitations barred Chase's claim(s) based on 12 U.S.C. § 4617(j)(3). Because Chase's claims are time-barred, this case is not about whether federal law preempts state law. This Court should affirm the District Court's holding that the three-year statute of limitations barred Chase's claims. What is more, in the unlikely event this Court disagrees with the District Court and finds Chase's claim was timely, this Court has alternative grounds to affirm the District Court's order. Here, because the District Court properly enforced the NRCP, and because Chase failed to timely produce the evidence it argues it needed, Chase's claims are unsupported to establish its claim under HERA. Accordingly, the District Court properly granted summary judgment in SFR's favor. Of note, Chase raised a variety of arguments that it never raised first at the District Court, in an attempt to circumvent proper granting of judgment in SFR's favor.

FACTUAL AND PROCEDURAL BACKGROUND

SFR purchased the subject Property as the highest bidder at the May 1, 2013

[1] In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), which established the Federal Housing Finance Agency ("FHFA" or "Agency") to regulate Federal Home Loan Mortgage Corporation ("Freddie") and Federal Housing Finance Agency ("Fannie Mae"). HERA contains the Federal Foreclosure Bar, 12 U.S.C 4617 (j)(3) and the statute of limitations 12 U.S.C 4617 (b)(12).

public foreclosure auction held on behalf of Pebble Canyon Homeowners Association (the "Association") pursuant to NRS 116.[2] At no time before the sale was Freddie Mac named as a beneficiary on the subject Deed of Trust. SFR purchased the Property, Freddie Mac was not the named beneficiary of the deed of trust.[3]

I. CHASE'S INITIAL COMPLAINT IS SILENT AS TO 12 U.S.C § 4617 (J)(3).

The initial complaint filed on or about **November 27, 2013**,[4] is devoid of any of the following allegations:

1) that the Federal Home Loan Mortgage Corporation ("Freddie") owned the note and deed of trust ("DOT"); **or**

2) that 12 U.S.C § 4617 (j)(3) preempted Nevada law to the extent that Nevada law would allow an Association foreclosure sale to extinguish a deed of trust securing a loan owned by Freddie.

Finally, after **833** days of litigation, for the first time in its amended complaint, filed on or about March 9, 2016, Chase raised 12 U.S.C § 4617(j)(3), arguing that the subject deed of trust was property of Freddie which later became the property of

[2]3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043. 1AA_002. The former homeowners were Robert M. Hawkins and Christine V. Hawkins. 1AA_003. See 3AA_325-327.
[3] 3AA_333; SA_000033-35.

FHFA[5] when Freddie was placed in conservatorship; if true, Chase knew this at the initiation of litigation.[6] Yet, after obtaining leave of the court specifically to add 12 U.S.C § 4617(j)(3), Chase did not disclose its evidence to support this claim; evidence that should have been in its possession when it brought the motion to amend and disclosed immediately thereafter, which necessitated in part, SFR's counter-motion to strike.[7] The same evidence that Chase claims the District Court's striking amounted to case-ending sanctions.

II. CHASE FAILED TO TIMELY DISCLOSE EXHIBITS AND WITNESS— DEAN MEYER DURING DISCOVERY.

Chase failed to timely supplement its initial disclosures of documents and witnesses. Discovery closed on **May 2, 2016**.[8] While parties have an obligation to supplement, it is within the discovery period, and not anytime a party sees fit. ***All*** of Chases supplemental disclosures were late—after discovery closed.[9] The first supplemental disclosure was served on **May 6, 2016**, the second supplemental disclosure was served on **July 26, 2016**, and then shockingly, **707** days after discovery expired and the parties were back from remand, Chase serves SFR with

[5] Federal Housing Finance Agency.
[6] 1AA_071-080.
[7] *See* SFR's Counter-Motion to strike, 3AA_552-553; *see also* SFR's Reply in support, 4AA_595-599.
[8] *See* Scheduling Order filed on June 29, 2015, 1AA_035-037.
[9] *See* SFR's Reply in support of its Countermotion to Strike, 4AA_595-599.

its third supplemental disclosure on **April 13, 2018**.[10] ***All*** these were each ***well*** past the **May 2, 2016** deadline, a deadline that was *never* extended. Chase chose not to disclose during the discovery period. More telling, however, is that on **January 23, 2018**, Chase filed a motion to re-open discovery and then voluntarily withdrew after SFR opposed,[11] further evidencing Chase's purposeful violation of the scheduling order.

Chase and SFR filed competing motions for summary judgment in 2016 (collectively "First MSJs" individually, the "Bank's first MSJ" and "SFR's first MSJ").[12] SFR did not need to contest whether the exhibits attached to Chase's 2016 MSJ were properly before the District Court because SFR challenged Chase's standing to raise 12 U.S.C. § 4617 (j)(3) as defense or claim, which the District Court agreed and entered judgment in in SFR's favor.[13] While Chase's first appeal was pending, this Court issued its decision in *Nationstar*.[14] In light of this decision, the parties stipulated to remand back to the District Court only to brief issues related to 12 U.S. C. § 4617(j)(3).[15] SFR did not need to stipulate to remand, SFR ***only*** did so

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[10] *Id*.
[11] *See* Chase's Motion to Extend Discovery Deadlines at 2AA_268-274; *see also* SFR's Opposition, 2AA_275-286; *see* Chase's withdrawal, 2AA_287-289.
[12] Bank's 2016 MSJ 1AA_157-190; *see also*, SFR's 2016 MSJ 1AA_134-156.
[13] *See* Findings of Fact Conclusion of law ("FFCL"), 2AA_258-267.
[14] *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. ___, 396 P.3d 754 (2017).
[15] *See* Stipulation and Order to Remand filed on September 208, 2017 SA_000054-70.

because the District Court findings regarding the validity of the sale would remain intact, and Chase agreed.[16]

III. CHASE'S DILATORY BEHAVIOR CONTINUES.

Back in District Court after remand, Chase filed a motion to reopen discovery so it could cure untimely disclosures and, presumably to properly disclose the documents it later disclosed in its April 2018 supplement. But then, Chase voluntarily and purposefully withdrew its motion, which would have been a chance for Chase to cure/remedy its late disclosures.[17] In withdrawing its motion, Chase *knew* that it did not timely disclose all the documents it claimed it needed to disclose.

Chase's second MSJ used the Meyers declaration and the undisclosed documents.[18] The District Court was informed of these issues and exercised its discretion to consider the late disclosed documents. The District Court did not issue case-ending sanctions.

IV. CHASE FAILED TO PROPERLY RAISE ARGUMENTS AT THE DISTRICT COURT.

In 2018, after remand from the Nevada Supreme Court, the parties filed competing motions for summary judgment (collectively "Second MSJs" individually, "Chase's Second MSJ" and "SFR's Second MSJ").[19] SFR's Second

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[16] *Id.*
[17] *See* Withdrawal filed in February 1, 2018 at 2AA_287-289.
[18] *See* SFR's Counter-motion to strike, 4AA_548-567; *see specifically*, 3AA_552-553.
[19] Chase's 2018 MSJ 2AA_290-314; *see also*, SFR's 2018 MSJ 3AA_524-533.

MSJ raised statute of limitations barring Chase's HERA claims.[20] In opposition to SFR's Second MSJ, Chase *only* raised the following arguments: statute of limitations applies to claims brought by the FHFA, and since FHFA is not a party, the statute of limitations does not apply, only the quiet title statute of limitations applies, and even if three-year applied—it was timely.[21] Yet, in its reply in support of its Second MSJ, Chase raised a new argument for the first time: that Chase's claims are subject to the six year statute of limitations as the claims sound in contract ("new argument").[22] At the hearing, SFR moved the District Court to strike Chase's new argument raised in its reply in support of its Second MSJ because SFR was unable to address the new argument.[23] Due to this, and this alone, the District Court properly exercised its discretion and did not consider Chase's new argument.[24]

V. CHASE WAIVED ANY ARGUMENT REGARDING THE VALIDITY OF THE SALE.

After the *Nationstar* opinion, the District Court certified that it would reconsider its order on appeal.[25] Chase stipulated to limiting the issues on remand, agreeing that all prior findings and conclusions as to the validity of the sale would stand.[26] Yet, in its Second MSJ, Chase breached the stipulation by raising issues

[20] 3AA_528 at Sec. B
[21] 3AA_543-546.
[22] 4AA_591:7-592:2.
[23] 4AA_600-624; *see specifically*, 4AA_613:6-18.
[24] *Id*. at 4AA_613:19.
[25] SA_00055-58.
[26] SA_00062 at ¶¶10-11.

regarding the price SFR paid, i.e. the validity of the sale itself.[27] The District Court properly exercised its discretion to strike this argument.

All told, notwithstanding untimeliness of the federal foreclosure bar or 4617(j)(3) claim, Chase never properly disclosed admissible evidence to establish Freddie's ownership interest in the subject Property. Therefore, there are no genuine issues of material fact rebutting validity of the Association sale, and SFR's resulting deed. Therefore, this Court should affirm the District Court's judgment entered in favor of SFR

SUMMARY OF THE ARGUMENT

The District Court correctly found that Chase's 12 U.S.C § 4617(j)(3) claim is time barred. Here, the sale occurred on March 1, 2013. **1043** days later on March 9, 2016, Chase filed its amended complaint. However, the original complaint is silent as to any facts regarding the Federal Foreclosure Bar, or any allegations remotely related to the Federal Foreclosure Bar that would put SFR on notice that Freddie claimed an interest in the Property at the time of the sale. Accordingly, the District Court correctly concluded that relation back would not save the day for Chase as the original complaint did not implicitly or explicitly place SFR on notice of its claims under 12 U.S.C § 4617(j)(3). What is more, is at the hearing the District Court

[27] *See* Bank's 2018 MSJ; *see specifically*, Chase disputing the price SFR paid for the Property at 2AA_299:1-3; *see also*, 2AA_310 Sec. C&D.

properly disregarded Chase's new argument—that its claims are not barred as the six-year statute of limitations applies, which was raised in its reply in support of its own motion for summary judgment, which effectively deprived SFR of an opportunity to address it. This means that Chase is limited to the arguments raised in its 2018 Opposition and this Court should not consider *any* of the new arguments, which Chase is bringing for the first time on appeal. This Court should affirm the District Court's judgment in favor of SFR.

STANDARD OF REVIEW

Chase's stated standard is incorrect. While questions of law are reviewed *de novo* by this Court, a District Court's decision to strike an argument is under an abuse of discretion. *Century Steel, Inc. v. State, Div. of Indus. Relations, Occupational Safety & Health Section*, 122 Nev. 584, 588, 137 P.3d 1155, 1158 (2006). But this Court reviews a District Court's decision to strike arguments under an abuse of discretion, and will not interfere with the District Court's exercise of its discretion absent a showing of palpable abuse. *See Olausen v. State Dep't. of Corr*., 281 P.3d 1206 (Table) (Nev. 2009) (unpublished disposition) (A district court's dismissal for failure to oppose a motion to dismiss is reviewed for abuse of discretion.) *see also; Walls v. Brewster,* 112 Nev. 175, 912 P.2d 261 (1996). A district court's decision to grant a motion due to failure to oppose the same is reviewed for abuse of discretion. *Sheckler v. Chaisson JRJ Investments, LLC*, 373

P.3d 960 (Table) (2011) (unpublished disposition); *Las Vegas Fetish & Fantasy v. Ahern Rentals,* 124 Nev. 272, 277–78, 182 P.3d 764, 768 (2008).

Therefore, before reviewing the grant of summary judgment in SFR's favor, this Court must review for abuse of discretion the District Court's decision to strike the new argument raised in Chase's reply in support of its 2018 MSJ, and it's under the correct standard, this Court must affirm. Additionally, the District Court's decision to strike the purposefully late disclosed documents is also subject to an abuse of discretion standard, and under this standard this Court must affirm.

ARGUMENT

I. CHASE'S ASSERTION OF § 4617(J)(3) IS TIME-BARRED

A. The District Court Properly Found the Federal Foreclosure Bar is a Right that Must be Timely Asserted.

1. 4617(b)(12) provides a three-year statute of limitations.

The District Court properly found HERA's three-year statute of limitations applies to any assertion of 4617(j)(3) in the context of a foreclosure sale, and also properly found relation back was inapplicable.[28] 12 U.S.C. § 4617(b)(12) provides in relevant part:

> [T]he 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;

[28] *See* FFCL 4AA_625-630; *see specifically*, 4AA_628:11-29:6.

12 U.S.C. § 4617(b)(12) (emphasis added.)

The Federal Housing Finance Agency ("FHFA") has successfully argued and convinced the Second Circuit to hold that, "Congress intended one statute of limitations – 4617(b)(12) of HERA – to apply to *all* claims brought by the FHFA as conservator [and] supplant[s] any other limitations that otherwise might have applied." *Federal Housing Finance Agency v. UBS Americas Inc.*, 712 F.3d 136, 143-44 (2d Cir. 2013) (emphasis in original).

2. ***Chase steps into both shoes of the FHFA—to assert the right and accept the limitations that Congress placed on that right.***

Here, the ***only*** reason Chase can even assert 4617(j)(3), is because this Court recognized that a contractually authorized servicer could assert the right, under a principal/agency relationship.[29] In other words, Chase steps into the shoes of FHFA and asserts the right. In this case, Chase ***never***[30] proved it is a contractually authorized servicer of Freddie Mac for the subject loan, and SFR does not concede this fact. But for purposes of this argument, even assuming Chase is the contractually authorized servicer, Chase does not step into only one shoe, it steps into ***both*** shoes. In that regard, if it can assert the right, it is equally bound by the limitations that

[29] *See Nationstar*, 396 P.3d 754.

[30] The District Court granted SFR's Counter-Motion to strike on the basis that Chase disclosed its "evidence" too late; *see* FFCL at 4AA_629; *see also* transcript at 4AA_615:8-24.

Congress placed on that right. Thus, Chase is bound by the statute of limitations set forth in 4617(b)(12) just as FHFA would be if it asserted the right. The District Court correctly found this, when it stated:

> "…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 is 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 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."[31]

Having established the three-year statute of limitations applies, the District Court properly determined that Chase' amended complaint did not relate back to the original complaint because the original complaint did not implicitly or explicitly place SFR on notice of its claim under 12 U.S.C § 4617(j)(3).

B. The District Court Properly Found Relation Back Does Not Save the Day for the Bank.

Other than saying this Court should reverse the District Court's order finding that relation back was inapplicable, Chase's brief is devoid of any analysis explaining why the District Court abused its discretion. Of course, such challenge does not involve a de novo standard, rather it involves an abuse of discretion standard. *See State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d

[31] 4AA_605:20-606:13.

8, 19 (2004). A district court *only* abuses its discretion when it "bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. ___, ___, 367 P.3d 1286, 1292 (2016).

In the present case, at the District Court level Chase moved to amend after **833** days of litigation. At the hearing the District Court stated as follows:

> "Here's why I think you have to [do] more than you did: Because you say, we are claiming that the sale did not extinguish the first deed of trust. You go, okay that the result you are looking for, it didn't extinguish it but what's your theory? I don't think notice was given to SFR if your theory was Federal Foreclosure Bar."[32]

Here, Chase's original complaint was filed on November 27, 2013,[33] and contained ***no*** reference to Freddie, the Federal Foreclosure Bar or HERA. This is evident by the fact that Chase sought to amend its complaint specifically to add 12 U.S.C § 4617(j)(3). Had Chase truly alleged this claim in the first instance it would not have needed to amend its complaint: but it did. Chase knows it did not allege the claim of 12 U.S.C. § 4617(j)(3), either implicitly or explicitly. The amended complaint makes it apparent all the allegations regarding the federal interest that were completely absent from the original complaint.

The District Court did not abuse its discretion in finding relation back inapplicable.

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[32] 4AA_610:22-611:5.
[33] 1AA_001-7.

1. Standard for relation back

NRCP 15(c) states, "[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." (Emphasis added). However, "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 (1984) (internal marks and citation omitted). *See also, 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). Similarly, Nevada law will not allow a new claim based upon a new theory of liability asserted in an amended pleading to relate back under NRCP 15(c) after the statute of limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d 1141, 1146 (1983).

2. Chase's original complaint is silent as to HERA

Chase's complaint (filed on November 27, 2013), and answer (filed on August

11, 2015) are completely bereft of any mention of 4617(j)(3), any federal interest, preemption or anything even remotely indicating Chase intended to challenge the sale based on the Supremacy Clause due to an alleged interest by Freddie.[34] Chase's complaint and amended complaint allege "[Chase] is the lender and beneficiary under the…promissory note and corresponding deed of trust."[35]

Simply put, anyone reading Chase's complaint would have no idea that 4617(j)(3) would be alleged or that Freddie would claim an interest in the deed of trust. The absence of these allegations makes Chase's reliance on *Jackson v. Groenenyke*[36] unconvincing. In *Jackson*, this Court dealt with a water rights issue, and this Court allowed a party to amend his pleadings to include land access for maintenance and repair on the subject pipe. *Id.* at 366. The Court reasoned that these issues arise from the same transaction or occurrence as the vested right to receive water because the quest to assert water rights necessarily includes action to ensure the continued flow of that water. *Id.* at 366. In the present case, there is nothing for Chase's HERA claim to relate back to; Chase never alleged anything to do with a federal interest, and unlike *Jackson*, it does not necessarily follow that a bank challenging an NRS 116 sale will involve a claimed federal interest.

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[34] 1AA_001-007; 1AA_038-48.
[35] 1AA_004 at ¶ 10. Even Chase's answer alleges a total of 13 affirmative defenses, none of which allege preemption/4617(j)(3). 1AA_044-46.
[36] *Jackson v. Groenenyke*, 369 P.3d 362 (Nev. 2016).

But Chase wants the rule to be read as if the "transaction" is the Association sale itself, and therefore any amendment would relate back, even a yet-to-be made one. But this defies the purpose of the rule. The "conduct, transaction, or occurrence" Rule 15(c) references, cannot be the event by which gave rise to the claim i.e. the car accident in a negligence case, the contract in a breach of contract case or the slip and fall in a premises liability case. A mere history of NRS 116 litigation demonstrates how protean bank claims are, so that SFR cannot be deemed to know from a bare bones pleading what claims may arise, especially having had to litigate the interpretation of NRS 116.3116(2), constitutionality, commercial reasonableness, mortgage protection clause, tender, fraudulent transfer, and any number of other claims by which a deed of trust was somehow revived. In other words, even in this notice pleading state, a defendant has to have some idea of what claims it needs to defend. And, a plain reading of the complaint in this case gives no indication that a claim arising under 4617(j)(3) should be anticipated.[37] If this was the standard then there would be no purpose for the rule because every amendment would relate back to the original pleading.

And yet, we have a rule that requires fair notice in the original pleading of the now asserted amendment such that it can relate back. Again, as this Court held, NRCP 15(c) does not allow a new claim based upon a new theory of liability to relate

[37] 1AA_001-7.

back. *See Nelson*, 665 P.2d at 1146. Thus, it stands to reason if there is nothing to relate back to, i.e. no allegations even remotely touching upon what a party now seeks to allege, then the mandates of Rule 15(c) are not met. That is exactly what we have in this case here.

All told, because there are zero allegations about any federal interest relation back does not apply, the District Court properly found this in its decision.

3. ***Chase waived its legal theory argument by failing to properly raise it below—at the District Court.***

It is well-settled, "a point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Here, Chase, in opposition to SFR's Second MSJ never asserted the Federal Foreclosure Bar was merely a theory not a claim.[38] [39] Accordingly, this Court should not consider this argument that is not properly before this Court. SFR has no desire to waive the waiver. Should this Court want to entertain this argument despite the fact that Chase failed to properly raise it before the District Court in the first instance, this Court can order additional briefing.

[38] *See* Chase's Opposition to SFRs Second MSJ at 3AA_534-547; *see specifically*, pp. 543 at Sec. II "Chase's Claims are Timely."
[39] *See* Chase's Opening Brief ("AOB") at pg. 27 Sec. B.