## IN THE SUPREME COURT OF THE STATE OF NEVADA OFFICE OF THE CLERK



## APPELLANTS' APPENDIX TO OPENING BRIEF

## INDEX OF APPENDIX

VOLUME I
\# Document
1 Complaint
2 Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction

VOLUME II
2 (Continued) Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction
3 Affidavit of Counsel
4 Notice of Lis Pendens APN 29-401-17
5 Order After Hearing Concerning Restraining Order and Preliminary Injunction
6 Corrected Order Concerning Restraining Order and Preliminary Injunction
7 Response to Application for Ex Parte Restraining Order, Preliminary Injunction, and Permanent Injunction

## VOLUME III

7 (Continued) Response to Application for Ex Parte 11-15-2018 AA00501 Restraining Order, Preliminary Injunction, and Permanent Injunction

## VOLUME IV

7 | (Continued) Response to Application for Ex Parte | 11-15-2018 AA00751 |
| :--- | :--- | ---: | :--- |
| Restraining Order, Preliminary Injunction, and |  |
| Permanent Injunction |  |

8 Declaration of Fay Servicing, LLC in Response to 11-15-2018 AA00778 Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction
9 US Bank Trust's Answer to Complaint
11-29-2018 AA00782
10 Defendant Bank of America, N.A.'s Notice of Motion and Motion to Dismiss Plaintiffs' Complaint11 Declaration of Non-Monetary Status (Sables)12-24-2018 AA00805
12 Order After Hearing Concerning Restraining Order12-31-2018 AA00809and Preliminary Injunction and Setting Aside OrderEntered 11-8-18 and Corrected Order 11-14-18.
13 Objection to Declaration of Non-Monetary Status
14 Sables, LLC's Response to Objection to ItsDeclaration of Non-Monetary Status
15 Sables, LLC's Motion to Set Aside Default16 Plaintiffs' Motion for Leave to File AmendedComplaint to Substitute Parties
17 Motion for Rule 11 Sanctions Against Plaintiffs18 Declaration of Ramir M. Hernandez, Esq. in Supportof Motion for Rule 11 Sanctions Against Plaintiffs
19 Defendant Bank of America, N.A.'s Motion to ..... 03-22-2019 AA00935Dismiss Plaintiffs' Complaint
20 Opposition to US Bank's Motion for Rule 11 ..... 03-28-2019 AA00944
Sanctions
21 Opposition to Bank of America’s Motion to Dismiss ..... 04-04-2019 AA00975 Plaintiff's Complaint
VOLUME V21 (Continued) Opposition to Bank of America'sMotion to Dismiss Plaintiff's Complaint
22 Response to Declaration of Shadd A. Wade ..... 04-11-2019 AA01078
23 Defendant Bank of America, N.A.'s Reply to04-12-2019 AA01094Opposition on Motion to Dismiss Plaintiffs'Complaint
24 Reply in Support of Motion for Rule 11 SanctionsAgainst Plaintiffs
25 Motion to Intervene and Expunge Lis Pendens ..... 05-24-2019 AA01111
26 Order
27 Plaintiffs’ Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims for Relief
28 Opposition to Motion to Intervene
30 Reply in Support of Motion to Intervene and ..... 06-19-2019 AA01230 Expunge Lis Pendens
31 Sables, LLC’s Opposition to Plaintiffs' Amended Motion to Amend
32 Reply to Breckenridge Property Fund 2016, LLC’s Opposition to the Amended Motion for Leave to Amend Complaint
33 Petition for Writ of Mandamus (Supreme Court)06-20-2019 AA0123506-10-2019 AA01213
29 Opposition to Plaintiffs' Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims and Relief ..... 06-19-2019 AA01225
06-07-2019 AA01127

| 42 | Plaintiffs' Opposition to Breckenridge's Motion for Order to Show Cause Re Writ of Restitution | 10-18-2019 | AA01445 |
| :---: | :---: | :---: | :---: |
| 43 | Plaintiffs’ Answer to Counterclaim and Counterclaim Against Intervener | 10-23-2019 | AA01473 |
| 44 | Order Denying Ex Parte Motion and Setting Hearing | 10-24-2019 | AA01495 |
| 45 | Sables, LLC's Response to Petition for Writ of Mandamus (Supreme Court) | 10-25-2019 | AA01498 |
|  | VOLUME VII |  |  |
| 45 | (Continued) Sables, LLC’s Response to Petition for Writ of Mandamus (Supreme Court) | 10-25-2019 | AA01501 |
| 46 | Breckenridge’s Answer to the Counterclaim Filed by Albert Ellis Lincicome, Jr. and Vicenta Lincicome | 11-18-2019 | AA01516 |
| 47 | Order Concerning Motion for Leave to File Motion for Reconsideration of the Court's August 23, 2019 Order Re Declaratory Relief. | 11-22-2019 | AA01521 |
| 48 | Petitioners’ Reply to Responses to Petition for Writ of Mandamus (Supreme Court) | 11-27-2019 | AA01523 |
| 49 | Order (Concerning Motion to File Second Amended Complaint) | 12-06-2019 | AA01544 |
| 50 | Plaintiffs’ Motion for Reconsideration | 12-13-2019 | AA01546 |
| 51 | Plaintiffs' Second Amended Complaint | 12-20-2019 | AA01553 |
| 52 | Answer to Second Amended Complaint (US Bank, Prof-2013 M4-Legal Title Trust and Fay Servicing) | 01-07-2020 | AA01697 |
| 53 | Breckenridge Property Fund 2016, LLC’s Answer to Second Amended Complaint | 01-08-2020 | AA01721 |
| 54 | Order Denying Petition for Review (Supreme Court) | 01-22-2020 | AA01726 |
| 55 | Bank of America, N.A.'s Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint | 01-23-2020 | AA01728 |
| 56 | Order Denying Without Prejudice Ex Parte Motion for Order to Show Cause Why a Temporary Writ of Restitution Should Not Be Granted and Request to Shorten Time to Answer | 02-11-2020 | AA01748 |

## VOLUME VIII

57 Answer to Second Amended Complaint (Newrez, 03-19-2020 AA01751 LLC, d/b/a Shellpoint Mortgage)
58 Breckenridge Motion for Order Requiring Plaintiff to 03-27-2020 AA01776 Deposit Rental and/or Mortgage Payments With Court
59 Plaintiffs' Opposition to Motion for Deposit of
04-13-2020 AA01806 Payments With Court
60 Breckenridge Reply in Support of Motion for Order
04-24-2020 AA01839
Requiring Plaintiff to Deposit Rental and/or Mortgage Payments with Court
61 Breckenridge Property Fund 2016, LLC’s Reply in 09-11-2020 AA01844 Support of Motion for Leave to File Crossclaim Against Prof-2013-M4 Legal Title Trust by U.S. Bank National Association, as Legal Title Trustee
62 Breckenridge Property Fund 2016, LLC’s
10-02-2020 AA01853
Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
63 Answer to Breckenridge Property Fund 2016, LLC's
11-02-2020 AA01860 Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
64 Bank of America, N.A.'s Motion for Summary Judgment and Motion for Sanctions

## VOLUME IX

64 (Continued) Bank of America, N.A.'s Motion for
03-17-2021 AA02001 Summary Judgment and Motion for Sanctions
$65 \begin{aligned} & \text { Breckenridge Property Fund } 2016 \text { LLC's Motion for } \\ & \text { Summary Judgment Against Plaintiff }\end{aligned}$
66 (Plaintiffs') Motion for Partial Summary Judgment 03-19-2021 AA02230 VOLUME X
66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02251 Judgment

## VOLUME XI

66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02501 Judgment

67 Shellpoint Mortgage Servicing, LLC’s Undisputed 03-25-2021 AA02540 Statement of Facts in Support of Motion for Summary Judgment

## VOLUME XII

67 (Continued) Shellpoint Mortgage Servicing, LLC’s 03-25-2021 AA02751 Undisputed Statement of Facts in Support of Motion for Summary Judgment
68 Prof-2013-M4 Legal Title Trust, By U.S. Bank, 03-25-2021 AA02764 National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment
69 Request for Judicial Notice in Support of Prof-2013M4 Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment and Shellpoint Mortgage Servicing LLC's Motion for Summary Judgment
70 Shellpoint Mortgage Servicing, LLC’s Motion for 03-25-2021 AA02785 Summary Judgment
71 Prof-2013-M4 Legal Title Trust, By U.S. Bank,
03-25-2021 AA02796
National Association, as Legal Title Trustee's and Fay Servicing LLC’s Undisputed Statement of Facts in Support of Motion for Summary Judgment

## VOLUME XIII

71 (Continued) Prof-2013-M4 Legal Title Trust, By
03-25-2021 AA03001
U.S. Bank, National Association, as Legal Title

Trustee's and Fay Servicing LLC’s Undisputed
Statement of Facts in Support of Motion for Summary Judgment

72 Bank of America, N.A.’s Errata to Bank of America, 04-02-2021 AA03017 N.A.'s Motion for Summary Judgment and Motion for Sanctions
73 Bank of America, N.A.'s Opposition to Plaintiffs'04-14-2021 AA03021Partial Motion for Summary Judgment
74 Plaintiffs' Opposition to US Bank, Fay Servicing,and Shellpoint's Motions for Summary Judgment
75 Plaintiffs' Opposition to BANA's Motion for Summary Judgment
76 Plaintiffs' Opposition to Breckenridge's Motion for
Summary Judgment04-15-2021
04-15-2021 AA03089
77 Plaintiffs' Statement of Undisputed Material Facts ..... 04-15-2021 AA03136
VOLUME XIV
77 (Continued) Plaintiffs' Statement of Undisputed Material Facts04-15-2021 AA03251
78 Prof-2013 M4-Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's, and Fay Servicing LLC's Opposition to Plaintiffs'Motion for Partial Summary Judgment
VOLUME XV
78 (Continued) Prof-2013 M4-Legal Title Trust, By ..... 04-19-2021 AA03501
U.S. Bank, National Association, as Legal Title Trustee’s, and Fay Servicing LLC’s Opposition to Plaintiffs' Motion for Partial Summary Judgment
79 Bank of America, N.A.’s Reply Supporting Motion 05-05-2021 AA03506 for Summary Judgment
80 Supplement to Plaintiffs' Statement of Undisputed ..... 05-06-2021 AA03519 Material Facts
81 Reply to Bank of America, N.A.'s Opposition to ..... 05-06-2021 AA03671Plaintiffs' Motion for Partial Summary Judgment
82 Reply to US Bank \& Fay Servicing, LLC’s ..... 05-06-2021 AA03698 Opposition to Plaintiffs' Motion for Partial Summary Judgment
83 Shellpoint Mortgage Servicing, LLC’s Reply in ..... 05-10-2021 AA03720Support of Motion for Summary Judgment
84 Prof-2013 M4-Legal Title Trust, By U.S. Bank, ..... 05-10-2021 AA03727

Fay Servicing LLC's Reply in Support of Motion for Summary Judgment
85 Breckenridge Property Fund 2016 LLC's Reply in Support of Motion for Summary Judgment Against Plaintiff
86 Order on Breckenridge Motion for Summary Judgment

## VOLUME XVI

87 | Order Denying Plaintiffs' Motion for Partial |
| :--- |
| Summary Judgment/Granting Motions for Summary |
| Judgment filed by BANA, Prof-2013 M4 Legal |
| Trust, US Bank and Fay Servicing LLC |

88 Notice of Entry of Order (Order on Breckenridge

07-06-2021 AA03769
Motion for Summary Judgment)
89 Notice of Entry of Order (Order Denying Plaintiffs ..... 07-06-2021 AA03780 Motion for Partial Summary Judgment)
90 Notice of Entry of Order (Order on Breckenridge ..... 07-06-2021 AA03801 Motion for Summary Judgment)
91 Lincicomes' Notice of Appeal07-19-2021 AA03812
92 Case Appeal Statement07-30-2021 AA03815
93 Order Regarding Permanent Writ of Restitution08-20-2021 AA03823
94 Breckenridge Property Fund 2016’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents09-09-2021 AA03826
95 Plaintiffs' Motion for Stay Pending Appeal96 Opposition to Breckenridge Property Fund 2016’s09-24-2021 AA03904Motion for Entry of Order Granting Permanent Writof Restitution and Payment of Overdue Rents
97 Defendant Breckenridge Property Fund 2016, LLC’s 10-01-2021 AA03906 Opposition to Plaintiffs' Motion to Stay PendingAppeal
98 Request for Transcripts10-04-2021 AA03974
99 Breckenridge Property Fund 2016’s Reply in10-06-2021 AA03976
Support of Motion for Entry of Order Granting

Permanent Writ of Restitution and Payment of Overdue Rents

100 Transcripts of Hearings
10-18-2021 AA03979

## VOLUME XVII

100 (Continued) Transcripts of Hearings
10-18-2021 AA04001

## VOLUME XVIII

100 (Continued) Transcripts of Hearings
10-18-2021 AA04251
101 Order Concerning: Breckenridge Property Fund
11-05-2021 AA04257 2016, LLC’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs’ Motion for Stay Pending Appeal

102 Lincicomes’ Ex Parte Motion for Additional Time to 11-15-021 AA04267 Obtain Supersedeas Bond

103 Breckenridge Property Fund 2016’s Opposition to 11-16-2021 AA04274 Plaintiffs’ Improper Ex Parte Motion for Additional Time to Obtain Supersedeas Bond and Request for Sanctions

104 Order Denying Ex Parte Motion (for additional time 11-17-2021 AA04301 for bond)
105 Permanent Writ of Restitution (order permitting 11-22-2021 AA04304 eviction of Lincicomes from their home)

# IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON 

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME.

Plaintiffs,
vs.

SABES. LLC. a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING. LLC. a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE $1 ; 1900$ CAPITAL TRUST II. BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

## Defendants.

ORDER DENYING
PLAINTIFFS MOTION FOR
PARTIAL SUMMARY JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY
BANA, PROF-2013 M4
LEGALL TRUST, US BANK AND FAY SERVICING LLC

## I. STATEMENT OF THE CASE

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants. Prof-2013M4-Legal Trust, by U.S. Bank. National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,

Breckenridge Property Fund 2016. LLC joined the Opposition. On May 6. 2021. Plaintiffs filed a Reply.

On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On the same date Prof-2013 M4 Legal trust, U.S. Bank. National Association as Legal Trustee ( ${ }^{-U U . S}$. Bank Trust") and Fay Servicing LLC. filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust. U.S. Bank, National Association as Legal Trustee ( ${ }^{-U . S . S . B a n k ~ T r u s t ") ~ a n d ~ F a y ~ S e r v i c i n g ~ L L C . ~ f i l e d ~ a ~ R e p l y . ~ O n ~ M a y ~} 10$. 2021 Shellpoint Mortgage filed a Reply.

On March 17, 2021. Bank of America, hereinafter "BANA." filed a Motion for Summary Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition. On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC ("Breckenridge") joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust"), Defendant Fay Servicing LLC ("Fay") and Shellpoint Mortgage Servicing, LLC ("Shellpoint") joined the Motion on April 19. 2021.

## II. ISSUE PRESENTED

Should the Court sanction the Plaintiffs for discovery violations?
Should the Court grant the Plaintiffs' Motion for Summary Judgment?
Should the Court grant the Defendants' Motions for Summary Judgment?

## 1II. SUMMARY OF DECISION

The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.
The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to summary judgment as a matter of law.

The Court finds that no genuine material issues of fact exist and the Defendants are entitled to summary judgment as a matter of law.

## IV. PRINCIPLES OF LAW

## A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings. depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posadav. City of Reno, 109 Nev. 448 (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence. must be viewed in a light most favorable to the non-moving party. Richards v. Republic Silver State Disposal, Inc., 122 Nev. 1213 (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. Woodv. Safeway. Inc., 106 Nev. 601.603 (1990).
B. Statutes of Limitation

NRS 11.190 states in relevant part:
(1) Within 6 years:
(a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.
(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

## C. Enforceability of FMA Agreement

The Supreme Court held in C'ain v Price. 134 Nev. 193195 (2018), that to be "legally enforceable, a contract "must be supported by consideration." In Jones vi SunTrust Mtg., Inc. 128 Nev.
188. 191 (2012) the Nevada Supreme Court held that "Consideration is the exchange of a promise or performance, bargained for by the parties." The Jones Court held:

> A party's affirmation of a preexisting duty is generally not adequate consideration to support a new agreement. See ('ty: of (lark v: Bonanza No. 1. 96 Nev. 643. 650. 615 P.2d 939, 943 (1980). However, where a party's promise. offered as consideration, differs from that which it already promised, there is sufficient consideration to support the subsequent agreement. 3 Williston on Contracts $\$ 7: 41$ (4th ed. 2008).

In Jones, the Nevada Supreme Court had to determine the validity of a signed agreement resulting from Nevada's Foreclosure Mediation Program. The Jones Court held that, "when an agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise comports with contract principles. the agreement is enforceable under District Court Rule 16."id. District Court Rule 16 states:

No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall. by consent, be entered in the minutes in the form of an order. or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney.

NRS 40.453 states:
Except as otherwise provided in NRS 40.495:

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.
2. A court shall not enforce any such provision.

In Lowe Enterprise Residential Partners, L.P. v Eighth Judicial District Court ex rel. County of Clark. 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of NRS 40.453. The Court held that a "review of the legislative history reveals that NRS 40.453 was enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a jury trial." This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure. D. Claim Preclusion

The Nevada Supreme Court has adopted a three-part test to determine the availability of claim preclusion: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." G.C. Wallace. Inc. veighth Judicial District Court. 127 Nev. 701.706 (2011), citing to Five Star. 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).
E. Repudiation/Renunciation/Anticipatory Breach

17B C.J.S. Contracts § 718. Acts constituting renunciation or repudiation, states:
In order that the rule permitting the immediate institution of a suit on the renunciation or repudiation of a contract may apply, the renunciation or repudiation must be a present one. It must also be entire, or total, covering the entire performance to which the contract binds the promisor, or the refusal to perform must be of a covenant going to the whole consideration. Furthermore, the renunciation or repudiation must be absolute or unequivocal. It has also been said that in order to be effective for this purpose, the renunciation or repudiation must be clear. strict. positive, definite, specific. distinct. final, unqualified. or unconditional.

In order to constitute an absolute and unequivocal repudiation, no precise form of words is necessary. Whether an anticipatory repudiation has occurred is determined on a case-by-case basis, depending on the particular language used.
The repudiation or renunciation may be by language or act making it futile for the other party to proceed. An intent to repudiate may be expressly asserted or circumstantially manifested by conduct. However, a party's words and acts communicated to the other party, not its intention. should control. Thus, a mere expression of intention not to perform, or not to be bound. is not enough, nor is a mere threat to abandon. or a mere assertion that the party will be unable, or will refuse, to perform the contract. At the same time, a refusal to perform may itself be a repudiation of the contract, in spite of a party's words seeking to reassure the other party of its intent to perform in the future.

17B C.J.S. Contracts $\S 722$, Elections of remedies upon renunciation of executory contract-
Acceptance or rejection of renunciation states:
The party injured by an anticipatory breach has an election to accept or reject the refusal of performance. For the doctrine of breach by anticipatory repudiation to be applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must accept and act on it. Moreover, it must also act promptly and within a reasonable time. However. the effect of an anticipatory repudiation is not nullified by the fact that the nonrepudiating party attempts to enforce performance.

The renunciation of a contract by the promisor before the time stipulated for performance is not effective unless such repudiation is unequivocally or affirmatively accepted by the promisee. If the promisee declines to accept the renunciation and continues to insist on the performance of the promise, as it may do. the contract remains in existence for the benefit, and at the risk, of both parties, and is binding on them, and, if anything occurs to discharge it from other causes, the promisor may take advantage of such discharge. Where the contract thus remains in existence, no actionable claim for damages arises until the time for performance expires. Furthermore, a repudiation not treated as an anticipatory breach is immaterial in an action thereafter brought to enforce the contract.

If. after the attempted renunciation by one party to the contract, the other party elects to treat the contract as still binding and to await the time for full performance, it is incumbent on the party making such election to perform such of the obligations as may, in the meantime. fall on it under the terms of the contract.

## F. Tender of Payments

$\S 47: 1$. Showing of readiness and willingness to perform, 15 Williston on Contracts $\S 47: 1$ (4th
ed.) states:
A party to a contract who complains that the other party has breached the terms of the contract must prove performance of the contract on his or her own part or a valid and unconditional tender of performance rejected by the other party. Tender of performance in this regard combines readiness, willingness, and ability to perform. In order to be valid, tender of payment on a contract must be: (1) timely; (2) made to the person entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due; and (5) coupled with an actual production of the money or its equivalent. The rules that govern tenders are strict and strictly applied: a tender must be one of full performance and unconditional to be valid; moreover, the party alleging an offer of tender must possess the ability to perform, and the tender must be made in good faith. Unlike the situation where performance by one party is a condition precedent to performance by the other, where conditions are concurrent, the allegation of tender need not be of absolute tender. A tender conditional on contemporaneous performance by the defendant is sufficient and necessary. It has sometimes been said that in such a case, an allegation of readiness and willingness on the part of the plaintiff is sufficient or even that this is not part of the plaintiff's case. However. while in suits for specific performance a different rule prevails in many jurisdictions to maintain an action for legal relief, the plaintiff must not only be ready and willing to perform but also must have manifested this before bringing the action, by some offer of performance to the defendant. for, otherwise, both parties might be ready and willing and each stay at home waiting for the other to come forward. While the situation is possible that each of two parties has a right to specific performance against the other, it is not possible that each shall have a right to damages for a total breach of the contract.
(Citations omitted).
In Bank of America. N.A. v.SFR Investment Pool 1. LLC 134 Nev. 604, 610-11 (2018) the
Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:
Whether a tendering party must pay the amount into court depends on the nature of the proceeding and the statutory and common law of the jurisdiction. See Annotation, Necessity of Keeping Tender Good in Equity, 12 A.L.R. 938 (1921) ("Generally, there is no fixed rule in equity which requires a tender to he kept good in the sense in which that phrase is used at law."): see also Restatement (Third) of Prop.: Mortgages $\S 6.4$ (Am. Law Inst. 1997) ("The tender must he kept good in the sense that the person making the tender must continue at all times to be ready, willing. and able to make the payment."). Where payment into court is not explicitly required, "averment of a readiness and willingness to bring the money into court, and pay the same on the order of the court, is sufficient."
Annotation, Necessity of Keeping Tender Good in Equity: 12 A.L.R. 938 (I921). And, "the necessity of keeping a tender good and of paying the money into court has no application to a tender made for the purpose of discharging a mortgage lien." Annotation, Unaccepted Tender as Affecting Lien of Real Estate Mortgage, 93 A.L.R. 12 (1934) (explaining that such a tender would either immediately discharge the mortgage lien or the lien would remain unimpaired by the tender).
(Citations omitted).
If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the party was not in default. then the party must still allege and prove the party performed and has the ability to tender any amounts in contention and to continue performing. Turner י Seterus, Inc. 27

Cal.App $5^{\text {th }} 516,530-31$ (Ct. App 3rd CA 2018).

## G. Substantial Compliance and NRS 107.080

NRS 107.080 (5) through (8) states:
5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7. a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:
(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section:
(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee"s deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located: and
(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.
6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor. to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 90 days after the date of the sale.
7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6 , any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.
8. If. in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any requirement of subsection 2,3 or 4 , the court must award to the grantor or the person who holds title of record:
(a) Damages of $\$ 5,000$ or treble the amount of actual damages, whichever is greater:
(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2.3 and 4: and
(c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5 .

In Schleining v C'ap One, Inc, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS
107.080 does not require strict adherence. The Court focused upon the "does not substantially comply with" language. In Dayco Funding Corporation v Mona, 134 Nev. 929 (2018) the Nevada Supreme Court held that substantial compliance is found when the title holder "had actual knowledge of the default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." Id. citations omitted.

This Court found one decision which stated that inaccurate numbers regarding a deficiency was not grounds to find that a notice of default was not in substantial compliance. Kehoe varrora Loan

Services LLC': 2010 WL 4286331 (US Dst. Ct D. Nev 2010).

## H. Computation of Damages-NRCP Rule 16.1

NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation of damages:
(iv) a computation of each category of damages claimed by the disclosing party--who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material. unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; ....

In Pizarro-Ortega v: Cerrantes-Lopez, 133 Nev. 261, 265 (2017). the Nevada Supreme Court held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party in violation must show a "substantial justification" or that the failure is harmless to avoid sanctions that include the exclusion of evidence. Id.

NRCP Rule 37 (b) (1) states:
(b) Sanctions for Failure to Comply With a Court Order.
(1) For Not Obeying a Discovery Order. If a party or a party`s officer, director, or managing agent - or a witness designated under Rule 30(b)(6) or 31 (a)(4) - fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37(a), the court may issue further just orders that may include the following:
(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
(B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
(C) striking pleadings in whole or in part;
(D) staying further proceedings until the order is obeyed;
(E) dismissing the action or proceeding in whole or in part;
(F) rendering a default judgment against the disobedient party; or
(G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $\$ 381,150.00$ secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25,2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009. BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $\$ 417,198.58$. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptey and listed the debt for the property at $\$ 381,000$. The Plaintiffs made no payment at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payment on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator`s Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $\$ 2462.30$ as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.
18. A Notice of Default and Notice of Sale was filed against the subject property.
19. On November 7. 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.
20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.
21. On December 31. 2018. the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $\$ 172.610 .67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter. The Plaintiffs did not file the bond.
22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $\$ 294,000.01$.
23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.

## ANALYSIS

The gravamen of the Plaintiffs" causes of action is the alleged breach of the 2009 Loan

Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs believe that the mailing of the application constituted an acceptance and the LMA was from that point on a binding contract between the parties.

After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they would investigate whether the LMA was accepted. In October of 2009. the Plaintiffs received a mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not been modified.

If the original agreement was still in place, then the Plaintiffs were legally obligated to perform as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.

No issues of fact exist as to whether the Plaintiffs would have failed to make the required payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a demand for payment. The Plaintiffs also admitted that they entered into different modification plans after the LMA based upon their inability to pay.

The Plaintiffs rely on a theory that their performance was permanently excused by the failure of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory that their performance was excused by the failure of Fay to accept a payment under a modification on a subsequent modification. These theories fail under relevant law for several reasons.

If. as alleged, the LMA was effective upon mailing. then the breach occurred in 2009. If as alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that BANA would not accept the modified payment in 2009. They understood BANA would not perform under the LMA in October of 2009. They failed to bring an action against BANA until November 7 , 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the LMA had no impact on the date of the breach.

Additionally: if the LMA or subsequent modification was effective, then the Plaintiffs ${ }^{\circ}$ theory of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in a reasonable time. As stated in 17B C.J.S. Contracts $\S 722$, the non-breaching party must accept the repudiation and elect a remedy. The non-breaching party must also act promptly and within a reasonable time. The Plaintiffs did nothing in either 2009 or 2011 . Restitution to the lenders would also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.

The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the performances under the agreement. A lender materially performs by providing the funds requested under the loan. A borrower must then materially perform by making the monthly payments. Further, the theory of excuse of performance may delay the need to perform but it does not discharge the duty to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not accept the repudiation.

Contract and mortgage taw would also require that the Plaintiffs remain ready, willing and able to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not perform under any of the offers and modifications of the original agreement.

The Plaintiffs entered into a bankruptcy after their incomes went down and they had an
unanticipated tax bill. The bankruptey filing indicates that the Plaintiffs believed they were under the original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs did not have the ability to make the payments under any of the offers or alleged agreements. They have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments under any of the agreements.

Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements and the bankruptey could act as an intervening event and excuse any breach of not accepting the original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of foreclosure would have excused the original alleged breach.

The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the Plaintiffs became the breaching party once BANA and its successors made a demand for payment and payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They could have preserved any rights they believed they had under the LMA by making a tender after receiving the notice of default.

Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending upon what court they are in. BANA would be bound as well by any representations made in the bankruptcy proceedings.

Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have
to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

Under Jones, the mediated agreement of deed in lieu of foreclosure is enforceable. The Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the property. NRS 40.453 does not apply as argued in other motions.

The foreclosing defendants substantially complied with NRS 107.080 notice requirements. The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would occur. The fact that they disputed the amount of the default did not create any prejudice to them as they never intended to make a tender of any amount. The notice provided them the opportunity to file an action to stop the foreclosure sale which they then did. They were given an opportunity to file a bond and then perform under the agreement they argued was in effect, but then failed to do so.

Finally, the Court finds that the failure to provide a computation of damages as required by NRCP Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be justified by their counsel’s belief that to deal with damages at a later point in time is more economical. The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of damages. The Plaintiffs had over two years to comply with the rule.

The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a settlement conference that was ordered. How they could do so without understanding their damages is perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all allegations concerning monetary damages from the Complaint as the failure appears to be made in bad faith and in an effort to prolong this matter further.

## CONCLUSIONS OF LAW

1. Sanctions striking allegations the Plaintiffs have suffered monetary damages are appropriate as the Plaintiffs have not justified their failure to provide a computation of damages pursuant to NRCP Rule 16.1.
2. The Plaintiffs are not entitled to partial summary judgment.
3. The Defendants are entitled to summary judgment.

## VI. ORDER

Therefore, based upon the above and good cause appearing. IT IS HEREBY ADJUDGED and ORDERED that BANA's request for sanctions is GRANTED. The Court strikes all allegations in the Complaint that the Plaintiffs have suffered monetary damages.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that that Plaintiffs' Motion for Partial Summary Judgment is DENIED.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that the Motions for Summary Judgment filed by BANA. Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC., are GRANTED.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that BANA's request for NRCP Rule 54(b) certification as a final judgment is GRANTED. The Court finds no just reason for the delay.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is VACATED. The Court found the pleadings sufficient to enter an order without argument.

DATED: This 23rd day of June. 2021.


HON. LEON ABERASTURI
DISTRICT COURT JUDGE

I hereby certify that I. $\qquad$ , am an employee of the Third Judicial District Court. and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington. Nevada addressed to:

Michael G. Millward. Esq.
Millward Law, Ltd.
1591 Mono Ave.
Midden. NV 89423
Scott R. Lachman. Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson. Esq. Wedgewood, LLC 2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Chad A. Wade
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Matthew K. Schriever, Esq.
Hutchison \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramie M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This $\qquad$ d day of $\qquad$ , 2021.


Employee of Hon. Leon Aberasturi

WRIGHT, FINLAY \& ZAK, LLP
Darren T. Brenner, Esq.
Nevada Bar No. 8386
Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
rhernandez@wrightlegal.net
Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA
ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust, given by Vicenta Lincicome and dated 5/23/2007 et al.

Defendants.
and all related cases.

PLEASE TAKE NOTICE that an ORDER ON BRECKENRIDGE MOTION FOR SUMMARY JUDGMENT was entered in the above-entitled Court on the 23rd day of June, 2021. A copy of which is attached hereto.

DATED this $29^{\text {th }}$ day of June, 2021.


Ramir M. Hernandez, Esq. Nevada Bar No. 13146
Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

Page 1 of 3

## AFFIRMATION

## Pursuant to NRS 239B.03/603A. 040

The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B. 030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.
The term does not include any publically available information that is lawfully made available to the general public.

DATED this 29th day of June, 2021.
WRIGHT, FINLAY \& ZAK, LLP
Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY \& ZAK, LLP, and that on this Jay of June, 2021, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER to be served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

> Michael G. Millward, Esq.

MILLWARD LAW, LTD.
1591 Mono Ave.
Minden, NV 89423
Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410
Scott R. Lachman, Esq.
AKERMAN LLP
1635 Village Center Circle, Ste. 200
Las Vegas, NV 89134
John T. Steffen, Esq.
Matthew K. Schriever, Esq.
HUTCHISON \& STEFFEN, PLLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Casey J. Nelson, Esq.
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146


Case No.: 18-CV-01332
Dept. No.: II

## IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

 IN AND FOR THE COUNTY OF LYONALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and

ORDER ON
BRECKENRIDGE MOTION FOR SUMMARY
JUDGMENT subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

Defendants.

## I. STATEMENT OF THE CASE

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 10, 2021,

Breckenridge filed a Reply.

## II. ISSUE PRESENTED

Should the Court grant Breckenridge's Motion for Summary Judgment?

## III. SUMMARY OF DECISION

The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to summary judgment as a matter of law.

## IV. PRINCIPLES OF LAW

A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posada v. City of Reno, 109 Nev. 448 (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party. Richards v. Republic Silver State Disposal, Inc., 122 Nev. 1213 (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. Wood v. Safeway, Inc., 106 Nev. 601, 603 (1990).
B. NRS 40.010

NRS 40.010 states, "An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."
D. NRS 111.180

NRS 111.180 states:

1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.
E. NRS 40.250

NRS 40.250 states:
A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed áproperty known a 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $\$ 381,150.00$ secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electrenic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed documents creating the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $\$ 417,198.58$. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $\$ 381,000$. The Plaintiffs made no payments at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $\$ 2462.30$ as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred
to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.
18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject property.
19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.
20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.
21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter. The Plaintiffs did not file the bond.
22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $\$ 294,000.01$.
23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.

## VI. ANALYSIS

The Court incorporates the legal findings, factual findings and analysis contained in its separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4

LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims to title of the property.

## VII. CONCLUSIONS OF LAW

Breckenridge is entitled to a motion for summary judgment in its favor.

## ORDER

Therefore, good cause appearing, IT IS HEREBY ADJUDGED and ORDERED that Breckenridge's Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is VACATED. The Court found the pleadings sufficient to enter an order without argument.

DATED: This $23^{\text {re }}$ day of June, 2021.


HON. LEON ABERASTURI DISTRICT JUDGE

## Certificate of Mailing

I hereby certify that I, $\qquad$ Guv Them $\qquad$ , am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minder, NV 89423
Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson, Esq.
Wedgewood, LLC
2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Shad A. Wade
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Matthew K. Schriever, Esq.
Hutchinson \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This $23^{\text {r ld day of J } v \text { he }}, 2021$.


Employee of Hon. Leon Aberasturi

WRIGHT, FINLAY \& ZAK, LLP
Darren T. Brenner, Esq.
Nevada Bar No. 8386
Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
rhernandez@wrightlegal.net
Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs, vs.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust, given by Vicenta Lincicome and dated 5/23/2007 et al.

Defendants.
and all related cases.

PLEASE TAKE NOTICE that an ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4 LEGALL TRUST, US BANK AND FAY SERVICING LLC was entered in the above-entitled Court on the 23rd day of June, 2021. A copy of which is attached hereto.

DATED this $29^{\text {th }}$ day of June, 2021.
WRIGHT, FINLAY \& ZAK, LLP


Ramir M. Hernandez, Esq. Nevada Bar No. 13146 Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal

## AFFIRMATION

Pursuant to NRS 239B.03/603A. 040
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B. 030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 29th day of June, 2021.
WRIGHT, FINLAY \& ZAK, LLP
Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
Attorneys for Defendants, Prof-2013 M4-Legal Title
Trust, by U.S. Bank, National Association, as Legal
Title Trustee, Fay Servicing LLC, and Shellpoint
Mortgage Servicing, LLC

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY \& ZAK, LLP, and that on this dhay of June, 2021, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER to be served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Ave.
Minden, NV 89423

Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410
Scott R. Lachman, Esq.
AKERMAN LLP
1635 Village Center Circle, Ste. 200
Las Vegas, NV 89134
John T. Steffen, Esq.
Matthew K. Schriever, Esq.
HUTCHISON \& STEFFEN, PLLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq. WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146


# IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 

 IN AND FOR THE COUNTY OF LYONALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

Defendants.

ORDER DENYING
PLAINTIFFS MOTION FOR
PARTIAL SUMMARY
JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4
LEGALL TRUST, US BANK
AND FAY SERVICING LLC

## I. STATEMENT OF THE CASE

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants, Prof-2013M4-Legal Trust, by U.S. Bank, National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,

Breckenridge Property Fund 2016, LLC joined the Opposition. On May 6, 2021, Plaintiffs filed a Reply.

On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On the same date Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC, filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC, filed a Reply. On May 10, 2021 Shellpoint Mortgage filed a Reply.

On March 17, 2021, Bank of America, hereinafter "BANA," filed a Motion for Summary Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition. On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC ("Breckenridge") joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust"), Defendant Fay Servicing LLC ("Fay") and Shellpoint Mortgage Servicing, LLC ("Shellpoint") joined the Motion on April 19, 2021.

## II. ISSUE PRESENTED

Should the Court sanction the Plaintiffs for discovery violations?
Should the Court grant the Plaintiffs' Motion for Summary Judgment?
Should the Court grant the Defendants' Motions for Summary Judgment?

## III. SUMMARY OF DECISION

The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.
The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to summary judgment as a matter of law.

The Court finds that no genuine material issues of fact exist and the Defendants are entitled to summary judgment as a matter of law.

## IV. PRINCIPLES OF LAW

## A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posada $v$. City of Reno, 109 Nev .448 (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party, Richards v. Republic Silver State Disposal, Inc., 122 Nev. 1213 (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. Wood v. Safeway, Inc., 106 Nev. 601, 603 (1990).

## B. Statutes of Limitation

NRS 11.190 states in relevant part:
(1) Within 6 years:
(a) Except as otherwise provided in NRS 62B. 420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.
(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

## C. Enforceability of FMA Agreement

The Supreme Court held in Cain v Price, 134 Nev. 193195 (2018), that to be "legally enforceable, a contract "must be supported by consideration." In Jones v SunTrust Mtg., Inc. 128 Nev .

188, 191 (2012) the Nevada Supreme Court held that "Consideration is the exchange of a promise or performance, bargained for by the parties." The Jones Court held:

> A party's affirmation of a preexisting duty is generally not adequate consideration to support a new agreement. See Cty. of Clark v. Bonanza No. 1, 96 Nev. 643, 650, 615 P.2d 939, 943 (1980). However, where a party's promise, offered as consideration, differs from that which it already promised, there is sufficient consideration to support the subsequent agreement. 3 Williston on Contracts § 7:41 (4th ed, 2008).

In Jones, the Nevada Supreme Court had to determine the validity of a signed agreement resulting from Nevada's Foreclosure Mediation Program. The Jones Court held that, "when an agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise comports with contract principles, the agreement is enforceable under District Court Rule 16."id. District Court Rule 16 states:

No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney.

NRS 40.453 states:
Except as otherwise provided in NRS 40.495:

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.
2. A court shall not enforce any such provision.

In Lowe Enterprise Residential Partners, L.P.v Eighth Judicial District Court ex rel. County
of Clark, 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of NRS 40.453. The Court held that a "review of the legislative history reveals that NRS 40.453 was enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a jury trial." This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure. D. Claim Preclusion

The Nevada Supreme Court has adopted a three-part test to determine the availability of claim preclusion: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." G.C. Wallace, Inc. v Eighth Judicial District Court, 127 Nev. 701, 706 (2011), citing to Five Star, 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).
E. Repudiation/Renunciation/Anticipatory Breach

17B C.J.S. Contracts § 718, Acts constituting renunciation or repudialion, states:
In order that the rule permitting the immediate institution of a suit on the renunciation or repudiation of a contract may apply, the renunciation or repudiation must be a present one. It must also be entire, or total, covering the entire performance to which the contract binds the promisor, or the refusal to perform must be of a covenant going to the whole consideration. Furthermore, the renunciation or repudiation must be absolute or unequivocal. It has also been said that in order to be effective for this purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific, distinct, final, unqualified, or unconditional.

In order to constitute an absolute and unequivocal repudiation, no precise form of words is necessary. Whether an anticipatory repudiation has occurred is determined on a case-by-case basis, depending on the particular language used.
The repudiation or renunciation may be by language or act making it futile for the other party to proceed. An intent to repudiate may be expressly asserted or circumstantially manifested by conduct. However, a party's words and acts communicated to the other party, not its intention, should control. Thus, a mere expression of intention not to perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere assertion that the party will be unable, or will refuse, to perform the contract. At the same time, a refusal to perform may itself be a repudiation of the contract, in spite of a party's words seeking to reassure the other party of its intent to perform in the future.

17B C.J.S. Contracts $\S 722$, Elections of remedies upon renunciation of executory contract-
Acceptance or rejection of remunciation states:
The party injured by an anticipatory breach has an election to accept or reject the refusal of performance. For the doctrine of breach by anticipatory repudiation to be applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must accept and act on it. Moreover, it must also act promptly and within a reasonable time. However, the effect of an anticipatory repudiation is not nullified by the fact that the nonrepudiating party attempts to enforce performance.

The renunciation of a contract by the promisor before the time stipulated for performance is not effective unless such repudiation is unequivocally or affirmatively accepted by the promisee. If the promisee declines to accept the renunciation and continues to insist on the performance of the promise, as it may do, the contract remains in existence for the benefit, and at the risk, of both parties, and is binding on them, and, if anything occurs to discharge it from other causes, the promisor may take advantage of such discharge. Where the contract thus remains in existence, no actionable claim for damages arises until the time for performance expires. Furthermore, a repudiation not treated as an anticipatory breach is immaterial in an action thereafter brought to enforce the contract.

If, after the attempted renunciation by one party to the contract, the other party elects to treat the contract as still binding and to await the time for full performance, it is incumbent on the party making such election to perform such of the obligations as may, in the meantime, fall on it under the terms of the contract.
F. Tender of Payments
§ 47:1.Showing of readiness and willingness to perform, 15 Williston on Contracts § 47:1

A party to a contract who complains that the other party has breached the terms of the contract must prove performance of the contract on his or her own part or a valid and unconditional tender of performance rejected by the other party. Tender of performance in this regard combines readiness, willingness, and ability to perform. In order to be valid, tender of payment on a contract must be: (1) timely; (2) made to the person entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due; and (5) coupled with an actual production of the money or its equivalent. The rules that govern tenders are strict and strictly applied; a tender must be one of full performance and unconditional to be valid; moreover, the party alleging an offer of tender must possess the ability to perform, and the tender must be made in good faith. Unlike the situation where performance by one party is a condition precedent to performance by the other, where conditions are concurrent, the allegation of tender need not be of absolute tender. A tender conditional on contemporaneous performance by the defendant is sufficient and necessary. It has sometimes been said that in such a case, an allegation of readiness and willingness on the part of the plaintiff is sufficient or even that this is not part of the plaintiff's case. However, while in suits for specific performance a different rule prevails in many jurisdictions to maintain an action for legal relief, the plaintiff must not only be ready and willing to perform but also must have manifested this before bringing the action, by some offer of performance to the defendant, for, otherwise, both parties might be ready and willing and each stay at home waiting for the other to come forward. While the situation is possible that each of two parties has a right to specific performance against the other, it is not possible that each shall have a right to damages for a total breach of the contract.
(Citations omitted).
In Bank of America, N.A. v SFR Investment Pool 1, LLC 134 Nev. 604, 610-11 (2018) the Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:

Whether a tendering party must pay the amount into court depends on the nature of the proceeding and the statutory and common law of the jurisdiction. See Annotation, Necessity of Keeping Tender Good in Equity, 12 A.L.R. 938 (1921) ("Generally, there is no fixed rule in equity which requires a tender to he kept good in the sense in which that phrase is used at law."); see also Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) ("The tender must he kept good in the sense that the person making the tender must continue at all times to be ready, willing, and able to make the payment."). Where payment into court is not explicitly required, "averment of a readiness and willingness to bring the money into court, and pay the same on the order of the court, is sufficient."
Annotation, Necessity of Keeping Tender Good in Equity, 12 A.L.R. 938 (1921). And, "the necessity of keeping a tender good and of paying the money into court has no application to a tender made for the purpose of discharging a mortgage lien." Annotation, Unaccepted Tender as Affecting Lien of Real Estate Mortgage, 93 A.L.R. 12 (1934) (explaining that such a tender would either immediately discharge the mortgage lien or the lien would remain unimpaired by the tender).
(Citations omitted).
If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the party was not in default, then the party must still allege and prove the party performed and has the ability to tender any amounts in contention and to continue performing. Turner v Seterus, Inc, 27

Cal.App $5^{\text {th }} 516,530-31$ (Ct. App 3rd CA 2018).
G. Substantial Compliance and NRS 107.080

NRS 107.080 (5) through (8) states:
5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:
(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;
(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and
(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.
6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 90 days after the date of the sale.
7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6 , any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.
8. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any requirement of subsection 2,3 or 4 , the court must award to the grantor or the person who holds title of record:
(a) Damages of $\$ 5,000$ or treble the amount of actual damages, whichever is greater;
(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and
(c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5 .

In Schleining v Cap One, Inc, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS 107.080 does not require strict adherence. The Court focused upon the "does not substantially comply with" language. In Dayco. Funding Corporation v Mona, 134 Nev. 929 (2018) the Nevada Supreme Court held that substantial compliance is found when the title holder "had actual knowledge of the default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." Id. citations omitted.

This Court found one decision which stated that inaccurate numbers regarding a deficiency was not grounds to find that a notice of default was not in substantial compliance. Kehoe v Aurora Loan Services LLC, 2010 WL 4286331 (US Dst. Ct D. Nev 2010).
H. Computation of Damages-NRCP Rule 16.1

NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation of damages:
(iv) a computation of each category of damages claimed by the disclosing party--who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; ....

In Pizarro-Ortega v: Cervantes-Lopez, 133 Nev. 261, 265 (2017), the Nevada Supreme Court held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party in violation must show a""substantial justification" or that the failure is harmless to avoid sanctions that include the exclusion of evidence. Id.

NRCP Rule 37 (b) (1) states:
(b) Sanctions for Failure to Comply With a Court Order.
(1) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent - or a witness designated under Rule 30(b)(6) or 31(a)(4) - fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37 (a), the court may issue further just orders that may include the following:
(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
(B) prohibiting the disobedient party from supporting or opposing
designated claims or defenses, or from introducing designated matters in evidence;
(C) striking pleadings in whole or in part;
(D) staying further proceedings until the order is obeyed;
(E) dismissing the action or proceeding in whole or in part;
(F) rendering a default judgment against the disobedient party; or
(G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $\$ 381,150.00$ secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $\$ 417,198.58$. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $\$ 381,000$. The Plaintiffs made no payment at the time of bankruptcy filing or during the bankuptcy. The Plaintiffs did not challenge the underlying obligation.
10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payment on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $\$ 2462.30$ as an offered trial period plan. The payments had to be made on April 1, 2018 , May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.
18. A Notice of Default and Notice of Sale was filed against the subject property.
19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.
20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.
21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter. The Plaintiffs did not file the bond.
22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $\$ 294,000.01$.
23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.

## ANALYSIS

The gravamen of the Plaintiffs' causes of action is the alleged breach of the 2009 Loan

Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs believe that the mailing of the application constituted an acceptance and the LMA was from that point on a binding contract between the parties.

After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they would investigate whether the LMA was accepted. In October of 2009, the Plaintiffs received a mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not been modified.

If the original agreement was still in place, then the Plaintiffs were legally obligated to perform as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.

No issues of fact exist as to whether the Plaintiffs would have failed to make the required payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a demand for payment. The Plaintiffs also admitted that they entered into different modification plans after the LMA based upon their inability to pay.

The Plaintiffs rely on a theory that their performance was permanently excused by the failure of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory that their performance was excused by the failure of Fay to accept a payment under a modification on
a subsequent modification. These theories fail under relevant law for several reasons.
If, as alleged, the LMA was effective upon mailing, then the breach occurred in 2009. If as alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that BANA would not accept the modified payment in 2009. They understood BANA would not perform under the LMA in October of 2009. They failed to bring an action against BANA until November 7, 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the LMA had no impact on the date of the breach.

Additionally, if the LMA or subsequent modification was effective, then the Plaintiffs' theory of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in a reasonable time. As stated in 17B C.J.S. Contracts § 722, the non-breaching party must accept the repudiation and elect a remedy. The non-breaching party must also act promptly and within a reasonable time. The Plaintiffs did nothing in either 2009 or 2011 . Restitution to the lenders would also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.

The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the performances under the agreement. A lender materially performs by providing the funds requested under the loan. A borrower must then materially perform by making the monthly payments. Further, the theory of excuse of performance may delay the need to perform but it does not discharge the duty to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not accept the repudiation.

Contract and mortgage law would also require that the Plaintiffs remain ready, willing and able to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not perform under any of the offers and modifications of the original agreement.

The Plaintiffs entered into a bankruptcy after their incomes went down and they had an
unanticipated tax bill. The bankruptcy filing indicates that the Plaintiffs believed they were under the original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs did not have the ability to make the payments under any of the offers or alleged agreements. They have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments under any of the agreements.

Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements and the bankruptcy could act as an intervening event and excuse any breach of not accepting the original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of foreclosure would have excused the original alleged breach.

The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the Plaintiffs became the breaching party once BANA and its successors made a demand for payment and payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They could have preserved any rights they believed they had under the LMA by making a tender after receiving the notice of default.

Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending upon what court they are ir. BANA would be bound as well by any representations made in the bankruptcy proceedings.

Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have
to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

Under Jones, the mediated agreement of deed in lieu of foreclosure is enforceable. The Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the property. NRS 40.453 does not apply as argued in other motions.

The foreclosing defendants substantially complied with NRS 107.080 notice requirements. The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would occur. The fact that they disputed the amount of the default did not create any prejudice to them as they never intended to make a tender of any amount. The notice provided them the opportunity to file an action to stop the foreclosure sale which they then did. They were given an opportunity to file a bond and then perform under the agreement they argued was in effect, but then failed to do so.

Finally, the Court finds that the failure to provide a computation of damages as required by NRCP Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be justified by their counsel's belief that to deal with damages at a later point in time is more economical. The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of damages. The Plaintiffs had over two years to comply with the rule.

The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a settlement conference that was ordered. How they could do so without understanding their damages is perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all allegations concerning monetary damages from the Complaint as the failure appears to be made in bad faith and in an effort to prolong this matter further.

## CONCLUSIONS OF LAW

1. Sanctions striking allegations the Plaintiffs have suffered monetary damages are appropriate as the Plaintiffs have not justified their failure to provide a computation of damages pursuant to NRCP Rule 16.1.
2. The Plaintiffs are not entitled to partial summary judgment.
3. The Defendants are entitled to summary judgment.

## VI. ORDER

Therefore, based upon the above and good cause appearing, IT IS HEREBY ADJUDGED and ORDERED that BANA's request for sanctions is GRANTED. The Court strikes all allegations in the Complaint that the Plaintiffs have suffered monetary damages.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that that Plaintiffs' Motion for Partial Summary Judgment is DENIED.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that the Motions for Summary Judgment filed by BANA, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as L.egal Trustee ("U.S. Bank Trust") and Fay Servicing LLC., are GRANTED.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that BANA's request for NRCP Rule 54(b) certification as a final judgment is GRANTED. The Court finds no just reason for the delay.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is VACATED. The Court found the pleadings sufficient to enter an order without argument.

DATED: This 23rd day of June, 2021.


1
HON. LEON ABERASTURI DISTRICT COURT JUDGE

## Certificate of Mailing

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423
Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson, Esq.
Wedgewood, LLC
2320 Potosi St., Ste, 130
Las Vegas, NV 8p146

Shadd A. Wade
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Matthew K. Schriever, Esq.
Hutchison \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This $23^{\text {rd }}$ day of June., 2021.


Employee of Hon. Leon Aberasturi

John T. Steffen (4390)
Brenoch R. Wirthlin (10282)

## ORIGINAL FILED

HUTCHISON \& STEFFEN, PLLC 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
bwirthlin@hutchlegal.com
Casey J. Nelson (12259)
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Telephone: (702) 305-9157
Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant / Counterclaimant Breckenridge Property Fund 2016, LLC

## THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCLATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED ACTIONS

Case No:: 18-CV-01332
Dept No.: II
NOTICE OF ENTRY OF ORDER

Please take notice that an Order on Breckenridge Motion for Summary Judgment was entered on the 23 day of June, 2021, a copy of which is attached hereto.

DATED this 2day of June, 2021.
HUTCHFIS\& STEFFEN, PLLC
Casey J. Nelson (12259)
WEDGEWOOD, LLC
Brenoch R. Wid41/in (10282)
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Attorney for Defendant / Counterclaimant
Breckenridge Property Fund, LLC9

## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison \& Steffen, and that on the date indicated below, I served a true and correct copy of the NOTICE OF ENTRY OF ORDER via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs
R. Samuel Ehlers, Esq. Ramir M. Hernandez, Esq. WRIGHT FINLAY \& ZAK, LLP
7785 W. Sahara Avenue, \#200
Las Vegas, NV 89117
Attorney for Prof-2013-M4 Legal Title Trust by US. Bank, National Association as Legal Title Trustee; Fay Servicing, LLC, and Shellpoint Mortgage Servicing, LLC

Melanie Morgan, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, \#200
Las Vegas, NV 89134
Attorney for Bank of America

Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410
Attorney for Plaintiff

Shadd A. Wade, Esq
ZIEVE BRODNAX \& STEEL
9435 W. Russell Road, \#120
Las Vegas, NV 89148
Attorney for Sables, LLC

## FILED

201 UH: 23 P著4:07

Case No.: 18-CV-01332
Dept. No.: II

## IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

## IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated $5 / 23 / 2007$; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4

ORDER ON
BRECKENRIDGE MOTION FOR SUMMARY JUDGMENT LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

Defendants.

## I. STATEMENT OF THE CASE

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021 , the Plaintiffs filed an Opposition. On May 10, 2021,

Breckenridge filed a Reply.

## II. ISSUE PRESENTED

Should the Court grant Breckenridge's Motion for Summary Judgment?

## III. SUMMARY OF DECISION

The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to summary judgment as a matter of law.

## IV. PRINCIPLES OF LAW

## A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posada v. City of Reno, 109 Nev .448 (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party. Richards v. Republic Silver State Disposal, Inc., 122 Nev. 1213 (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. Wood v. Safeway, Inc., 106 Nev. 601, 603 (1990).

## B. NRS 40.010

NRS 40.010 states, "An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."
D. NRS 111.180

NRS 111.I80 states:

1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.
E. NRS 40.250

NRS 40.250 states:
A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $\$ 381,150.00$ secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed documents creating the deed of trust and note and understood she had a 30 -year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25,2015 , BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $\$ 417,198.58$. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $\$ 381,000$. The Plaintiffs made no payments at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $\$ 2462.30$ as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred
to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.
18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject property.
19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.
20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.
21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter. The Plaintiffs did not file the bond.
22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $\$ 294,000.01$.
23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.

## VI. ANALYSIS

The Court incorporates the legal findings, factual findings and analysis contained in its separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4 LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims to title of the property.

## VII. CONCLUSIONS OF LAW

Breckenridge is entitled to a motion for summary judgment in its favor.

## ORDER

Therefore, good cause appearing, IT IS HEREBY ADJUDGED and ORDERED that Breckenridge's Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is VACATED. The Court found the pleadings sufficient to enter an order without argument.

DATED: This $23^{\text {rd }}$ day of June, 2021.


HON. LEON ABERASTURI DISTRICT JUDGE

## Certificate of Mailing

I hereby certify that I, $\qquad$ , am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Shadd A. Wade
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Matthew K. Schriever, Esq.
Hutchison \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Casey J. Nelson, Esq. Wedgewood, LLC 2320 Potosi St., Ste. 130

Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
Las Vegas, NV 89146
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This $23^{r d} d$ day of J vhe, 2021.


Employee of Hon. Leon Aberasturi

Case No: 18-CV-01332
Dept.: II
The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A. 040

## Victoria Tova

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and ) VICENTA LINCICOME,

Plaintiffs, v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,
vs.
ALBERT ELLIS LINCICOME, JR., an ) ) individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5. Counterdefendants.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome, by and through their counsel of record, Michael G. Millward of Millward Law, Ltd., appeal to the Supreme Court of Nevada from the Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC entered June 23, 2021.

The Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC, concerns the following motions:

1. Motion for Summary Judgment filed by Bank of America on March 17, 2021;
2. Motion for Summary Judgment filed by Shellpoint Mortgage Servicing on March 25, 2021; and
3. Motion for Summary Judgment filed by Prof-2013 M4 Legal Trust, U.S. Bank, National Association of Legal Trustee and Fay Servicing, LLC, on March 25, 2021.

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome appeal to the Supreme Court of Nevada from the Order on Breckenridge Motion for Summary Judgment, entered June 23, 2021.

The Order on Breckenridge Motion for Summary Judgment concerns the Motion for Summary Judgment filed by Breckenridge Property Fund 2016, LLC, on March 18, 2021.

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome appeal to the Supreme Court of Nevada from the Order granting Sables, LLC, nonmonetary status entered May 30, 2019.

The Order concerns Sables, LLC's Declaration of Non-Monetary Status filed on or about December 18, 2018.

## AFFIRMATION

The undersigned hereby affirms, pursuant to NRS 239B.030, that the foregoing does not contain the social security number of any person, or other personal information as defined by RS 603A. 040.

Respectfully submitted $\qquad$ 16 day of
 , 2021

MILLWARD LAW, LTD By:-2forn Michael Gillward, Esq.
NSB\# 11212
1591 Mono Ave
Minden, NV 89423
(775) $600-2776$
Attorney for Plaintiffs

## IN THE THIRD JUDICIAL COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON



Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., submit their Case Appeal Statement in accordance with NRAP 3(f) as follows:

APPELLANTS: The Appellants are ALBERT ELLIS LINCICOME, JR. AND VICENTA LINCICOME (together referred to as "Appellants" or "the Lincicomes"). Appellants are represented by retained counsel Michael G. Millward, Esq., of Millward Law, Ltd., 1591 Mono Avenue, Minden, Nevada

89423, and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., 1512 US HWY 395 N, Ste. I, Gardnerville, Nevada 89410. Appellants were not represented by appointed counsel before the District Court. Appellants' counsel, Michael G. Millward, Esq., and Justin M. Clouser, Esq., are licensed to practice law in Nevada. Appellants have not sought leave to proceed in forma pauperis.

This appeal concerns real property and claims pertaining to wrongful foreclosure and breach of contract. This appeal does not involve child custody or visitation. Appellants believe that settlement of the issues pertaining to this appeal are a possibility.

DISTRICT COURT JUDGE: HONORABLE LEON ABERASTURI of the Third Judicial District Court issued the Orders that are the subject of this appeal.

RESPONDENTS: The Respondents and respective counsel for each respondent are as follows:

1. SABLES, LLC, represented by Shadd A. Wade, Esq., of Zieve, Brodnax \& Steel, 9435 W. Russell Road, Suite 120, Las Vegas, Nevada 89148;
2. FAY SERVICING, LLC, represented by Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of Wright, Finlay \& Zak, LLP, 7785 W. Sahara Avenue, Suite 200, Las Vegas, Nevada 89117;
3. PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., represented by Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of Wright, Finlay \& Zak, LLP, 7785 W. Sahara Avenue, Suite 200, Las Vegas, Nevada 89117;
4. BANK OF AMERICA, N.A., represented by Scott R. Lachman, Esq., of Akerman, LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134;
5. BRECKENRIDGE PROPERTY FUND 2016, LLC, represented by Hutchison \& Steffen, PLLC, 10080 W. Alta Drive, Suite 200, Las Vegas, Nevada 89145, and Wedgewood, LLC, 2320 Potosi Street, Suite 130, Las Vegas, Nevada 89146;
6. NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, represented by Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of Wright, Finlay \& Zak, LLP, 7785 W. Sahara Avenue, Suite 200, Las Vegas, Nevada 89117;
7. 1900 CAPITAL TRUST II, by U.S. BANK TRUST NATIONAL ASSOCIATION, represented by Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of Wright, Finlay \& Zak, LLP, 7785 W. Sahara Avenue, Suite 200, Las Vegas, Nevada 89117; and
8. MCM-2018-NPL2 represented by Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of Wright, Finlay \& Zak, LLP, 7785 W. Sahara Avenue, Suite 200, Las Vegas, Nevada 89117.

Appellants are informed and believe that the foregoing respective counsels for Respondents are licensed in Nevada.

DISTRICT COURT PROCEEDINGS: The Lincicomes initiated the proceedings before the Third Judicial District Court on November 7, 2018, by filing their Complaint and application for preliminary injunction.

NATURE OF ACTION AND RESULT: In 2007, the Lincicomes purchased their home in Dayton, Nevada. By late 2008, the Lincicomes had fallen behind on their mortgage payments, and in early 2009, the beneficiary of the Deed of Trust at the time, Defendant Bank of America, N.A. (hereinafter "BANA") recorded a notice of default.

In July of 2009, BANA made an offer to the Lincicomes to modify their 2007 Deed of Trust. The Lincicomes accepted the offer to modify their mortgage and timely submitted the paperwork to BANA on July 31, 2009.

On September 1, 2009, BANA accepted the Lincicomes' first payment on the modified loan, even though BANA was unable to locate the modification in its system. On October 1, 2009, BANA rejected the Lincicomes' payment when

BANA's customer service agent again could not find a record of the modification in BANA's system.

Thereafter in May of 2011, without notice to the Lincicomes, BANA recorded the 2009 modification with the Lyon County Recorder's Office. The Lincicomes remained unaware that BANA had found the modification until 2017 when the recorded modification was disclosed at a foreclosure mediation.

Even though it is admitted by all parties to this matter that the modification exists, was recorded, and that it effectively modified the Lincicomes' mortgage, no beneficiary of the deed of trust, or servicer has abided by its terms. BANA, US Bank, and all subsequent beneficiaries of the modified Deed of Trust have failed to implement or provide the Lincicomes with the opportunity to make payment under its terms. The Trustee under the Deed of Trust was informed that the terms of the modified Deed of Trust have not been followed or honored by BANA or any other successor beneficiary under the Deed of Trust.

At a hearing upon the Lincicomes' application for temporary protective order, the District Court determined that the Lincicomes were likely to succeed upon the merits of their claims and were entitled to a preliminary injunction. However, the Lincicomes were unable to post the requisite bond by December 20, 2018.

In spite of the Court's findings, on January 4, 2019, Sables, LLC, conducted the foreclosure sale of the Lincicomes' home and sold the same to Breckenridge Property Fund 2016, LLC.

On May 30, 2019, the District Court entered an Order granting Sables, LLC's application for non-monetary status effectively dismissing Sables from the action.

On December 20, 2019, the Lincicomes were granted leave and filed their Amended Complaint seeking relief for claims of wrongful foreclosure, declaratory relief, quiet title, violation of the Homeowners' Bill of Rights, breach of contract, breach of duty of good faith and fair dealing, slander of title, and attorney's fees as special damages.

On June 23, 2021, the District Court entered its Order Denying Plaintiffs' Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC, and it's Order on Breckenridge Motion for Summary Judgment.

The Lincicomes are appealing the District Court's May 30, 2019 Order effectively dismissing Sables, LLC, from the action and the District Court's two separate Orders entered June 23, 2021, granting the Defendants' respective motions for summary judgment and deciding all Plaintiffs' claims in Defendants' favor.

PRIOR APPEAL: This case has previously been the subject of an original writ proceeding in the Court of Appeals of the State of Nevada. A Petition for Writ of Mandamus was filed August 1, 2019, as Case No. 79152-COA, and captioned as Albert Ellis Lincicome, Jr. and Vicenta Lincicome, Petitioners, v. Third Judicial District Court of Nevada, in and for the County of Lyon; Honorable Leon Aberasturi, District Court Judge, Respondent and Sables, LLC, Fay Servicing, LLC, Prof-2012-M4 Legal Title Trust by U.S. Bank, N.A., and Bank of America, N.A., Real Parties in Interest. Additionally, a Petition for Review filed before the Nevada Supreme Court on February 10, 2020, under the same case number and caption.

## AFFIRMATION

The undersigned hereby affirms, pursuant to NRS 239B.030, that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.


## CERTIFICATE OF SERVICE

I, Ashley Voss, hereby certify that I am an employee of Millward Law Ltd., and that on the $30^{\text {th }}$ day of July, 2021, I deposited for delivery a true and correct copy of the CASE APPEAL STATEMENT for service by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in Minden, Nevada, on said date, following ordinary business practices to the following:

Shadd A. Wade, Esq.

Zieve, Brodnax \& Steele, LLP

## 9435 West Russell Road, Suite 120

Las Vegas, Nevada 89148
Ramir M. Hernandez, Esq.
Christopher A. J. Swift, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
(702) 475-7964

Matthew K. Schriever, Esq.
Hutchison \& Steffen, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Casey J. Nelson, Esq.
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Darren T. Brenner, Esq.
Scott R. Lachman, Esq.
Akerman, LLP
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134

## FILED

Case No.: 18-CV-01332
Dept. No.: II
?2021 AUG 20 AM 8:20
conrys


# IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON 

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING,

ORDER REGARDING PERMANENT WRIT OF RESTITUTION LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee: for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-20I8-NPL@. substituted in for DOE 3; and DOES 4-10. Defendants.

On July 20. 2021, BRECKENRIDGE PROPERTY FUND 2016 filed a Permanent Writ of Restitution with the Court. No Motion was filed with the Writ. The Court's file does not indicate whether BRECKENRIDGE PROPERTY FUND 2016 provided notice of the filing to the other Parties
in this matter. The Court declines to treat the matter ex parte.
Therefore, good cause appearing. IT IS HEREBY ORDERED that BRECKENRIDGE PROPERTY FUND 2016 will file a noticed motion requesting the Court to enter the proposed writ.

DATED: This 19th day of August, 2021.


## Certificate of Mailing

I hereby certify that 1 . $\qquad$ . am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minder. NV 89423
Scott R. Lachman. Esq. Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson, Esq.
Wedgewood, LLC
2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Shad A. Wade, Esq.
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Matthew K. Schriever, Esq.
Hutchison \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This (goth day of August. 2021.
$\qquad$
Employee of Hon. Leon Aberasturi

John T. Steffen, Esq. (4390)
Brenoch R. Wirthlin, Esq. (10282)
Alex R. Velto, Esq. (14961)
HUTCHISON \& STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
bwirthlin@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC
THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA
ALBERT ELLIS LINCICOME, JR., and VICENTA | Case No.: 18-CV-01332 LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome Dept No.: II

BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.
AND RELATED MATTERS.
COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorneys of record, Hutchison \& Steffen, PLLC and hereby submits this motion for entry of an order
granting a permanent writ of restitution in favor of Breckenridge and payment of overdue rents pursuant to this Court's summary judgment order. This motion is made and based upon the following points and authorities, the pleadings and papers on file, the attached exhibits, and any oral argument this court may entertain at a hearing on this matter

DATED this 8th day of September, 2021.
HUTCHISON \& STEBFEN, PLLC


JohíT. Steffen/(4390)
Brenoch R. Whrthlin (10282)
Alex R. Velyo (14961)
HUTCHISON \& STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com
Casey J. Nelson, Esq. (12259) Wedgewood, LLC
Office of the General Counsel 2320 Potosi Street, Suite 130 Las Vegas, Nevada 89146 caseynelson@wedgewood-inc.com Attorney for Breckenridge Property Fund 2016, LLC

III

III
III

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for $\$ 294,000.01$.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs had no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery proved that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment. Breckenridge now seeks an order for a permanent writ of restitution and payment of overdue rents pursuant to this Court's summary judgment order.

## II. Statement of Undisputed Facts.

1. On or about May 23, 2007, Plaintiffs executed a Note and Deed of Trust that was secured by the Subject Property. See Exhibit \#1.
2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. See Exhibits \#2 and \#3.
3. On November 7, 2018, Plaintiffs filed a complaint for injunctive relief, contractual claims, and declaratory relief regarding the scheduled foreclosure sale of the Subject Property.
4. On November 8,2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.
5. On December 31, 2018, the Court entered an order enjoining the foreclosure on the Subject Property if the Plaintiffs timely posted of a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter.
6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $\$ 294,000.01$, relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite bond. See Exhibit \#4.
7. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's ownership of the Subject Property was recorded. See Exhibit \#5.
8. The Plaintiffs were in possession of the Property at the time Breckenridge purchased the Property and have been in possession since that date. On or about January 28, 2019, Breckenridge served a Three-Day Notice to quit to the Plaintiffs ("Three-Day Notice"). See Exhibit \#6.
9. Notwithstanding the Three-Day Notice, the Plaintiffs have remained in possession of the Subject Property up to and including the present time.
10. Breckenridge has made repeated demand on the Plaintiffs to vacate the Subject Property, but Plaintiffs, without cause or reason, have refused to vacate the Subject Property.
11. The Plaintiffs continue in possession of the Subject Property notwithstanding the termination of the tenancy by services of the aforesaid Three-Day Notice.
12. The Plaintiffs' actions are in violation of NRS $\S 40.250-255$ and Breckenridge is entitled to possession of the Subject Property as prescribed in NRS § 40.290-420.
13. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.
14. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, sought to quiet title in its favor, sought other monetary damages, as well as possession of the Property through a claim for writ of restitution ("Restitution Claim").
15. In addition, Breckenridge sought payment of "reasonable rents for the period of time from service of the Three-Day Notice until such time as the [Plaintiffs] vacate the Subject Property." See Breckenridge’s Counterclaim on file herein, at $\$ 34$.
16. Because the Plaintiffs remained in possession of the Subject Property even after service of the Three-day Notice, Plaintiffs should be required to pay rent to Breckenridge from February 1, 2019, until the date they vacate the Subject Property.
17. Ultimately, this Court made a determination granting Breckenridge' counterclaims and denying Plaintiffs' claims. The Plaintiffs have been and continue to reap a windfall by being able to stay in the Subject Property without having to make any payments. To add to that windfall, the Plaintiffs have an incentive to delay final resolution because every month of delay is another month of living rent free.
18. Based on the current rental market, a range of $\$ 2,250.00-\$ 2,500.00$ is a fair market rental value for the Subject Property. See Exhibit \#7. That rental range is consistent with the monthly security of $\$ 2,105.10$ per month that this court previously ordered to stay foreclosure. ${ }^{1}$
19. Plaintiffs have been in the Subject Property from February 1, 2019, to the present, August, 2021, or a total of 31 months, which would equate to rent in the principal amount of not less than \$69,750 - \$77,500.
20. Accordingly, Breckenridge requests this Court issue an order and judgment against the Plaintiffs, in this range (and additional amounts due at this rate by entry of such an order) for rents due to Breckenridge due to the Plaintiffs' continued wrongful possession of the Subject Property.
21. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims against the Plaintiffs.
22. In its MSJ Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.

## III. Law and Argument

A. Based upon this Court's MSJ Order, Breckenridge is entitled to a permanent writ of restitution regarding the Property.

As noted above, on or about January 4, 2019, Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $\$ 294,000.01$. The Three-Day Notice was served on the Plaintiffs on January 28, 2019. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person:
${ }^{1}$ Plaintiffs did not dispute this amount when proffered as part of Breckenridge's motion requesting Plaintiff's post rental payments with the Court.
(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected;

Nev. Rev. Stat. Ann. § 40.255 (West). Breckenridge is the sole owner of the Property by virtue of purchasing the Property at a valid foreclosure sale conducted pursuant to NRS Chapter 107 on January 4, 2019. Service of the Three-Day Notice terminated the Plaintiffs' right to remain in the Property. Despite this, the Plaintiffs refused to vacate the Property within the three days as required by NRS 40.280 et seq. Rather, the Plaintiffs continued to squat in the Property without Breckenridge's permission or consent. Plaintiffs have paid no rent to Breckenridge during the time they are illegally squatting in the Property. Plaintiffs had no objective basis in law or fact to remain in the Property after foreclosure. Breckenridge was vested with title to the Property and the foreclosure proceeded properly.

Plaintiffs' continued occupation of the Property was in clear violation of NRS § 40.255 and Breckenridge is entitled to permanent possession of the Property as prescribed in NRS $\S \S 40.290$ to 40.420. Breckenridge, as purchaser of the Property, is entitled to a permanent writ of restitution of the Property.

## B. Breckenridge is entitled to rental payments during the time Plaintiffs have unjustly

 remained in the Subject Property without making a single rental payment."Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the loss of another." Topaz Mutual Co. v. Marsh, 108 Nev. 845, 856 (1992); Nevada Industrial Development $v$. Benedetti, 103 Nev. 360, 363 (footnote 2) (1987).

Plaintiffs have been unjustly enriched by being allowed to remain in the Subject Property without paying rent or a mortgage payment since February, 2019. The foreclosure in this matter occurred over two years ago and Plaintiffs were not making payments to their lender prior to that time either. The Plaintiffs are squatting in the Subject Property without Breckenridge's permission. They are aware that
the Subject Property has been foreclosed. However, Plaintiffs continue to occupy the Subject Property without paying fair market rent to Breckenridge's detriment.

NRS 40.385(3) provides, "A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due." This Court should follow the guidance and rationale of NRS $40.385(3)$ - which has now been confirmed due to the MSJ Order and require the Plaintiffs to pay fair market rent for their years' long wrongful occupation of the Subject Property.

Breckenridge has provided proof that the fair market rental value of the Subject Property is in the range of $\$ 2,250.00$ to $\$ 2,500.00$. This rental range is consistent with the monthly security of $\$ 2,105.10$ per month that this Court previously ordered to stay foreclosure.

## IV. Conclusion.

For all these reasons, Breckenridge respectfully requests that this Court grant its Motion for entry of an order granting Breckenridge a permanent writ of restitution, as well as payment of all overdue rents until the Subject Property is vacated, and to grant such and further relief as the Court deems appropriate.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding

DATED this $8^{\text {th }}$ day of September, 2021.


## CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the

## BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING

 PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS via U.S. Mailto the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD. 1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs
Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY \& ZAK, LLP
7785 W. Sahara Avenue, \#200
Las Vegas, NV 89117
Attorney for Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust

DATED this $8^{\text {th }}$ day of September, 2021.

Shadd A. Wade, Esq
ZIEVE BRODNAX \& STEEL
9435 W. Russell Road, \#120
Las Vegas, NV 89148
Attorney for Sables, $L L C$
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, \#200
Las Vegas, NV 89134
Attorney for Bank of America

## Scineille kelley

An Employee of HUTCHISON \& STEFFEN

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 1

## Hutchison \& Steffen

A PROFESSIONAL LLC


## DEFENTIONS

Words used in multiple sections (6) Pus document are defied below and other words are defined in Sections 3, 11, Section 16
nett $Y$ res pus isis document, which is dated
(A) "Security Instrument toy his document
together with all Riders lo his
(B) "Borrower" 2 s



Borrower is the truster wider ins Securty Instrument
(C) "Landor" ${ }^{15}$ organized and existing under the laws of CALIFORNIA
organized and existing under the laws of COISOM, CA 95630 render 15 a 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA Lender's address
(D) "Trust ry is

GREENHEAD INVESTMENTS, INC., A
CALIFORNIA CORPORATION


A vARIED WOMAN

Form $30291 / 01$


BRECK000031
（E）＂MERS＂is Mortgage Electronic Registration Systems，Inc MERS is a separate corporatoon that is acting solely as a nomunes for Lender and Lender＇s successors and assigns MBRS is the beneficiary under this Securnty Instrument MERS is organuzed and exasting under the laws of Delaware，and has an address and telephone mamber of $P$ O Box 2026，Flunt，Michugan 48501－2026，tel（888）679－MERS
（F）＂Note＂means the promissory note signed by Borrower and dated
The Note stales thal Borrower owes Lender
THREE HUNDRED EIGHTY－ONE THOUSAND ONE RUNDRED EIFTY and NO／100－＿D Dollats （US $\$ 381,150.00$ ）plus interest Borrower has promused
Payments and to pay the debi in full not later than
（G）＂Property＂means the property that is described below under the heading＂Transfer of Raghis tr the Property＂
 （in）Loan means the debl evidenced under this Security Instrument，plus lnterest
 la be executed by Borrower［clieck box as appllicable］
［ XXAdustable Rate Reder
｜｜Ballioon Ruder
［ ］I－A Family Rider
［ ］V A Rdder

（J）＂Applicable Law＂means all controlung applicable fedetal，stale and local statutes，regulatons，ordenances and administrauive rules and orders（that bave the effect of law）as weltes all applucable final，non－appealgble judicial opruons （K）＂Commanity Associationt Dues，Feos，and Asseanigmipy in association，－homeownars association or sumbar＇ that are imposed on Borrower or the Property by
－＂means any tranfefer of funds，offier than a transaclion originaled by check，draft，
（L）＂Electronic Funds Transfer＂meabs any thrnget ar electronc terminal，telephonic usstrument，computer，or or sindiar paper jnstrument，which ist or authoref a imancral Instifution to debil or credil an account Such term sagnetic tape so as to order，tustrucl，or aul tansfers，cuytomated teller machine transactons，transfers intiated by telephone，wire transiers，and aujorgaled clearinghouse tansiers
（M）＂Escrow Items＂means those ytems that ara descriged an Section 3 a （N）＂Miscellaneous Proceeds＂（neansrany yan under the coverages described in Section 5）for（i）damage to，or
 destruction of，the Propefty（y）eonaemations of or omissions as to，the value and／or condrion of the In lieu of condemnation，or（i⿺辶 miskepsent
Property
（0）＂Mortgage insurancen means minsurance protectung Lender against the nonpayment of，or defaull on，the Loan
（P）＂Pornodic Paymerf＂means he tegilarly scheduled amounl due for（i）princlpal and interest under the Nole，
plus（山）any amounts（nder Sequlda 3 of bis Security Instrumeat（ 12 U，S C $\$ 2601$ et seq ）and is umplementing （Q）＂RESPA＂means the Real Estate Settement Procedures Ach be amended from（ume to ture，or any additional
 ＂RESPA＂sefers to ail tequirements and restictions that are imposed in regard to a＂federally related jnortgage loan＂ever，if the Loan dogis nol qualify as a＂federally related morigage loan＂under RESPA
（k）＂§ucessoot thintorest of Borrowar＂means any party that has taken tute to the Property，whether or not that party has assumed Berrower＇s obllgatons under the Note and／or this Security Instrument

## TRANSEER OF RIGHTS IN THE PROPERTY

The beneficiary of thus Security Instrument is MERS (solely as nominee for Lender and Lender's successpry and assigns) and the successors and assigns of MERS This Security Instrument secures to Lender (1) the repayment of the Loan, and all revewals, extenslons and modiflcaiuons of the Note, and (ii) the performance of Borrower's covenants and agreements under this Securdty Instrument and the Note For this purpose, Borrower arevocably grants and conveys to Trustee, in trust, with power of sale, the following described property localed in the COUNTY
[Type of Recording Junsdaction]
LEGAL DESCRTPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHLBS
which currently has the address of DAYTON

70 RIVERSIDE DRIVE 89423 [2]p Cdel ("Property Alseel), VERSIDE DRIVE
[Ciyl, Nevada 89 [2alp Cddel) ("Property Address").



TOGETHER WTTH all the mprovemants now or hereatter etected our -te property, and all easements, appurtenances, and fixtures now or hereafter a part of the preperty All replacemenis and additions shall also be covered by this Securfly Instrument All of the foregoing is referred to in this Securly Instrument as the Property Borrower understands and agrees that MERS holds only legantile io mers (as nomumee for Lender and Lender's Security Instrument, but, if necessary to comply with law on tursomh aress triduding, but not timuted to, the right successors and assigns) has the right to exercise any or an of thos ap segder weluding, but not limited to, releasing successors and and sell the Property, and to take any actoop tequred ap Leyd
to foreclose and canceling ths Securty Instrument

BORROWER COVENANTS that Borrower is tawhylly selsed of the estate hereby conveyed and has the rlght to grant and convey the Property and that the Ppoperty IS snencumbered, except for encumbrances of record Borower warrants and will defend generally the titie It ithe Property aganst all clatms and demands, subject to any encumbrances of record

THIS SECURITY INSTR RMRNX combineserifiorm covenants for national use and non-unform covenants with hrouted vanations by purestiction to consitute a umform securlty instrument covering real property

UNIFORM COVENAN Botrower and Lender covenant and agree as follows
1 Payment of Princupth Laterest, Bfcrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the pronempal of and interest on, the debt evtdenced by the Note and any prepayment charges and late charges due onder-he Note Borrower shall also pay funds for Escrow Items pursuant to Section 3 Payments due under ha Note and this Security Instrument shall be made in US currency However, if any check or other instrument refeiped by Lender as payment under the Note or this Security Instrument is returned to Lender umpard, Lender, ray requere thar any or all subsequent payments due under the Note and this Securlty Instrument be made in ghe on mace of the following facms, as selected by Lender (a) cash, (b) money order, (c) certiffed check, bank heneck, treasitrer's check or cashier's check, provided any such check is drawa upon an institution whoss deposis are unsured by a federal agency, Instrumenality, or entity, or (d) Electronic Funds Transfer

Payments aro deemed received by Lender when recerved at the location designated in the Note or at such other locanon as uray be deslegated by Lender In accordance wilh the notlce provisions in Section 15 Lender may return any payment or partal payment if the payment or partial payments are insufticlent to bring tha Loan current Lender may accept any payment or partal payment msufficient to bring the Loyments in the fulure, but Lender is rights hereunder or prejudice to its rights to refuse such payme Loan No: 0000479436

not obligaled to apply such payments at the tume such payments are accepted If acch Perivdre Payment is applifed
 as onds schie Borrower makes payment to bring the Loan current en bo Borrower If not appled earider, such funds period of Ume. Lender shall e ether apply such funds or retum the Note mmedately pror to foreclosure wwll be applied to the oulstanding principal balancure against Lender shall relieve Bonowerfon agreats sefured by thit


Paments or Proceeds. Except as otherwise described in (a) Interest due under the Note,
2. Application of Payments on applied in the follownrg order of priority (a) )
 (b) principal due under the Note. (c) amme due Any remainung amounts shail be applsed fifal balance of tho woye



If Lender recelves a payment trom payment may be applued to the defryment recetyed fron Borrower to the amount to pay any lale charge due, more than one Perionc Fayments 1 f , and to the extemt that, each paypent more Periodit Payments, such excess repayment of the Periodic sayment is applied to the full payment of ope or more Pergs ho any prepayment charges may be applied to any late charges due Volualary prepayments sham and then as described in the Note

Any applicaton of payments, insurance change the ambumt, of the Periodic Pays Payments are due under the shatl not extend or postpone he due, Borrower staall pay io Lender on the day Pent of amounts due for (a) taxes and
3. Funds for Esarow Iteros, Bo fum (the "Funds") to proylde eor paymument as a lien or encumbrance on the Nole, untll the Note is pard which can allam priorty over thas Setrity asy, (c) promiums for any and all msurance assessmerts and other lems which or grourd rents on the propery Property, (b) leasehold paymens on 5 ; and (d) Mortgage) insutance premiums in accordance with the provistons of required by Lender under Section S, Bortower to Lender in heu of he pa "Escrow liems * Angritnatyon or asments, if ary, be escrowed by Borrower. Section Io These leass are conder may require that Commury Associaty on Dues, fees and Asser sball promptly furnish to Lender all notices Lender naty res, fees and assessments shall be an Escrow ftem Borrower be Funds for Escrow Items unless Lender of amounls to be pald under thls Section Bo Fiybs for, any or all Escrow Ilems Lender mey wave Boriower's waves Borrower's obllgation to pray gan or antriscrow tems at any ume Any such waiver may only be un Escrow obligaton lo pay to Lender Pupds foy? shatipay directly, when and where payable, the amounls due farnist to Lender In the event of such watver (Ro Fy $d s$ bas been wagty by Lender and, if Lender requires, Borrower's obligation to make Items for whlch payment of Fyns witun such tume period as Lender may reque covenant and agreemeat contamed receipts evidencing such payme such payments and to provice thenptrase "covenant and agreement" is used is the maount due for an Escrow Item, in this Security Instument, as marsumt sf a walver, and Borrower fals to par Borrower shall then be abligated under to pay Escrow ltens drach rights under Section 9 and pay such anount and Borrow to any or all Escrow liems at any Lender may exercsent inger any such araount Lender may revoke the wayver as or arrower shall pay to Lender all
time by a notice giventan secardanee with Section 15 and, upon section 3 .

Lendry may, at any dime, coll RESPA, and (b) not to exceed the maxumum and data and reasonable estmates of
Fends al Lenter stail esturnate the amount of Funds due on the basis of cutreble Law
RESPA Lender stall esturate the amount orwise in accordance with Appllcable Law
expenditures of fudury Escrow Items or otherw


The Funds shall be held in an anstulion whose deposits ars insured by a federal agency, mstrumentality, or
 Bank Lender stall apply the Funds to pay the Escrow Items no hanully analyzing lhe escrow account, or verifying
 the Escrow Ilems, unless Lender pays Bome on willing or Applicable Law requres inlerw Borrower and Lender caragree such a clarge Uniess ar agren to pay Borrower ary moterest or earmungs on tha Fums to Borrower, whoth charge, an in writeng, however, that mierest shall be padd on , annual accounting of the Funds as requred by Resp, as defined under wespa, held in escrow, ass defured undes If there is a surplus of Funds beld RESPA If there is a shortage of Fumus sball pay to Dender the amount for the excess funds in accordance wat requited by RESPA, and Borrowe than 12 fonthly payments Is there RESPA, Lender slall nolly Borower accordance with RESPA, but in no more hail noude Borrower as requited by necessary to make up the shorlage lo



Upon payment beld by Lender and pay all laxes, assessmenis, charges, fines, and land or ground rents on the Borrower any Chargos; Lens Borsower shall pay all Iaxes, aty Instrumeal, Leasehold-payments extent that these flems ta the Property which can altand priority over Dues, Fees, and Assessments, 3
Property, If any, and Communty Assactara in the manner provided an Section 3 . are Escrow Ilems, Borrawer shah pay inge any lien which has progity peer this manner acceptable to Lender, but only

(a) agrees in wrtang to the payment on such agreement, by corfests the yed erate to prevent the enforcemeat of the so long as Borrower is perional proceedings whuch in eqder s/ongrad op are concluded, or (c) secures from the enforcement of the hen in, legal procing but only untly suph procequangs a this Security Instrument If Lender lien whlle those proceedings are penfactory to Lenter suborditatugg he hea priorty over this Security Instrument,
 determines that any part of the Price identifying thep tien Whithen 10 days of the date on turs Section 4

 Le used by Lender in connerfrom puth turs ean the improvements now exdstag or hereatler erected hazards 5 Property Insuranco. Borgyer spandinded withon the lerm "exlended coverage," and any oller hazarl be


 requires pursuant to the preegeding senter Borrower stbject to Lender's agbt to disapprove Buon with dus Loan, providing the lnsurance shall be chosinghably Lender may require Botrower to pay, in connecto or (b) a one-ilme
 ellher (a) a one-tume quarge no hiod and catification services and subsequen certification Borrower shall also be charge for flood zone determ.
 the revew of finy fided 2ane determination the coverages described above, Lender may on partcular type or amount
 of covexage Therefore, such coverage shall cover Lender, but ary risk, luzzard or llabiluty and mught provide greater equaty in the Property, or the contents of the Prope Borrower acknowledges that the cost of the insurance coverage or lesser covgrage than was previously the cost of insurance that Borrower could have oblained Any amou

[^0]
Form $30291 / 01$

BRECK000035
disbursed by Lender under thls Section 5 shall become additional debl of Barrower secured by this Securty Instrument These anmunts shall bear urterest at the Note rale from the date of disbursement and shall be payable whth such Interest, upon notice from by Lender and renewals of such policies shall bo wider as morgagge and/or ass

All firsurance pohches shall unclude a standard morigage clause, and shall name insurace proceeds to the notdees disapprove such policies, shall neluwe further agrees to generally assign rights to the right to hold the popicies and an additional loss payee and of the oustandigg loan balance Lender stan Lender all receipts of paty premituns and of the Note up to the amount of the ours, Borrower shall promply give io Lender all requred byt ender, for dampage $\langle$ renewal corificales renewal noices if bo the Property, such palicy shall include a standard mortgage cherally assigen ngas to mingrance
 proceeds to the holder of the Note up to the amompt notice to the insurance carrier ang Leendared an writug, any

In the avent of loss, Borrower shail give pro Unless Lender and Borrnyers otheryse beapplied to restoralon
 insurance proceeds, whether or not he unden or repar is economically feasible and Lendgron
 Das had an apportunity to nispect such Property to ensure the work as andisburse plogeeds for the reparss and provided that such inspection shall be undertaken pramptly Lent as the twork tse compreted Uoless an agreement restoration lo a sngle payment or in a sentes of progress payments as such insurance proceeds, Lender shall not be is made fo wating or Appllcable Law requres interest to beqains Fees for public adjusters, or other thurd partles, required to pay Borrower any interest or earatings on such pre proceeds and shall be the sole obigation of Borrower retaned by Bonrower shall not be pald out of he feasble of Lender's securlty would be lessened, the insurance If the restoration or repair is nof economicaliy feas Securde Iostrument yhtether or not then due, with the.excess, proceeds shall be appled to tha sums secured by thas shall be apppiad to he order pronded for in Section 2


If Borrower abandous the Property, Lend withay 30 days to a rolice from Lender that the insurance carrier has related matters. If Borrower does not respon negotate and settle the claum The 30 -day period will begin when the offered to settle a clam, then Lender may negotian the Property under Section 22 or othervise, Bormower hereby notce is given In either event, or $1 f$ Lender fow insurange procededs in an amount not to exceed the amounts unpad assigas to Lender (a) Borrower's rigais io gin (b) any quther of Barrower's rights (other that the right to anych righls under the Noto or thas Securty loser bers under nill insardace policies covering tre proceds elluer to repar or restore
 are applicable to to pay angogis untped under the Note or this use the Property as Borrower's princlpal residence

6 Occupancy. Borrewe shatroccupysescaity Intrument and shall contrnue to occupy the Property as
withen 60 days after the execuiton onarane year after the date of occupancy, unless Lender otherwise agrees in
Borrower's pracipal residence for at leastrone year after held, or unless extenuating crounstances exdst which are
writing, which consent shall nor he ugreasonaby
beyond Borrower's control


damage or is residing th the Property, Borrower shall mantann its it is delermmed pursuant to Seclion 5 that repair deteriorabog or dectasing in ralue due to ats condulon whem prompty repar the Property if darnaged to avold further or restoraliont not neconemically feasible, Bonnotion procesds are pald in connection with damage to, or the lakang deterioration dr damage,
of, the Property, Borrower hand lender ray disburse proceeds for the repairs and er condemnation proceeds are not
proceeds for sucherys payments as the work is corcpleted If the insurance or condenation for the completion


DRAW MERS NV CYL DT 6 WPR (0101DOCSD
BRECK000036

Lender or tis agent may make reasonable entries upon and mspections of the Property If it has reasonabia cause, Lender may inspect the intenor of the improvemenis on the Property Lender the lume of or paror to such an inderion Bortower shall be in default if, with Borrower's knowledge or consem Borrower or any persons of entues acting at the direction or slatements to Lender (or fayled to pronde Lented tor
 with materlal mformang Borrower's occupancy of the Property Riphts Under fhis Security (b) faere is a hegal



 which may allan pronty over this Security aty pay for whatever is reasonatule froction and or assessing the value abandoned the Property, then Lender mar thus Security Instrument, nclay form can melyde, but are not linited to Interest in the Property and rigats andor repairiag he Property Lender's/a (ynstrument, (i) appearng in court, and of the Property, and securing and/or repieh has prootly over this Secirty forty and/or rights under this Securnty
(a) payng any sums secured by a leen to prolect its interest in the ' Seduring the ploperty includes, bul is not
(c) payng reasonable attomeys feositon in a bankruplcy proceeding er bard updoons and madows, dram water Instrument, urcluding its secured po make repars, change locks, replace or butuos, and have utihties lurued on or off
hintted to, entenag the Properiy or other code vialahoons or dathgerow not have to do so and ls not under any duty
from pipes, etinder may take action under this Sectoon 9,
Although Lender
or obligaton to do so It is agreed that Leader freurs no


Any amounts disent These amounts shall bear interest al Bofrover frequesting payment this Securty with such interest, upon notuce fopm, Len Borrow
 Borrower acqures fee litle to the Propren


 Morgage insurance coverag sorfowervarar required lo make segared to obtatn coverage substantially equrvalent to por Mortgage lnsurance, Boryower chall pay he premiums subslanlally equrvalent to the cost to Borrower of the
 Mortgage Insurance previessy coverage ingla avallable, Horrower stall condure ceased to be in effect Lender will
 the separately designated paymencis mat a non-sefundable loss reserve in leu of palley padd in full, and Lender shall accept, use and retauy hefosepable notwilhstandling the fact that the Loan shes Lerye Lender can no longer require loss reserve shall be non-refunaw in any Interest or eataings on suct and for the perod that Lender requires) provided
not be requred to pay Borrower
 rey an lisure f selected by bender again becomes ayallable, is obender required Mortgage Inourance as a condition of
 maxing the Lhan and Berpower was requit one premums required to mantana Morgagance ends in accordance with
 provide anderetungh between Borrower and Lender providing for such exin to pay miterest at the rate provided in


BRECKO00037

Mortgage Insurance remburses Lender (or any ontity that purchases the Note) for certain losses it may sicur of Borrower does not repay the Loan as agreed Borrower is nol a party to the Mortgage Insurance

Mortgage lnsurers evaluate thent total risk on all such insurance in force from Ume to turae, and may enter agreements with other partes that share or madify therr risk, or reduce losses These agreements are on vexms and conditions that are satsfactory to the mortgage tasurer and the other party (or parties) to the agreeme for finds that morta These agreements may requre the mortgage insurer to make paymenis usng any sourance premiums) msurer may bave avalable (which may melude funds obtalned from More ane Iner Insurer, any permsurfer, any other

As a result of these agreements, Lender, any purchaser (darectly or Indirectly) amouris (hat derive frign (or 2 entity, or any affilale of any of the foregoing, may receive for Mortgage Insurance, in exchange for shanng or milght be characterized as) a portion of Borrower's payments (lasses such agreement provides that an afmoterf Lender
 takes a share of the insurer's risk In exchange for a share of the premiums pan often termed "captive reinsurance "Further
(a) Any guch ogre terms of the Loan. Such agreaments will not,

Insurance, or any Insurance, and they will not entitle Borrower to any peffund ${ }^{\text {a }}$, whingrospect to the Mortgage
(b) Any such agreemente will not affect the rights Borrower mhs ${ }^{\circ}$ if . Thesor gifts may include the right Insurance under the Homeowners Protection Act of 1998 or allinan of the Mortgage Insurance, to have the to recenvo certain disclosures, to requast and obtain cancellanaive andand of/any Mortgage Insurance Mortgage Insurance tormmated automationily, and/or then or termimation. premums that wero anearned at the time of sich canciar All Miscellaneous Proceeds are hereby assigned

11 Asslgnment of Mis 10 and stall be paid to Lender wre Miscellaneous Proseeds shath be appled to restoration or repair of the

If the Property is damaged, such Miscellaneous ferspo and Lenders security is not lessened Durng such

 an opportuinty to inspect such Property that such inspecilon shall, be undertaken promper Le workus completed Unless an agreemeat is made un writug disbursement or ma series of progress payments assh MIscollaneous Proceeds, Lender shall not be requred to pay or Applicable Law requires interest to be pald en sych Mastan Borrower any interest or earnings on such juscel, the Miscellaneous Proceeds shall be applied to the sums secured feasible or Lender's securty would be lesserfed, the Month the excess, if any, pand to Borrower Such Miscellaneous by this Secunty Instrument, whemer on trovidet for ine Section 2
Proceeds shall be applled in the orgirtrovidech or loss in value of the Property, the Miscellaneous Proceeds shall In the event of a lotinakine, destruction, or loss inen, whether or not then due, with the excess, If any, patd be applled to the sums secued yystes secung or loss in value of the Property in whech the far market value to Borrower

In the event of a pardgalaking, destryction, or loss in value of toss in yalue is equal to or greater than the of the Property inmedrately before the partal taldag. destruclion, of before the pardal takling, destruclion, or loss amount of the sums sofured by Gis Segarty Instrumenl mumediately sums secured by this Security Instrumeal shall m value, unless Borrpuler and Cender otherwise agree in wnulg, hed by the followirg fraction (a) the total amount be reduced by the arrount of the Mascellaneous Proceeds destruction, or loss in value divided by (b) the fart market of the sums secured inmededately gefore the partal takng, de destruction, or loss in value Aay balance shall be padd value of the property minedrately before the parthal laking, to Borrowen event of apartal takang, destruction, or loss in value of the Property in which we far market value of the Rroperty hmmediately before the partial taking, destruction, or loss in value, unless Borrower and Lender sums secured impedately before the partlal talding, destruction, or appled to the surds secured by this Secinty otherwise regree in witing, the Mlscellaneous P

[^1]BRECK000038

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that tha Opposing Party (as defined in the next sentence) offers to make an award to setle a clatm for damager, to collect and apply the (o Lender withra 30 days after the date the notce of the Property or to the sums securred by thas Sepergity Miscollaneous Proceeds eilher to restoralonoing Party" means the bird party that owes Borrower Miscellangous Instruinent, whether or nol then due "Opposer has a ngat of action in regard to Miscelan, begun that, an Denders Proceeds or the party agalnst whom Borrow or proceedung, whether civi or crim Lander's mige est tritheProperty

Borrower shall be in defaul if any Property or other material mparrment and, if accelenapion bas ocourred, judgment, could result in forieiture of the Bi Borrower can cure such a default and, if assed withe ruling shat, in or rights under this Secunty listru by causing the action or proceeding to be derment of $\mathcal{L}$ ender's materes in the remstate as proyded in Section 19,
 Property or rights under altribulable to the upparment Proceds that are not appled to restoration or repalr of the Rroperty

All Miscellaneous Proceeds that are not appls Not a Wariver Exienston of the ume for payment


12 Borrower Not Released; Forms secured by this Secunty ng mability of Bonopver or any Successors ut or modification of amorluztion of her stall not operate to release the gabity onanstany Successor ar Interest of
 Borrower or to refuse to extend tme for payment or otherwise monal Borrower or any Successors in Interest of
 Borrower Any forbearance by Lander in exercising any urcessurs in Interest of Borrower or in amounts less than acceplance of payments from thrd persons, encties or of of the exemose of any right or remedy
the amount then due, shall not be a waiver of or prectude consers and Assigns Boand Borrower covenanis and
13 Jout and Several Lability; Co-signors; gingesgorseral However, any Borrower who co-signs thls agrees that Borrower's obligations and hability shall be (aqnaig ber") (atis co-signing this Security Instrument only Security Instrument but does not execule ule ' herrest ta ue eroptaty under the terms of this Securty Instrument,
to morigage, grant and convey the co-signer's thterast to tre eronemity Instrument, and (c) agrees thai Lender and
(b) is rot personally obligated to pay the sums sectared ba this Seennty make any accommodaturs with regard to the terno
any other Borrower can agree to extend, ngol the conggner's consent of Borrower who assumes Borrower's

Subject to the provistons of secpent to willing, and is approved by Lender,

rights and benefits under (his Securty Insamenent untess Lender agrees to such release 20) and benefll the successors and asslgns of Lender

 including, but not limplearon in yh S Securty lostrument to charge a specifees that are expressly prohibited by this as a prolubition on the chargurs df such If the yoan is subject to a law which sels maxmmumeted in connection with the Loan exceed the permulted the merest or other poan charges collected or to be collece amount necessary to reduce the cbarge to the permutted luars, thee (a) any such 1 oan charge shall be reduced by
 Borrower Lendes may choose to rake ild reduces principal, the reductou will be reated as a Note) Borrower's
a direct paymegt to Borrower ) (wbether or not a prepayment charge is provided for urd

BRECK000039
acceptance of any such refud made by direct payment to Borrower will consitute a walver of any right of action
Borrower mighl have atisigg out of such overcharge
15. Notices All noluces given by Borrower or Lender in connection with thls Security lnsitument pitst be it watung Any notice to Borrower in couneclon with thas Security Instrument sball be deermed to have beenglyen to Borrower when malled by first class mall or when actually delivered to Borrower's nouce address rifent by dess means Notice to any one Borrower shall constatute notice to all Borrowers unders hap deslgraled a substifule notice otherwise The nouce address shall be the Property Address unders Bo Borrower's change of dadfess If Lender address by notice to Lender Borrower shall prompty notur Laress, then Borrower shall only report a endyge of $\langle$ specifles a procedurs for reporting Borrower's change of ady one designated notuce address under thus Securty address through that specified procedure There may be only on delivering it or by malling in ay festednss mail Instrument at any one tume Any notece to Lender stail be grated another adde ess by notice lo Bormower Any notice to Lender's address slated herein unless Lender bas des!gnated to have been given to Lender ungl t plualty regerved in connectlon with this Securty Insitument shall not be dene is also requred under Applicable Lawn the Applitable by Lender If any noluce required by this Secwity requirement under this securdy lastrument Law requrement will satusfy the corresponding requirementrion. This security Instryment stall be governed by
16. Governing Law; Seversbility; Roles of Construction. loba (ed Ail nghtsand obligations contamed in federal law and the law of the jurisdiction in which the and limitations of Applicable fay Applicable Law mught this Security Instrument are subject to anes to a gree by contract or it might pe slent, buy such silence shall not be expluctly or unplictly allow the parement by contract in the evest that any pravision or clause of this Security construed as a prohbition aganst agreement by conract handict shall not affectofier provisions of this Security Instrument or the Note conflicts wilh Applicabe caw, such cenflich inciag piovision
Instrument or the Note which can be given effect without the contlicung provision and Include corresponding
As used in this Securty Instrument (a) (b) words in lhe singular shall mean and melude the plural and vice neuter words or words of the fermune gele discretuon withont any ebiligation to lake any action

 in the Property" means any lega or bene.fortract for deed, installmont sales contract or escrow agreement, the intent interests translerred in a for tote by Borrower at a folure date to a purchaser

If all or any part of the Property or an Interestro theproperty is sold or transferred (or If Borrower is not attural person and a beneftial ipterest in Berrower is sold or transferred) without Lender's prior writent consent. Lender may requie immediate paymentin full bfall surns secured by this Securty Instrument However, thas optlon shall not be exercised by Lenfer if such exercise is probibited by Applicable Law

If Lender exercises hiss eporn, Lender shall give Borrower noluce of acceleratuon The notace shall provide a perlod of not less than ( 30 dys.from the datey ha notice is given In accordance with Section 15 withln which Borrower must pay all sums seefired by thss Security Instrument If Borrower falls to pay these sums prior to the expration of this period, Lepqer may myake any remedles permited by this Securty Instrument without further notice or demand on Borrower

19 Borrower's dy yht to Reintrato After Acceleration IrBorowermeets certain conditoons; Borrower shall have the right to have enforcentern of this Security Instrument discontinued at any tme pror to the earhest of (a) flve days before sale ot the Property pursuant to ary power of sale contained in this Security Instrument, (b) such ofber period as Apphiabth Lay moght specafy for the termmation of Borrower's right to reinstate, or (c) entry of a judgment epforcmg hhs Securify Instrumeat Those conditions are diat Bortower (a) pays Leader all sums which chen would bo due undet this Secunty Instrument and the Note as If no acceleradon had thls Security Instrument, default of any medudrige, but ady hmited to, reasonable attorneys' fees, property Inspend rights under thas Securaty Insirument, incurred for the prypgse of prolectung Lender's interest in the to assure that Lender's interest in the Property and and (d) takes yuch action as Lender may reasonably require rights under tils Security Instrument, and Borrower's oblat Boirower pay such reinstatement sums and expenses Ingtrument, ghatl contrue unchanged Lender may requira that Boirown Loan No: 0000479436

 (page 10 of 13 pagos)
DIW MRES NY CVI DT IO WPR ( 01010 OCSIDEEDSICVLNV_MERS CVL)
in one or more of bie following forms, as selected by Lender (a) cash; (b) money order, (c) cerufied check, bank check, treasurer's check or castiuer's check, provided any such check is drawn upon an mstilution whose deposits are insured by a federal agency, Instrwnentality or entity, or (d) Electrande Funds Transfer, Upon remstatement by Borrower, this Securty Instrument and obllgations secured hereby shall remain fully effective as if no acceleratorn had occurred However, tus rigbt to relostate shall not apply in the case of acceleration under Sechon 18
20. Salo of Note, Change of Lom Sorvicer, Notico of Grievance The Note or a partial interestra, che Nole
 migbt result in a change in the entlily (known as tie Loan sarvicer") dal colvens obligations yinder the Nate, this Note and thls Secunty Instrument and performs othor mortgage loan more changes of the Ladar Sedvicer untedated Security Instrument, and Applicable Law There also Servicer, Barrower will be given wnitea notitse of the chiange to a salc of tie Note If there is a change of he new Loan Servicer, the address to which payfeents should ke made which will state the nanne and address of the mev Lection with a noluce of trausfer of setvicing yo the Note is sold and any other Information RESPA. requres in con Servicer other than the purchaser of the Note, the gorigage loan and thereafter the Loan is serviced by a Loan Sth the Loan Servcer or be Lransfapred lo a saccess of Loan Servicer servicing obligatoons to Borrower will cenam uless otherwise provided by the Note purchaser-
and are nol assumed by the Note purchaser wame joln, or be joined of any judicial abulan (as ether an mivividual Neither Borcowernor Lender may commence, litugant or the member of a class) mat aneach any provision of, or any duty owed y y/reason of, thes Security that alleges that the other party has beder has nouffied the other parly (with such the requarements of Section 15) of such alleged breach and afforded the other party thereto a reasonable pertod after the giving nif such notuce to take corrective acilon If Applreabte Law provides a tume period which must elapse before certain actlon can be taken, that tme period will be deemed tobe reasonable for purposes of this paragraph The notice of acceleration and opporturuty to cure given to-Borrowernpurstamt to Section 22 and the notce of acceleration given to Borrower pursuant to Section 18 shan bedcemed to spasfy the nolice and opporiunty to take
 21. Hazardous Substances. As used in fas Ser wastos ay baytromenlal Law and the following substances defined as loxdc or hazandous substances, pollutaris or wastes ay ands, loxic pesticides and herbicldes, volatile solvents, gasoline, kerosene, other flammable or toxt par andradieactive maternals, (b) "Enviranmental Law" means federal materials contanung asbestos or fon where the propertyss teeated that relate to health, safety or environmental protection, (c) "Environmental Cleantup" (ectudes any response action, remedial acton, or removal acton, as defined in Environmental Law, athey (d) ang "Entronmental Condition" means a condtion that can cause, conlnbute 10, or otherwlse trigger an Enfironngeniat Cleasup Substances, or threaten io releage, any Hazardows $\}$ Sublace, use, disposal, storage, or ralease of any hazardous allow anyone else to do, ayythanf affectugh the Property (a) thal is in ynolation of any Enyrommental Law, (b) which creales an Eovironmental conditur, or cc which, due to the presence, use, or release of a Hazardous Subsiance, creates a condition that adyersely affeests the value of the Property The preceding two sentences shall not apply to the presence, use, or sinfage on the Ppoperty of small quantities of Hazardous Substances that are generally recoguzed to be appropriate to normal residential uses and to mantenance of the Property (includung, but not Limited to, hazardoul sthbstances an consumer products).

Borrower shall gramatiy ghyt Lender writen notice of (a) any Investigation, clalm, demand, lawsult or other achon by any gopenmental or regulatory agency or private party moolving the Yropetty and any Hazardous metudng ofut not limited lo, any splling, lealang, discharge, release or threat of release of any Hazardous Surbsance, and (c) any condtion caused by the presence, use or release of a Hazardous Substance which adversely affecis the walue of the Property If Borrower learns, or is nowled by any goverumental or regulatory auchority, or any priveteparty, that any removal or other remediallon of any Hazardous Substance affecting the Property is necessary, Begrower shall promplly take all necessary remedial actions in sccordance wlh Environmental Law necessary,
Nothung herem shall create any obligation on Lender for an Environmental Cleanup

NEVADA-Syigle Family-Pannio Mar/Tredde Mac UNTFORM INSTRCMENT
Loan No: 0000479436
Rorm 3029 1/01
(page II of 13 pages)

BRECKO00041

|  |  |  | 05/25/2007 |
| :---: | :---: | :---: | :---: |
| $1 .$ |  | 407150 | 012 of 20 |

NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as ooleration following
22 Acocleration; Remedies Londer shall gre notscurfy knstrament (bat not prior to acceleration Borrower's breach of any covenant or agrement fo this Se. The notico shall apecify. (a) the defanils; (b) the under Section 18 onless Applicable Law provides othens than 30 days from the date tho jotio is giver to action required to cura the defanlt; (c) a dato, and (d) that falure to core the definult on or before the date Borrower, by which the default must be cur specifled mo the notice ma a tho Property. The notico right to bring a cour. If the defaralt is not cured on or bofore the date sperumg the tight to goceforate full option, and without furthor demand, may invoke the power of sabe, , Law, Lender shall boentitied te collect payment of the Nots, and any other remedres pormitted by Applicable Lan. Letion inghting, but hot limiled to, all expenses incurred in pursuing the remedies provided in ithe evddence. roasonable attornoys' fees and costs of sale, Lender shall execute or calss Irusteo th to be cold, and shall causo If Lender myokes the power of and of Lenders' election to capse the Properts locited. Lander shall mail the coourrences of an evant in each county in which any part of the proph persors prescribed by Applicable such notice to notice as prescribed by Applicable Law to Borrower and to ano per oreserbed by Applicable Law, copies of thenctice as pre public notioe of sale to the persons and in the rame prowner, shall sell the Property Aftor the tme requared by Applicable Law, Trustes, rathoat demand one terms designated in the notice of at public auction to the highest bidder at the tmo and place hnd anderutee may postrone sale of all or any sale in one or more parcels and in any order Trustee deternumact of any previoudy scheduled salo Lender
 or its designee may purohase the Properaser Trustee/s deed gonvexing the Property witiondence of the trath
 Warf the statements made therom. Trustes hall ably the proceedr expenses of the sale, moluding, but not limited to reasonab the person or persons logally entitled to it secured by this Secursty Instrument; and (o) any exseseted by ths Securlty Instrumenl, Lender shall request
23. Reconvepance. Upon paymend of air simer Securty Instrument and all notes evidencing debt secured Trustee to reconvey the Property ged shall Suriender by thss Securty Instrument to 10 urbea Trustee shay , shall pay any recordallon cosis Lender may charge such persons legally entulled to it such personor property, but only if the fee is pald to a third party (such as the


24. Substitute Trustec. cenderat his ophon, conveyance of the Property, the successor trustea shall succeed


BY SICNING BELOW, Borrower accepts and amrees to the ferms and covenants contamed tn this Secunty Instuint and in any Rader execuled by Borrower and recorded will it

(Seal)
$\qquad$
(Seal)


STATE OF NBYADA, $\quad(1-6 \cdot$ Eng ArL
Thus Instrument was acknowledged befque me on
 $1 /$ "'


Form 3029 I/01 (page 13 of 13 pagcs)
NEVADA-Single Family-Panbe Mactir DRAW MERS NV CVL DT 13 Ypr diondocsurin WHEN RECORDED MAII TO
MIP INSURING ФEPARTMENT

50 IRAN FOINT CIFCIES STE $20 \phi$


BRECKO00043

# ADJUSTABLE RATE RIDER <br> ( 1 Year IIBOR Index $\sim$ Rate Caps) (Assumable after Initial Period) 

THIS ADJUSTABLE RATE RIDER 15 made thus 23 rd day of 7 Ma 2007 , and is incorporated milo and shall be deemed to ate by the undersigned (the "Borrower") (o secure or Security Deed (the "Security Instrument(') of the same dale given by (th the Borrower's Adjustable Rale Note (the "Note") io AC., A CALIFORNKA CORPORZTTION (he "Lender") Of the same date and covering the property described in the Security Instuinent and located at

$$
\begin{aligned}
& 70 \text { RIVERSIDE } \mathrm{pRIVE} \\
& \text { DAYTON, NV } 89 \pm 03
\end{aligned}
$$

[Property Address]

THE NOTE CONTAINS PROVISO NS ALI OWING FOR CHANGES IN THE INTEREST
 BORROWER MUST PAY.
ADDITIONAL COVENAREPS. In addiman to the covenants and agreements made on the Security Instrument, Borrower and Lender further covenant and able as foll dos
A. INTEREST RATR/AND MONTHlY PAYMENT CHANGES

The Note provides for an' Interest rate and the monthly payments, as follows
4 INTEREST RATE AND MO NH Y
(A) Change pates and may change on the first day of JUNE 2017 , and mange on Tho interest rite I will pay may bach date on which my interest rate could change is called a "Change Date " that day every 12 th monte therealig:
(B) mae kyd ox with First Change Dale, my moterest rate will be based on an Index The. "Index" is the one-year Begging with the fist Change Date, my miterest tate will be bo interbank offered rates for one-year US

Loan No: 0000479436
 (Page Jo rt)
dollar-denominated deposils in the London market, as publishad nu The Wall Street Journal The most recent Tridex figure avalable as of the date 45 days before each Change Date is called the "Current Index " flgure valuable ds is no Jonger avallable, the Note Holder will cho
unfornatuon The Note Holder will give me notce of thus cholce
(C) Calculation of Changes

Before each Change Date, the Note Holder will calculale my new premerest rate hy yaddung (2.250\%) TWO AND ONE QUARTER to the Current Index Che Note Holder whe lisuts stated in Section 4(D) befoye, this routdedtamone will be my new interest rate wntl the nexl Change Date

Tbe Note Holder will then determune the amount of the monldy payment that wqutd be suffictent to repay the unpad prncipal that I am expected to owe at the Change Date in (n) on he Maturny da my monthly paynent rate in substantially equal payments The resull of this calculaton will be the new amg in
(D) Lumits on Inter est Rate Changed han $2.250 \%$ Thereafter, my interest rale wilr never be Increased or decraased on any slagle Change Date by more fian TWO percentage ponts ( 2.000 \%) from the rate of fnterest 1 have been payng for the preceding 12 months My nterest rate will never the greater than $11.875 \%$
(B) Effective Date of Changes payment begruning on the first montlly payungnt date y fit (he change Date until the amount of my monthly payment changes again
(F) Notloc of Changes my montliy payment before the effective date of any change The notlce will include informatuon requlred by law to be given to me and also the tithe and telephone nutbbr of a person who will answer any queston. I may have regarding the notice


 Transfer of tha Preperty $\partial$ a a Benoicicia eniflial Interest in the Property, frcluding, but not "Interest in the property y jeans any legal in in a bond for deed, contrad for deed, instalmment sales
 to a purtiaser an anty part of the Property or any Interest in the Property is sold or transfered (or if Bofower is not amatural person and a beoficial interest in Borrower is sold or transferred) without Bonzewer is not a ralural peranan Lender may requure immediate payment so full of all sums secured by



Lender's prior written consent, Lender may require mmedrate payment in full of all sums sectred by thus Securty Instrument However, this option shall nol be exercised by Lender is prohibited by Applucable Law

If Lender exercises thls optapn Lender shall give Borrower notice is given ja accordance-wfild shall provide a period of not less than 30 days fron wecused by this Security Instrument 5 Boorower Section 15 withun which Borrower must pay alis sums this period, Lender may , havoke any yemethes) Falls to pay these sums priar to the expration firther notice or demagd on Bdrower permited by thus Secunty Instriment without firther notice or demagen on Borrower


QR THE TERMS STATED IN SECTION
2 AFTER MY INTTIAL INTBREST RATE CHANGES UNDEL 4 ABOVB, UNIPORM COVENANT 18 OF THE SECURTY, ANN ONIFORM CDVENANT 18 OF THE 11(A) ABOVE SEALL THEN CEASE TO BE IN EFEECI, AN ASGOLIOTS

Transfor of the Property or a Beneficial Interestinerest in the Property, meludang, but not
"Interest in the Property" means any legal or benedica ford ford, contract for deed, iostallment sales limuted to, hose beneficlal miteresis ransterred in a bend isthe transfer ef atle by Borrower at a future date
 to a purchatl or any part of the Property fr any Intersed in fie froperty is sold or transfersed) without Borrower is not a natural person and a beney requite unmedtate payment in full of all sums securad by Leader's prior written consent, Lender may reg a ath nol be exercised by Lender if such exercise is this Secunty yostrument However, this oppron shat ax actise this option if (a) Borrower causes to be prohibuted by Applicable Law Lender a submutted to Lender infomatron requ, ind (b) Lender reasonably determines that Lender's securty will were being made to the ffaysferge, and had lhat the risk of a breach of any covenant or agreement in


To the extert permuted Br Applimble Law, Lender may charge a reasonable fee as a condition to Lender's consent to fhe loan assumption Lender may also require the transferee to sign an assumption agreemend thatys acceptaple to Lender and that obly promises and agreemanis made yo the Note and in this Sen unless Lender releases Borrower in writlog be obligated under tha Note and this Securty Instrument wayment in full, Lender shall give Borrower

If Lender exercises the option to requre immedia of of less than 30 days from the date the notice of accelenaion The fotice shall provide a perod which Burrower must pay all sums secured by notice is given on accordance with Secton 15 wither when sums pror to the expiration of this perlod, this Security hastrument if Borrower fails io py this Secunty Instrument without further notice or
Lenger may ingoke


BY
Rduer
Rate Ruder

(Seal)
$\qquad$

Loan No: 0000479436


CDERvi zar bibor Index
MULTIETATE ADJUSTABLE RATE RTEERY'

[Sign Origural Oniy]

1


BRECK000047

# INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 

Property Address 70 RIVERSIDE DRIVE<br>DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY and is incorporated into and mitended to fomm a part of the Adjustable paze Ruder (the "Rider") dated the same date as this Adderdum execuled by the undersigned and payable to


THIS ADDENDUM supersedes Section 4(C) of the Ruder None of the other provsstons of the Ruder are changed by this Addendum

## 4. INTEREST RATE AND MONTHLY PAYMBNT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder wri calcudate my new interest rate by addong TWO AND ONE QUARTER percentage points ( $2.250 \%$ ) to the Current Index for such Change Date The Aoto Holder will then round the result of thus addition to the nearest one-enghth of one percentage point ( $(225 \%$ ) Sutbey to the limits stated ln Section 4(D), blds rounded amount will be my new interest rade until the next Change Date

During the Interest-Ond Period the Nome fordiar will ther deternune the amount of the monthly payment that would be suffictent to repuy abormenthaterest This will be the amaunt of my monlthly payment until the earler of the next Change Date or the gid of ihe Interestry Only Period unless I make a volunlary prepayment of primetpal during such period If I makia_ volumary prepayment of principal durng the Interest-Only Period, my payment amount for subsequent paymens yyill be redideed to the amount necessary to pay jnterest at the then current Interest rate on the lower principal balanose Af the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will deterpine the amount of the monthly payment that would be sufficient to repay an full the unpard principal that I am expected to erse at hie end of the Interest-Only Period or Change Date, as applcable, in equal monthly payments ofer the remaning term of the Note The result of this calculatuon will bo he new amount of my monthly payment Aster he ery of the Interest-Only Period, my payment amount will not be reduced due to voluotary prepaymenus

LOan No: 0000479436
INTERBST ONT Y ADDENDUM TO ADSUSTABLE RATB RIDER $5 / 1$ LIBOR ARM - MULTISTATB
GRAW MX CVL ARM IO ADNDM RDER 1 WPF (OIOIDOCSIRIDERSICVIMMKIO ADN RD)

BY SIGNING BELOW, Borrower accepis and agrees to the termas and covenants contamed in ins Adjustabite Rate
RId
RUder 凡

$\qquad$

[Sign Orignal Only]

Loan No: 0000479436

## Order No: 06041897-5A

The land referred to harbin is situated in the state of Neral, County of LYON, described as follows:
 PHASE 2, FILE IN TAE OFEICE OF THE 2 , 365687.
ON OCTOBER 20,2005 , AS DOCUMENT NO. OHCHRTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE. EXCEPAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASGESEOR'S PARCEL NO. 029-401-17

BRECK000050

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 2

## HUTCHISON \& STEFFEN <br> A PROFESSIONAL LLC



## NOTICE OF BREACH AND DEFAULT AND OF ELEGTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

YOU ARE GEHIND IN YOUR IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE ACTION, and you may have the legal PAYMENTS, IT MAY BE SOLD Whanding by paying a of ofyour past due payments plus permitted costs right to bring your account in good stand by law for reinstatement of your account, which is normally five and expenses within the time permited the sale of your propeaty pursuant to NRS 107.080. No sale date (5) business day prior to the date set for the date thls Nefice of Default may be recorded (which date of may be set untl three months from the daie is $5265,512.32$ as of 10/31/2017 and will increase untll your account becomes current.
NOTICE IS HEREBY GIVEN THAT: SABLES, BLC, a Nevada limited liability company is either the original trustee, or the duly appointed substitithed Yrustee, or acting as agent for the Trustee or the Beneficlary under a under a Deed of Trus dated-6/2al2007, executed by VICENTA LINCICOME, A MARRIED WOMAN, as trustor to secure obligationn in favor of Mortgage Electronic Registration Systems, Inc., as nominee fot SIERRA PACIFIG MORTGAGE GOMPANY, INC. its successors and assigns, as Beneficiary, rechred 52522007 , instrument no. 407150 The subject Deed rer fust was modfied by Loan Modification_Agreement recorded as inder of Lyon, County, Nevada securing, 5/4/2011 of Offlcial Records ) , the efice of
among other obligations including
One note(s) for the Origimal sumt of $\$ 389,150.00$, that the beneficial interest under such Deed of Trust and the obligations secured kereby are presently held by Beneficiary; that a breach of and default in the obligations for which/such Deed of Trust is security has occurred or that payment has not been made of. The monthly instatment which became due on 911/2008, along with late charges, and all subsequent montthy instaliments.
Yourare yesponsibie to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure truslee fees and costs, advances and late charges.

Fynthermore, as a condition to bring your account in good standing, you must provide the undershoner with written proof that you are not in default on any senlor encumbrance and provide proof of insurance.
T.S. No.: 16-42397

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provislons of the loan documents.

That by reason thereof the present Beneflclary under such deed of Trust has executed and delliered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has depositid with sald duly appointed Trustee such Deed of Trust and all documents evidencing-obligations-secured thereby and has declared and does hereby declare all sums secured thereby immaediately due and payable and has elected and does hereby elect to cause the lrust property to be sold to satisfy the obilgations seoured thereby.

## NOTICE

You may have the right to cure the default hereon and reinstate the one obllgation secured by such Deed of Trust above described. Section NRS 107.080 permits certaln deleulis to be duyed upon the Payment of the amounts required by that statutory section without requiring paymens of inay portion of principal and Interest which would not be due had no default occurred. As to ownes-occupled property, where reinstatement is possible, the time to reinstate may extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the inght to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acberereation and Sale.
To determine if reinstatement is possibie and the amonng ifany, to cure the default, contact:
PROF-2013-M4 Legal Title Trust, by U.S. Bank National Assefiatlon, as Legal Title Trustee clo Fay Servicing, LLC c/o SABLES, LLC, a Nevada limited liability company $>$ 3753 Howard Hughes Parkway, suite 200 Las Vegas, NV 89169 Beneficlary Phone: 800-495-7168 Trustea Phone: (702) 66

To reach a person with authorify to negotiat
Lauren Jowers
800-495-7166
Property Address: 70 RINERSIDE DRIVE, DAYTON, Nevada 89403
If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Nofeythstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the concluslon of the foreciosure.
REMEMBER, YOUQMAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT AGTION.
Attached hereto and Incorporated herein by reference is the Affidavit of Authority in Support of Notlce
OFDefault and Election to Sell pursuant to NRS 107.080,
OEDefault and Ele

T.S. No.: 16-42397

You may wish to consulk a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counselling agency by calling ther approved Local Housing Counseling Agency toll frea-number: ( 800 ) $669-4287$ or you can go to $H U{ }^{2}$ 's website: http:/lportal.hud.gov.

Dated: 11/1/2017


## Daled: $11 / 2$

 3753 Hoyrard Hughes Parkway, suite 260
Las Veogas, Nevada B9169


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to whioh this certificate is attached, and not tho tuthfuiness, accuracy, or validity of that documenti.

## Slate of CALIFORNIA

County of ORANGE


On 11/1/2017, before me, Christine O'Brinh, persongliy appeared Michael Busby who proved to me on the basis of satisfactory evidence to be/the person(s) whose name(s) islare subscribed to the within instrument and acknowledged to me that he/sheithey executed the same in his/her/their authorized. capacity(les), and that by his/rientheir signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) aqted executed the lostrument
I certify under PENALTY OF EERMKR Under the laws of the State of California that the foregoing paragraph is true and cogrect? WITNESS my hand and offolarseath


Signature of Notary

BRECK000062

## Affidavit of Authority

(Nevada Revised Statute $\S 107.080$ as amended effective June 1, 2013)
Re: TS H 16-42397
BorowerName: Property Address:

## VICENTALINCICOME 70 RIVERSIDE DRIVE DAYTON, Nevada 89403

I,_ Veronica Talley_, am the Foreclosure Spocialledflay Servicing, LLC, the current serviger for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affigayit is attached ("Deed of Trust'). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the bustiest records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected thereinocyurded.
Ia). The full name and business address of tho current trustee of record for the Deed of Trast-is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes pa (Kwa, Suite 200, Las Vegas, Nevada 89169
1(b). The full name and business address of the current holder of He Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U,S. Bank National Association, as Legal Title Trustee 60 Livingston Aye EP-MN-WS3D St. Paul MN 551d, Attn: Structured Finance Services - PROF

1(c). The full name and business address of the current beneficiary for the obligation or debt secured by tho Deed of Trust is PROF-2013-MA Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Raul MiN 55107, Attn: Structured Finance Services - PROF


1(d). The full name and business address of the oufrent satyicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St, Suite 2000, Chicago, IL 60605
2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty of tile insurance issued by a title insurer or title agent authorized to do business in this State persument to Chapter 692d of the NRS, the name of each assignee and each recorded assignment of the De fd of Trust.
2(a). Assignor Aflame: PRQF-20h子-Ary Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee Instrumentixa 544042
2(b). Assignee Name Bank of America, N.A. Successor by Merger to BAC Homo Loans Servicing, LP FRA Country vide Home Loans Servicing, LP
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on $08 / 15 / 2011$ 1pstrament No. 480360
Nc) Assignee Name: Bank of America, NA. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719
The current beneficiary under the Deed of 'Trust, the successor in interest of the beneficiary or the From my review of the documents of public record and the business records of the current ry, the current trustee has authority to exercise the power of sale with respect to the property

Affidavit of Authority to Exercise the Power of Sale Revised $6 / 1 / 12013$
encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and curtent holder of the note secured by the Deed of Trust.
5. From my revlew of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attomey of the beneficiary or servicerhas semt to VICENTA LINCICOME, a written statement of: (1) the amount of payment required to make good the deficiency in performance of payment, avoid the exerclse of the power of sale and reingrate the temity and conditions of the underlying obligation or debt existing before the deficiency in perfothatice or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of tha obligarioh or debt secured by the deed of trust (IV) the amount of accrued interest and late charges; (M) a good fatth estimate of all fees Imposed in connection with the power of sale; and (Yy) comtect information for obtaining the most current amounts due and the local or toll-free telephone number that VIGESTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.
6. The borrower or obligor of the loan secured hy the Ded of Trust may cay Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a rectation of the ingormation contained in this Affidavit.

I declare under penalty of perjury of the laws of the
this Affidavit was executed on
this Affidavit was execored ons:
By: Fay Servicing, LLC, its attorney in fact

(Title)
A notary public or other office completing this centificate verifies only the identity of the indeviduat who signed the document to which this coftificate is aunched, and yot the truthfulness-accurayy or valdicis of that document


Atisur tins amstin , Notary Public,
$\qquad$ who proved to me on the basis of satisfactory evidence to be the person(s)-whose pame(s) isfare subscribed to the within instrument and acknowledged to me that he/she/they executed the gaimo in his/herfhelr authorized capacity(ies), and that by his/her/their signature(s) on the instrument the persgn(s) or the ehtityy yon behalf of which the person(s) acted, executed the instrument.


Affidavit of Autionity to Exercisa the Poure of Salo Revised 6/1/2013

# Declaration of Mortgage Servicer 

 Pursuant to NR 107.510T.S. Number:

Borrower(s):
Mortgage Servicer:
Property Address:

15-42397
VICENTA LINCICOME
Fay Serviclng, LLC
70 RIVERSIDE DRIVE DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage serv cof named below declares that:


1. (Xhe mortgage servicer has contacted the borrowe plyrsuant to NRS 107,5io (2), Vo tassess the bortower's financlal situation and to explore options fon the borrower to avold a foreclosure sale". Thity (30) days, or more, have passed since the inltal contact was made.
2. The mortgage servicer has exercised due dillgence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financlal situation and explore optlons for the borrower to avold foreclosiure ${ }^{n}$. Thilty (30) days, or more, have passed since these due diligence efforts *sere gatisfled.
3. $\square$ No contact was required by the motodage/servicer becaus meet the definition of "borrowere's pursuant 6 NRS fot.410.

4. $\square$ During the preceding annuerrepoting perlod, the Lender has foreclosed on 100 or fewer real propertles located frimis state end therefore, pursuant to NRS 107.460, the provisions of NRS 177.400 fo 107.560 i incluslva, do not apply.
5.The loan is noota "residenthal mortigge loan" as defined in NRS 107.450.

I certify that this declaketion is accurahe, complete and supported by competent and reliable evidence which the montrage servicerinas reviewed to substantlate the borrower's default and the right to forecloseraciuding the borrower's loon status and loan Information.


## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 3

## Hutchison \& Steffen



APN No.: 029-401-17
[Recording requested by:]
[When recorded mail to:]
Sables LLC
c/a Zieve Brodnax \& Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148
T.S.No. 16-42397

## NOTICE OF TRUSTEESS SALE

 OFFICIAL RECORD Lyon County, NVFee: $\$ 38.00$ RPTT: $\$ 0.00$ Recorded By: mkassebaum

10112/2018 02:27 PM Page: 1 of 2

Requesfed By: SERVICELINK TITLE AGENCY INC Dawna L. Warr, Recorder

YOU ARE IN DEFAULT UNDER A DEED OF T (UST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, TT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDRING AGAINST YOU, YOU SHOULD CONTACTALAWYER.
A public auction sale to the highest bidder for ceash, cashier's checs draym on a state or national bank, check drawn by a stato or federal credit union, or a check drand by a stato or dederal savings and loan association, or savings association, or sayings bank specified in Section SHoz of the Fimancial Code and authorized to do business in thls state will be held by the duly appointed trusteg as shome below, of all right, title, and interest conveyed to and now held by the trustec in the hereinatter described property under and pursuant to a Deed of Trust described below. Tho sale will be made, but without covenan or warranty expressed or implied, regarding title, possession, or encumbrances, to pay the remainieg princip at sum of the rote(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the nofe (s), adjancices, yrder the terms of the Deed of Trust, interest therion, fees, charges and expenses of the Musteg tor the total amount (at the time of the initial publication of the Notice of Salo) reasonably estmated to be set forth below. The amount may be groater on the day of sale.

TRUSTORVICENTA LINCICOME AMARRIED WOMAN
Duly Appointed Trustee: Sabres LCC, a Nevada Linited Liability Company
Recorded 5/25/2007, as Instrumont No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Tnstrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorde of Lyyon Cquaty, Nevada, Described as follows:
THE LAND REAEEMED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, ANTIS DESCRUBED AS FOLLOWS:


Alfthat cestainceal property situate in the County of Lyon, State ofNevada, described as follows:
Lot 42 à shomn on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nekada Recorder, on October 20, 2005, as Document No. 365687.
EXGEETING fHEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson gyver.
Date of Sale: 11/9/2018 at 11:00 AM

31 S. Maln Street Yerington, Nevada 89447 Lyen County Courthouse
Estimated Sale Amount: $\$ 666,632.22$
Street Address or other common deslguation of real property:
70 RIVERSTDE DRTVE DAYTON, Nevada 89403

## APN. No.: 029-401-17

The undersigued Trustee disclaims any liability for any incorrectness of the street addrose or other formon designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtalned by sending a written request to the beneficiary within To days of the date of first publication of this Notice of Sele.

Date: 10/11/2018
 Sale Information; (214) 848-9272 www.elitepostandpub.com For Non-Awomated Sale Information, call: (702) 664-1774

> A notary public or other officer completing this certificate verifies only the ldentity of the indiftidual who signed the document to which this centificate is attached, and not the truthfulmegs aecuracy ok yalidity of that document.

State of CALIFORNA County of ORANGB
On 10/11/2018, before me, Wuacelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory eridence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to mernathershe/they executed the same in his/hor/their authorized capacity(ies), and that by his/her/heir signaturdss on the isstument the person(s), or the ontity upon behalf of which the person(s) acted, executed the instrumett.
I oertify under PENADTY OFPERJURY under the laws of the State of Califomia that the foregoing paragraph is true and conegt.


THIS FIRM IS ATTEMPTING TO COLLECTADEBTAND
ANY INFORMATION WE OBTANN WILL BE USEO FOR THAT PURPOSE.

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 4

## Hutchison \& Steffen <br> A PROFESSIONAL LLC

Jobr T. Steffen (4390)
Mathew IK. Sohriever (10745)
Alex R. Velto ( 14961 )
HUTCEISON \& STEFEBN, RECC
10080 West Alta Drive, Sulte 200
Eas Vegas, NV 89145
TCl (702) 385-2500
Fax (702) 385-2086:
msohxigver@inutchlegalcom.
Casey I.Nelson, Esq. (12259)
Wedgewood, LLC
Office of the Generat Courisel
220 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9:157
Fax (3.10) 730-596.7
caseynelson@wedgewod-inccom
Altornej for Defendant, Counterclaimant, and Cross-Plainitiff
Bredkenridge Property Fund 2016, LLC
THARD UUDICLAL DISTRICT COLRT EYON COUNTY, NEYADA
A:LBERTA ELLIS LINCICOME, JR, and Case $\mathrm{No}_{2}$; $18 \mathrm{CV}-01332$ VICENTA LINCICOME,

Plaintiff,
v.

SABLES, ELC, a Nevada limité liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome end dated $5 / 23 / 2007$; FAY SERVICING; ELC, a Delaware lianted liablity canpaity atd subsidiary of Fay Finticial, LLC; PROF-2013-MF LEGAL. TITE TRUSTA by U.S. BAAKK N.A., as Legal Title Trastee; for BANK OF AMERICA $N, A$; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELIPOINT MORTGAGE SERVICINGT, LLC; 1900 CAPITAL TRUST H, BY U.S.. BANK TRUST NATHONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50 ${ }^{2}$

Defendants.
AND RELATED MATTERS.

Bept No: II
DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTYY RUND 2016 LLC'S MOTION FOR: SUMMMARX JUDGMENT AGATNST PLATNTIFF

The undersigneid, Jason Cempbell deelators: under penalty of perfiry that the: following assertions

1. I Im an authorized agent of Breckenridge Property Fund 2016 LLC ("Breckennidge').
2. I ani competent to tesitify to the matters asserted herein, qIf which I hage personal knowiledge, except 的 to those tratetes stated upon information and bellef. As to those matters stated upon information and belief, I believs them to be true. If make thls declaration 'in support of Breckentidge's motion for summary judgment against Plaint fffs,
 Dayton, Nevada 89403 ("Subject Property") at a forreclosurte sale cợducted purisuant to NRS 107. (Foreqlosute Sale").
3. Breckenriage was the highest bidder and patd $\$ 294 ; 000.01$ to purchase the Subjeet Property at the Foreclosure Sale.
4. Breckenridge relied on the fact that the noticed Foreclasure Sale was valid because Plaintiffs failed to post the cout-ordered bond.
5. Breckenridge had no role in thisis dispute prior to its purchase of the Subject Properety at the Foreclosure Sate.
6. Breckenridge is entitled to an prder quieting title in ifs favor because there were no defects in the Foreclosure Sale and any rigitits, title, or interest that Plaintiffs previously had in the Subject. Property hads beein teiminated by way of the Foreclosure Sale
7. I declare under penalty of pergiary of the laws of the United States and the State of Nevada that these facts are frue to the best of miny knowledge and belief.

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 5

## Hutchison \& Steffen <br> A PROFESSIONAL LLE

## INTENTIONALLY LEFT BLANK

 EXHIBIT PAGE ONLY
## EXHIBIT 5

## Hutchison \& Steffen

70 RIVERSIDE DR
A.P.N.: 029-401-17

RECORDING REQUESTED BY:
AND WHEN RECORDED TO:
Breckeoridge Property Fund, 2016, LLC
2320 Potosl St Ste 130
Las Veges, NY 89146
Rectrod As An $A$ cocminodation
Forward Tax Sistements to
the address given above

Doc \#: 591393
012620018 08:21 AM Pager 1 of 2
OFFICIAL RECORD
Requasled By: FIRGT AMERIOAN Tithe INSURANCE O
Lyon County, NV
Margie Kassebaum, Recorder
Fes: $\{8 \mathrm{sB}, 00$ RPTT: $\$ 1,148.65$
Recorded Byi lohumilded

SPACE ABOVE LINE FOR RECORDER'S USE
T.S. \# 16-42397

Order H: $160069595-\mathrm{NV}$-VOO

## TRUSTEES DEED UPON SALE

Traster Tax; 51140.55
The Orantee Hercin WAS NOT the Foreclosing Beneficlary,
The Amount of the Uapald Debt wes $\$ 671,249,37$
The Amounl Pold by the Orantee was $\$ 994,000.01$
Sald Property is in the Clty of DAVYON, County orLyon
SABLBS, LLC, a Ncyada limiled liablity company, as Trustee, (whereas so designated in the Deed of Trut hercurder more paticulariy deseribed or as duly appointed Trustee) does hereby GRANT and CONVIS to

## Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenanl or waranty, expressed or implied, all righls, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyou, State of Nevado, described as follors:'

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS TOLLOWS:
All that certain real property situato la the County of lyou, State orNevada, deseribed as rollows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, Illed in the omee of the Lyou County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREPROM all that portlon thereof, tying below the antural ordiaary bigh water llae of the Carson River.

Property Address: 70 RIVERSDE DRIVE, DAYTON, Nevada 89403
Thls conveyance is made in compliance with the terms and provisions of the Deed of Trust exccuted by VICENTA LIMCICOME A MARRIED WOMAN as Truslor, dated $5 / 23 / 2007$ of the Officiel Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default haying occurred under the Deed of Trust pursuant to the Nollice of Breach abd Election to Sell under the Deed of Trusl recorded on $5 / 25 / 2007$, as Instrument No. 407150 , The subject Deed of Trusi was modified by Loan Modificatlon Agreement recorded as lnstrument 475808 and recorded on $5 / 4 / 2011$, of official records.
A.P.N.: 029-401-17

RECORDING REQUESTED BY:
AND WHEN RECORDED TO;
Breckenrldge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NY 89146
Forward Tax Stateruents to Only Without Uladidity
the address given above
T.S. \# 16-42397

Order \#: 160069595-NV-voo

## TRUSTEE'S DEED UPON SALE

Trunsfor Tax: S $1 M 18.5 S$
The Granteo Horein YYAS NOT the Foreolosing Bereficiary,
Tho Amount of tho Unpald Debt was $\$ 671,249,37$
Tho Amount Paid by tha Grantoc was $\$ 294,000.01$
Sald Property is in the Clty of DAXTON, Ccunty of Lyon
SABLES, LLC, a Nevadn limited liability company, an Trustob, (whereas so designated in the Deed of Trust herounder more partcularly desoribed or as duly appointed Trustes) does hereby GRANT and CONVEY to

## Breckenridgo Property Fund, 2016, LLC

(beroin called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by It as Trustee under the Dood of Trust In and to the property situated in the county of Lyon, State of Nevade, described as follows:

TEM LAND REFERRED TO FIEREIN BLLOW LS SITUATGD IN THE COUNTY OF LYON, STATE OF NEYADA, AND IS DESCRIBED AS FOLLOWS:
All that certatn real property sliunte in tho County of Lyon, State of Nevada, described as follows: Lot 42 as shown on the offlelal map of GOLD CANYON ESTATES, PHASE 2, filod in the office of the Lyon County, Neyada Recorder, on October 20, 2005, as Document No. 365687.
EXCDPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDI DRIVE, DAYTON, Nevnda 89403
This conveyance is made in compliance with the terms and provsions of the Deed of Trust executed by VICCENTA LINCICOME, A MARRWID WOMAN as Trustor, dated 5/23/2007 of the Officind Records in the office of the Recorder of Lyon, Nevada under tho authority and powers vested in the Trusteo designated in the Deed of Trust or as the duly appolnted Trustee, default having occurred under the Deod of Trust pursuant to the Notioe of Breach and Election to Sell under the Deed of Trust recorded on $5 / 25 / 2007$, as Instument No , 407150 , The subject Deod of Trust was madifted by Loan Modifention Agreement recorded as fustrument 475808 and rocorded on 5/4/2011, of offlicial records.

## TRUSTEE'S DEED UPON SALE

T.S. \#: 16-42397

Order \#: 160069595-NY-YOO
Trusteo having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by tho Deed of Trust including sending a Notics of Breach and Election to Sell within ten days after its recording and a Nottce of Sale at loast twenty days prior to the Sale Date by certified return receipt mail, postage prepaid to each person entitled to notice in compllance with Nevada Revised Statutes 107,080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publloation of copies of Notice of Default and Election to Sell underDeed of Trust and Notice of Trustes's Sale, and the posting of copies of Notico of Trustee's Sale have been complied with. Trustee, in complyance with sald Notlce of Trugteo's sale and in exercise of Its powers under sald Deed of Trust sold said real property at publlc anotion an 1/4/2019. Grantee, being the highest bidder at sald sale became the purchaser of said property for the amonat bid, boing $\$ \$ 294,000,01$, in lawfil money of the United Statos, in pro per, recoipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, bads this qay, caused its nanno to be hereunto affixed.

Date: 1/15/2019

A notary public or other officer completing this certficate
 verifies only the identity of the individual who signed the document to which this cortficato is attaohed, and not tho truthfulness, acoureoy, or valldity of that document.

## State of CALIPORNIA

County of ORANGE
On $1 / 15 / 2019$ before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfaotory evidenos to be tho porson(s) whose name(s) is/are subsoribed to the within linstrument and, acknowledged to mo that he/she/thoy executod the samo in his/her/thoir authorized capacity(ies), and that by his/hertheir 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 OR PERJURY under the laws of the State of Callfornia that the foregolng paragraph is true and cortect.



INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 6

## Hutchison \& Steffen <br> A PROFESSIONAL LLC

THREE -DAY NOTICE TO QUIT

## TO: VICENTA LINCICOME <br> TENANT AND SUBTENANT AND ALL OCCUPANTS <br> 70 RIVERSIDE DR. <br> DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the abovementioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 et seq., and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections $40.255,40.280$, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twentyfour (24) hours after the receipt of the aforesaid order.

DATED this day of January, 2019

WEDGEWOOD, LLC


## EXHIBIT A

## EXHIBIT A

## NOTICE TO TENANT

TO
VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 et seq., and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property within three (3) business days of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
2) The lease or tenancy was the result of an arms-length transaction; and
3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to ayoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this $25^{87}$ day of January, 2019.
WEDGEWOOD, LLC


Nevada Bar \# 12259
Office of the General Counsel 2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC


1. At the time of service I was at least 18 years of age and nat a party to this action.
2. I served coples of the Three-Day Notice to Quit, Notice to Tenant
3. a. Party served: Vicenta Lincicome; Țenant and Sụberiant and All Occupants
b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. Iserved the party:
a. By Posting. On: Mon, Jan $282019^{\circ}$ (2) at: 02:20 PM by posting a copy of the documents in a consplcuous place on the property. b. By Mailing. On: Mon, Jan 282019 by malling a copy of the documents, addressed as shown In Item 4, va Certifed Mall Issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
a. Tonl Ruckman (R-052005, Washoe) d. The Feefor Service was:
b. FIRST LEGAL

2920 N. Green Valley Parkway, Sulte 514
Henderson, NV 89014
c. (702) 671-4002

Pursuant to NRS 53.045
7. I declare under penally of perjury under the laws of the State of Nevada that the foregoing is true and correct.



」".

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

# HUTCHison \& Steffen 

A PROFESSIONAL LLC

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON \& STEFFEN, PLLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mschriever@hutchlegal.com
Casey J. Nelson (12259)
WEDGEWOOD, LLC
Office of the General Counsel 2320 Potosi Street, Suite 130 Las Vegas, Nevada 89146
Telephone: (702) 305-9157
Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant / Counterclaimant
Breckenridge Property Fund 2016, LLC
THIRD JUDICLAL DISTRICT COURT LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

Case No.: 18-CV-01332
Dept No.: II
DECLARATION IN SUPPORT OF MOTION FOR ORDER REQUIRING PLAINTIFF TO DEPOSIT RENTAL AND/OR MORTGAGE PAYMENTS WITH COURT

## AND RELATED ACTIONS

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am the Director of Regional Operations for Wedgewood, LLC, which is the managing member of Defendant / Counterclaimant Breckenridge Property Fund 2016, LLC ("Breckenridge").
2. I am an authorized representative of Breckenridge.
3. Breckenridge is a limited liability company authorized to do business in Nevada, that purchases real estate throughout the state of Nevada.
4. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.
5. As the Director of Regional Operations for Wedgewood, LLC, the major responsibilities and duties of my position include, among other, the following:
a. Daily analysis of upcoming properties scheduled to go to sale in foreclosure;
b. Daily analysis of real property market conditions and property valuations;
c. Area Property Manager oversight, renovation direction, budgeting, approval; and
d. Area real estate professional oversight including pricing, offer negotiation, and repair negotiation.
6. Breckenridge purchased the real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale that occurred on January 4, 2019.
7. Breckenridge purchased the Subject Property at the foreclosure sale as an independent, good faith purchaser.
8. I have reviewed the publicly available information available for the Subject Property and compared that information with online rental availability of other real estate available for rent in Dayton, Nevada and Fernley, Nevada.
9. Based on current available rental prices and rentals in those surrounding areas I have determined that a fair market rental value for the Subject Property to be in the $\$ 2,250.00$ to $\$ 2,500.00$ per month range.
10. The factors I utilized to determine that fair market rental range in comparing the Subject Property with other properties for rent included year built, square footage, bed/bath count, neighborhood, larger garage size, single story, lot size, availability, and desirability.

I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief


Case No: 18-CV-01332
Dept.: II
The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A. 040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and ) VICENTA LINCICOME,

Plaintiffs,
v.

SABLES, LLC, a Nevada limited liability

## PLAINTIFFS' MOTION FOR STAY PENDING APPEAL

company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK) OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,
vs.
ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5.

Counterdefendants.

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby move this Court for an order staying all proceedings in this matter pending appeal of the Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC and the Order on Breckenridge Motion for Summary Judgment, both entered June 23, 2021.

This motion is made pursuant to NRCP 62(d), and is supported by the Memorandum of Points and Authorities attached hereto, the documents previously admitted as evidence in this Court, the supporting Exhibits attached hereto, and the pleadings and papers on file herein.

Respectfully submitted $/ 4^{\text {º }}$ day of September, 2021
MILLWARD LAW, LTD.


## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME (hereinafter collectively the "Plaintiffs" or the "Lincicomes") seek an order from this Court staying any action on the underlying proceedings until such time as their appeal of this Court's summary judgment orders is resolved.

On June 23, 2021, this Court entered its Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC and the Order on Breckenridge Motion for Summary Judgment. On July 19, 2021, Plaintiffs appealed those orders to the Nevada Supreme Court, and the appeal is currently pending.

Because the Court's orders which are the subject of the appeal concern the rights and interest the Lincicomes have in their home located at 70 Riverside Drive, Dayton, Nevada (hereinafter the "Property"), and because those interests may be affected by a decision of the Nevada Supreme Court, a stay of the proceeding including an order on the request for Writ of Restitution is necessary and appropriate to prevent serious and irreparable harm.

Therefore, the Lincicomes respectfully request that this Court issue a stay of all proceedings pending appeal.

## II. A STAY IS APPROPRIATE PENDING APPEAL

## A. Legal Standard.

NRCP 62 (d)(2) provides the Court the authority to enter a stay pending appeal of the district court's order to the Nevada Supreme Court.

When determining to issue a stay of proceedings pending appeal, courts are to consider the following:
(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied;
(2) whether the appellant ... will suffer irreparable or serious injury if the stay or injunction is denied;
(3) whether respondent ... will suffer irreparable or serious injury if the stay or injunction is granted; and
(4) whether appellant/petition is likely to prevail on the merits in the appeal.

See Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 89 P.3d 36 (2004). As established herein, all of the factors weigh in favor of the issuance of a stay in this action.

## B. The object of the appeal will be defeated if the stay is not entered.

The object of Plaintiffs' appeal will be defeated if a stay is not issued. Plaintiffs filed their Second Amended Complaint on December 20, 2019, in order to set aside the Trustee's Deed Upon Sale, recorded on January 25, 2019, to quiet title to the Lincicomes' residence in favor of the Lincicomes, and to determine the parties respective duties and rights, including those under the 2007 Deed of Trust as modified by the 2009 Loan Modification Agreement.

If the Court's Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC and the Court's Order on Breckenridge Motion for Summary Judgment and proceedings herein are not stayed, Plaintiffs will be evicted from their home, which will undoubtedly defeat the primary object of their appeal, which seeks review of this Court's Orders by the Nevada Supreme Court.

## C. Plaintiffs will suffer irreparable harm if the stay is not granted.

Plaintiffs will suffer irreparable injury if the stay is denied. Nevada law is clear that the loss of real property constitutes irreparable harm because real property is unique. See Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (holding that "real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm").

The Lincicomes' residence sits in the balance of this Court's decision. This Court's Summary Judgment Orders were decided narrowly on several issues including the validity of actions taken by the Trustee and the beneficiary of the Lincicomes' mortgage loan. The acts of Defendants related to the nonjudicial foreclosure have been the subject matter of this case prior to the foreclosure of the Lincicomes' property.

Defendant Breckenridge Property Fund 2016, LLC (hereinafter "Breckenridge") was aware or constructively aware, of the allegations in this case prior to purchasing the property at foreclosure. Breckenridge has admitted that it knew of the issues pertaining to this case prior to its purchase at foreclosure and knew that "Plaintiffs failed to post the court ordered bond," and it chose to purchase the property out of foreclosure anyway. See Declaration in Support of Breckenridge Property Fund 2016, LLC's Motion for Summary Judgment Against Plaintiff attached hereto as Exhibit 1.

Money damages will be insufficient to replace the Lincicomes' home if they happen to prevail upon any one of their claims that would result in the nullification of the foreclosure. Furthermore, NRS 107.560(4) makes it clear that the validity of the sale is not affected only as to a bona fide purchaser of the property "without notice." See NRS 107.560(4). Breckenridge is not a bona fide purchaser of the property. See Exhibit 1.

Breckenridge had notice and therefore the sale of the property, under the alleged violations of the Homeowners Bill of Rights, which the Court found the Lincicomes were likely to prevail upon in its December 31, 2018 Order, remains subject to potential invalidation on appeal.
D. Defendants will not suffer irreparable or serious harm if the stay is granted.

The Defendants in this matter, including Breckenridge will not suffer irreparable or serious harm if the stay is granted. With the growth of the value of the housing market, it may be in Breckenridge's best interest not to oust Plaintiffs or proceed with the sale of the property. Notably, Breckenridge purchased the property for $\$ 294,000$. At present Zillow.com provides that the property is valued at $\$ 537,500$. See Zillow valuation attached as Exhibit 2.

The fact that Breckenridge may have to wait a little longer to evict the Plaintiffs from their home is not irreparable harm sufficient to deny the requested stay. See Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C. Cir. 1985) (holding that "[m]ere injuries, however
substantial, in terms of money, time and energy necessarily expended in the absence of a stay" are not irreparable harm (internal quotations omitted)).

## E. Review of Court Orders and Likelihood to Prevail.

The Lincicomes' appeal is not brought in bad faith. I am sure the Court can agree that the law and the facts of this case made it a difficult case to determine by way of summary judgment. Accordingly, without any disrespect to the Court intended, the Lincicomes believe that review of the Court's decision is warranted, especially as to the application of the unique and novel facts and circumstances that arise in this case as applied to the law under Chapter 107 of the Nevada Revised Statutes.

If the Lincicomes are meritorious on any one of the close issues, such as the claim for wrongful foreclosure or violation of the Homeowners Bill of Rights, the appropriate remedy under Nevada law would be the declaration that the foreclosure sale was void. See NRS 107.080(5) or NRS 107.560(4).

The Court has admonished the Lincicomes in this case repeatedly that they will not get their home for free. The Lincicomes have never sought such relief and do not seek that relief now. It is appropriate that the Lincicomes be given the opportunity to have the Court's summary judgment decision fully and finally reviewed. If this Court's decision is affirmed, then the Lincicomes will be required to vacate their home and the Defendants in this matter will be able to seek costs as is appropriate.

However, if the Court does not stay all pending matters, including Breckenridge's request for writ of restitution, and the Supreme Court reverses this Court's decision on grounds sufficient to declare the foreclosure void under NRS 107.080(5), or under NRS 107.560(4), then the Lincicomes will be irreparably injured and the relief provided under NRS 107.080(5) and NRS 107.560(4) will be unavailable to them.

The fact that the Lincicomes did not prevail before this Court does not mean that they will not or cannot prevail before the Nevada Supreme Court. Moreover, when seeking a stay, "a movant does not always have to show a probability of success on the merits," if there is a
"serious legal question involved" and the "balance of equities weighs heavily in favor of granting the stay." Hansen, 116 Nev. at 659, 6 P.3d at 987 (internal quotations omitted).

As set forth above, because denial of stay could result in irreparable harm to the Lincicomes, the Court should find that the balance of equities as well as the applicable relief under Nevada law weighs heavily in favor of granting the stay. Therefore, the Lincicomes respectfully request that this Court stay summary judgment Orders and all proceedings pending appeal.

## F. Defendants are Adequately Protected.

Pursuant to NRCP $62(\mathrm{~d})(1)$, the Court may require $a$ bond be issued when staying a proceeding pending appeal. See, NRCP 62 (d)(1).

It is well accepted that the term "may" as used in NRCP 62 is permissive, not mandatory. See, State ex. rel. Pub Serv. Comm'n v. First Judicial Dist. Court ex. rel. Carson City, 94 Nev. 42, 574 P.2d 272 (1978).
"The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252, (2005).

As to Breckenridge, there is simply no reason to require a bond where, as here, there is no financial award to protect pending appeal and when Breckenridge is overprotected by its interest in the Property. Furthermore, Breckenridge will retain its ability to evict the Plaintiffs from the real property following the appeal if the Court's Orders are affirmed. As to the other Defendants, the Lincicomes' Carson City property located at 2763 Carriage Crest, is not exempt from execution and would be subject to any judgment lien recorded against it.

Therefore, Plaintiffs respectfully request that this Court issue a stay of all proceedings.
Alternately, Plaintiffs request that this Court enter an order allowing them to post their interest in the real property located at 2763 Carriage Crest Drive, Carson City, Nevada, as security to be subject to judgment as the Court determines appropriate upon remand.

Generally, the party seeking a stay is required to post a bond "that will permit full satisfaction of the judgment." McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983); see also NRCP 62 (d); Nelson v. Heer, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (holding that "alternate security" can be substituted for a bond).
"A district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant. Id.; see also Athridge v. Iglesias, 464 F. Supp. 2d 19, 24 (D.D.C. 2006) (holding that "courts have discretion to approve other forms of security than a supersedeas bond").

To determine whether to accept alternate security, this Court considers:
(1) the complexity of the collection process;
(2) the amount of time required to obtain a judgment after it is affirmed on appeal;
(3) the degree of confidence that the district court has in the ability of funds to pay the judgment;
(4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
(5) whether the defendant is in such a precarious financial position that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Nelson, 121 Nev. at 836, 122 P.3d at 1254 (internal quotations omitted). Again, these factors all weigh in favor of accepting the Lincicomes' Property as security for the stay.

First, allowing the real property listed above to be security for the stay will not complicate the collection process since the collection process would simply be allowing judgment to be recorded against the Property.

Second, if the Lincicomes lose on appeal, the stay will end promptly upon remand, and Breckenridge will be free to seek possession of 70 Riverside Drive in Dayton, and judgment may be entered against the Lincicomes' Carson City property for payment of any awarded costs.

## V. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request a stay pending appeal be issued until the Nevada Supreme Court has determined the issues on appeal. Further, Plaintiffs
respectfully request that no bond be required, or in the alternative their real property located in Carson City serve as adequate security.

## AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B. 03 that the foregoing does not contain the social security number of any person or other personal information as defined by NRS 603A. 040.

Dated this $/ 4$ roth $^{\text {d }}$ day of September, 2021.


## INDEX TO EXHIBITS

| Exhibit 1 | Declaration in Support of Breckenridge <br> Property Fund 2016 LLC's Motion for Summary <br> Judgment Against Plaintiff | 3 pages |
| :--- | :--- | :--- |
| Exhibit 2 | Zillow Valuation for 70 Riverside Drive, <br> Dayton, Nevada | 1 page |

Exhibit I

John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
HUTCHSON \& STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com
Casey J. Nelson, Esq. (12259) Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC
THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA
ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
V.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.

Defendants.
AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II
DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").
2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true. I make this declaration in support of Breckenridge's motion for summary judgment against Plaintiffs.
3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107. ("Foreclosure Sale").
4. Breckenridge was the highest bidder and paid $\$ 294,000.01$ to purchase the Subject Property at the Foreclosure Sale.
5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because Plaintiffs failed to post the court-ordered bond.
6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at the Foreclosure Sale.
7. Breckenridge is entitled to an order quieting title in its favor because there were no defects in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject Property has been terminated by way of the Foreclosure Sale
8. I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.


Exhibit 2

## 70 Rmarsice D

## Dayton, NV 8e 403



## 000

MORE

## Refinance now and save

Mortgage rates are near historic lows. Find a lender in minutes and see if you could save.
$\square$

## Your Home Value



Zestimate

## \$537,500

Case No: 18-CV-01332
Dept.: II
The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A. 040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and ) VICENTE LINCICOME,

Plaintiffs,
v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust ) given by Vicenta Lincicome and dated ) 5/23/2007; FAY SERVICING, LLC, a

AND PAYMENT OF OVERDUE RENTS OPPOSITION TO BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK) OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, ) LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY USS. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLD)))))))))))))
Counterclaimant,)
vs.)
ALBERT ELLIS LINCICOME, JR., an)
individual; VICENTA LINCICOME, an)
individual; and DOE OCCUPANTS 1-5.Counterdefendants.

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby submit their Opposition to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents (hereinafter "Opposition").

This Opposition is supported by and based upon Plaintiffs' Motion for Stay Pending Appeal filed on September 15, 2021, which was filed in response to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents filed on or about September 8, 2021. Plaintiffs' Motion for Stay Pending Appeal is incorporated herein by this reference as Plaintiffs' Opposition. This Opposition is additionally supported by the documents previously admitted as evidence in this Court, and the pleadings and papers on file herein.

Respectfully submitted 2 d ddy of September, 2021
MILLWARD LAW, LTD.


John T. Steffen, Esq. (4390)
Brenoch R. Wirthlin, Esq. (10282)
HUTCHISON \& STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
bwirthlin@hutchlegal.com

## ORIGINAL

FILED ? 2221 OCT- 1 AM II 125

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

## THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated $5 / 23 / 2007$; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLD; 1900 CAPITAL TRUST II, BY USS. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

Case No.: 18-CV-01332
Dept No.: II

DEFENDANT BRECKENRIDGE
PROPERTY FUND 2016, LLC'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PENDING APPEAL

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorneys of record, Hutchison \& Steffen, PLLC and hereby submits this opposition to Plaintiffs' Motion for Stay Pending Appeal ("Stay Motion"). This opposition is made and based upon the following points and authorities, the pleadings and papers on file, the attached affidavits and exhibits, and any oral argument this court may entertain.

DATED this $30^{\text {th }}$ day of September, 2021.
HUTCHISON \& STEFFEN, PLLC

John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
Alex R. Velto (14961)
HUTCHISON \& STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel 2320 Potosi Street, Suite 130 Las Vegas, Nevada 89146 caseynelson@wedgewood-inc.com

Attorney for Defendant, Counterclaimant, and
Cross-Plaintiff Breckenridge Prope!ty Fund 2016, LLC

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. Introduction

As this Court is well aware, this case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property. Since that time the Plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") have wrongfully been in possession of the Subject Property without making a single rental payment to Breckenridge, the rightful owner of the Subject Property. Ironically, the Plaintiffs recognize in this Stay Motion that this Court has correctly admonished them several times that they will not get their home for free. See Stay Motion at p. 6. Plaintiffs state that they are not seeking that relief (id.) but then proceed to argue throughout the entirety of their Stay Motion that they should receive exactly that: continued wrongful possession of the Subject Property - which they do not own - for free, to the detriment of Breckenridge.

Further, this Court has granted Breckenridge summary judgment on its claims and against Plaintiffs on their claims. Plaintiffs then continued to manipulate the Court system by filing an appeal which appears to lack any good faith basis and which will likely be dismissed. Not only that, Plaintiffs continue to request that this Court permit them to remain squatting in the Subject Property, paying no rent, and continuing to violate Breckenridge's rights with no consequences whatsoever, Given the current situation, there is no good faith basis for the Plaintiffs to continue - for years now - their ongoing violation of Breckenridge's rights through a stay pending their appeal. ${ }^{1}$ Accordingly, Breckenridge respectfully requests that this Court deny the Plaintiffs' Stay Motion in its entirety.
${ }^{1}$ In addition, Breckenridge has filed a Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents which is set to be heard by this Court on October 13, 2021.

## II. Statement of Facts

1. On or about May 23, 2007, Plaintiffs executed a Note and Deed of Trust that was secured by the Subject Property. See Exhibit \#1.
2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. See Exhibits \#2 and \#3.
3. On November 7, 2018, Plaintiffs filed a complaint for injunctive relief, contractual claims, and declaratory relief regarding the scheduled foreclosure sale of the Subject Property.
4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.
5. On December 31, 2018, the Court entered an order enjoining the foreclosure on the Subject Property if the Plaintiffs timely posted of a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter.
6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $\$ 294,000.01$, relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite bond. See Exhibit \#4.
7. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's ownership of the Subject Property was recorded. See Exhibit \#5.
8. The Plaintiffs were in possession of the Property at the time Breckenridge purchased the Property and have been in possession since that date. On or about January 28, 2019, Breckenridge served a Three-Day Notice to quit to the Plaintiffs ("Three-Day Notice"). See Exhibit \#6.
9. Notwithstanding the Three-Day Notice, the Plaintiffs have remained in possession of the Subject Property up to and including the present time.
10. Breckenridge has made repeated demand on the Plaintiffs to vacate the Subject Property, but Plaintiffs, without cause or reason, have refused to vacate the Subject Property.
11. The Plaintiffs continue in possession of the Subject Property notwithstanding the termination of the tenancy by services of the aforesaid Three-Day Notice.
12. The Plaintiffs' actions are in violation of NRS $\S 40.250-255$ and Breckenridge is entitled to possession of the Subject Property as prescribed in NRS § 40.290-420.
13. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.
14. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, sought to quiet title in its favor, sought other monetary damages, as well as possession of the Property through a claim for writ of restitution ("Restitution Claim").
15. In addition, Breckenridge sought payment of "reasonable rents for the period of time from service of the Three-Day Notice until such time as the [Plaintiffs] vacate the Subject Property." See Breckenridge's Counterclaim on file herein, at \$ 34.
16. Because the Plaintiffs remained in possession of the Subject Property even after service of the Three-day Notice, Plaintiffs should be required to pay rent to Breckenridge from February 1, 2019, until the date they vacate the Subject Property.
17. Ultimately, this Court made a determination granting Breckenridge' counterclaims and denying Plaintiffs' claims. The Plaintiffs have been and continue to reap a windfall by being able to stay in the Subject Property without having to make any payments. To add to that windfall, the Plaintiffs have an incentive to delay final resolution because every month of delay is another month of living rent free.
18. Based on the current rental market, a range of $\$ 2,250.00-\$ 2,500.00$ is a fair market rental value for the Subject Property. See Exhibit \#7. That rental range is consistent with the monthly security of $\$ 2,105.10$ per month that this court previously ordered to stay foreclosure. ${ }^{2}$
19. Plaintiffs have been in the Subject Property from February 1, 2019, to the present, August, 2021, or a total of 31 months, which would equate to rent in the principal amount of not less than \$69,750-\$77,500.
20. Accordingly, Breckenridge requests this Court issue an order and judgment against the Plaintiffs, in this range (and additional amounts due at this rate by entry of such an order) for rents due to Breckenridge due to the Plaintiffs' continued wrongful possession of the Subject Property.
21. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims against the Plaintiffs.
22. In its MSJ Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.

## III. Law and Argument

A. Plaintifes' appeal is meritless. They should not be permitted to continue TO UNLAWFULLY SQUAT IN THE SUBJECT PROPERTY, RENT FREE, DURING THE PENDENCY OF THEIR BASELESS APPEAL.

Plaintiffs' appeal lacks merit since, among other reasons, it is not an appeal from a final judgment. There has been no determination as to the rents owed Breckenridge, and additional issues remain pending which prevent the Plaintiffs' appeal from being heard at this time. Breckenridge

[^2]intends to file a motion addressing this now that the settlement program was clearly a delay tactic. Breckenridge will not go into specific details as to amounts or number but suffice it to say the Plaintiffs did not participate in settlement negotiations in good faith and their request to enter the settlement program appears to have merely been a bad faith tactic to continue to drag this out improperly.

Further, the Plaintiffs' motive for improper delay is transparent. As noted above, on or about January 4, 2019, Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $\$ 294,000.01$. The Three-Day Notice was served on the Plaintiffs on January 28, 2019. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person:
(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected;

Nev. Rev. Stat. Ann. § 40.255 (West). Breckenridge is the sole owner of the Property by virtue of purchasing the Property at a valid foreclosure sale conducted pursuant to NRS Chapter 107 on January 4, 2019. Service of the Three-Day Notice terminated the Plaintiffs' right to remain in the Property. Despite this, the Plaintiffs refused to vacate the Property within the three days as required by NRS 40.280 et seq. Rather, the Plaintiffs continued to squat in the Property without Breckenridge's permission or consent. Plaintiffs have paid no rent to Breckenridge during the time they are illegally squatting in the Property. Plaintiffs had no objective basis in law or fact to remain in the Property after foreclosure. Breckenridge was vested with title to the Property and the foreclosure proceeded properly.

Plaintiffs' continued occupation of the Property was in clear violation of NRS § 40.255. Plaintiffs' Stay Motion is merely the next step in a continued pattern of requested delay and vexatious litigation. Therefore, Breckenridge requests that the Stay Motion be denied.

III
I/I

## B. PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM WITHOUT A STAY ANY MORE THAN BRECKENRIDGE WILL SUFFER IRREPARABLE HARM IF A STAY IS GRANTED. EITHER WAY, THIS FACTOR IS NEUTRAL. MOREOVER, THE OBJECT OF THE APPEAL WILL NOT BE defeated if the Stay Motion is denied.

Plaintiffs fail to mention that their requested relief continues to harm Breckenridge, who has now been without possession of its Subject Property or even a single rental payment from Plaintiffs despite their improper and unjust possession of the Subject Property, from the time it was purchased by Breckenridge. "Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the loss of another." Topaz Mutual Co. v. Marsh, 108 Nev. 845, 856 (1992); Nevada Industrial Development v. Benedetti, 103 Nev. 360, 363 (footnote 2) (1987).

Plaintiffs have been unjustly enriched by being allowed to remain in the Subject Property without paying rent or a mortgage payment since February, 2019. The foreclosure in this matter occurred over two and a half years ago and Plaintiffs were not making payments to their lender prior to that time either. The Plaintiffs are squatting in the Subject Property without Breckenridge's permission. They are aware that the Subject Property has been foreclosed. However, Plaintiffs continue to occupy the Subject Property without paying fair market rent to Breckenridge's detriment.

Moreover, the object of the appeal will not be defeated by denial of the Stay Motion. If the Plaintiffs prevail - and if their improper appeal survives a motion to dismiss - they will be able to seek the relief they deem appropriate. The harm suffered by Breckenridge with a stay is at least equal to any by Plaintiffs if a stay was not granted. At this point, there is no basis to reasonably conclude the Plaintiffs' appeal will succeed, and in the interim, Breckenridge's right to possess the Subject Property and be paid fairly for rent are being egregiously violated by Plaintiffs' improper and unreasonable delays. Accordingly, these factors strongly favor denial of the Stay Motion.
C. While Plaintiffs' Stay Motion should be denied in its entirety, at a minimum A BOND IN THE FULL AMOUNT OF THE APPROPRIATE JUDGMENT SHOULD BE REQUIRED.

In their Stay Motion, Plaintiffs correctly note that a party seeking a stay is required to post a bond "that will permit full satisfaction of the judgment." NRCP 62(d); McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). However, Plaintiffs then unreasonably state that their continued wrongful possession of the Subject Property during the pendency of their meritless appeal should be permitted with no bond whatsoever. This is wholly improper, and also underscores the jurisdictional defects in the Plaintiffs' appeal as the amounts owed by them for their improper failure to pay rents has not yet been decided and is the subject of a pending motion by Breckenridge. Regardless, there is no basis to require anything less than the full amount of a bond as required under Nevada law.

Further, while the property values may have increased recently, there is no guarantee that they will not decrease, and often do so rapidly. Breckenridge has no protection from this likely event happening and the longer Plaintiffs are allowed to delay the inevitable upholding of this Court's decisions the more harm they will cause to Breckenridge. Accordingly, while the Stay Motion should be denied, in the event that it is not the Plaintiffs should be required to post a bond in the full amount of the Subject Property that they are wrongfully preventing Breckenridge from possessing, despite the Plaintiffs' lack of any ownership interest in the Subject Property.

## V. Conclusion

For all these reasons, Breckenridge respectfully requests that this Court deny the Plaintiffs' Stay Motion in its entirety, and grant such other and further relief as the Court deems appropriate.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding
document filed in this court does not contain the social security number of any person
DATED this $30^{\text {th }}$ day of September, 2021.
SUIn T. Steffen (4360)
Brenoch R. Wirfhlin (10282)
Alex R. Velto (14961)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
mschriever@hutchlegal.com
Wedgewood, LLC
Office of the General Counsel
Casey J. Nelson, Esq. (12259)
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
E-mail: caseynelson@wedgewood-inc.com
Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison \& Steffen, and that on the date indicated below, I served a true and correct copy of DEFENDANT BRECKENRIDGE PROPERTY FUND 2016, LLC'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PENDING APPEAL via U.S. Mail to the parties designated below.

Michael G. Milliard, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs
R. Samuel Ehlers, Esq.

Pamir M. Hernandez, Esq.
WRIGHT FINLAY \& ZAK, LLB
7785 W. Sahara Avenue, \#200
Las Vegas, NV 89117
Attorney for Prof-2013-M4 Legal Title Trust by US. Bank, National Association as Legal Title
Trustee; Fay Servicing, LLC, and Shellpoint Mortgage Servicing; LLC

Darren T. Brenner, Esq.
Scott R. Lachman, Esq.
AKKERMAN, LLD
1635 Village Center Circle, \#200
Las Vegas, NV 89134
Attorney for Bank of America
DATED this $30^{\text {th }}$ day of September, 2021.


An Employee of HUTCHISON \& STEFFEN

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 1

## Hutchison \& Steffen


(A) "Seourlty Instrument yopentis gise
logelher with all Riders VICEMTA LINEICOME, A MARRIED WOMAN
(B) "Botrower" ${ }^{18}$


Borrower is thotrusion winder
(C) "Lendo 1 is
IS (C) "Lend CORPORATION organized and existung undar the laws of CALIFORNIA Lender is a 50 IRON POINI CIRCIE, STE 200, FOLSOM, CA
(D) "Trablese 1 is GREENHEAD IMESTMENIS, INC., A CALITHORNIA CORPRRATION
 NDVADA- Single Yamity- Sanme Mieffroddio Man DRAW MRRS NV CVL D'T 1 YYRT (OI OIDOCSDORDSICVLNV_MERS CVL
(B) "MBRS" is Morigage Electroulc Ragitration Syalems, Inc MRRS is a separate corporation that is actiog solely as a noaunee for Lender and Lender's successors and aselgus MBRS' is tho benoficary ander thes securzy Instrument MERS is organuzed and exasting under the laws of Delaware, and has an address and felephone matibor of $P$ O Box 2026, Flenl, Mechugan 48501-2026, (et (888) 879-MBRS
(P) "Note" means the promissory nofe signad by Borrower and dated

MAY 23, 2007
The Note stales that Borrower owes Lender
THRES AUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED EIFTY and ND/100Payments and io pay the debi sn Aull pol Jater Hhan JUNE 1, 2037
(G) "Property" moans the proparty that is described below under the heading "Transfec of Rights no the Prgperty"
(A) "Lonn" means the debt oviderced by the Note, plus interest, any prepayment chargas-andyerectrorges due under tie Nole, and all sums due under Clus Securtly Instrument, plus interest
(I) "RIders" means all Ruders to this Securty Instrument lhal are Bxeculed by Borroupor The fozonting Ride)s are to be execuied by Borrower [check bex as applicable]

[ Condomuntum Rider

I XXAdulustable Rate Ruder
[ 1-4 Family Rutar
[ ] Biweakly Paymeal Rider INTERES'T ONLY RIDER
(r) "Applioable Law" means all controlling applicable federal mate and local slatutes, ragulations, orderances and admuntstratuve rules and orders (that bava the effect of law) as \$ueir as all applecable fnal, non-appealabie judictal opimooss
(K) "Commanity Association Duea, Feos, and Assessmrints" mbeans andines, Pees, assessmenis and other charges thal are lmposed on Borrower or the Property by a congomingion asinoflation, homeowners assoctation or sumular organuzation
(L) "Eleotronic Fomds Transiot" means any trampite of funds, oshet than a transacton orginaled by check, draft,


 tolephome, wire irmsifers, and aujorgalud clearinghousd tansfors
$(\mathrm{a})$ "Ebcrow Xtomb" means to oss leans that aradesoribed an Section 3
(N) "Miscollancous Procesed " fiengstary compansation, setdement, award of damages, or procesds patd by any thurd party (otiter than insutance prateeds pand junder be coverages described in Section b) for (3) darnage to, or destruction of, the Prope (ib, (b) pogatemnationo) ollier lakeng of all or any part of Jie Property, (w) convayance In liell of condemnatlon, ger ibo messepresentations of, or omissions as to, the value and/or condition of the Property

 plus (u) any amounls inder Seglion 3 of this Sacurity Instrument
 regulation, Regulation $x(240 / 8 / R$ Part 3500), as they mught be memended from (ume to (ume, or any additional or successor-hepasamon or-ragulauon that governe the same subjeci matter As used in this Securty Tasirument, "RESPA" 健的s to aly tequirements and restrictions that are imposed in regard to a "federally rolated mortgage igatn" evGe if tha Loan tioga not quallfy as a "federally related morigage loan" under RESPA
(ke)"\$ucceseber ha Intorest of Borrower" means any party that has laken tifle to the Projerty, whether or nol that party hige hssumed Begrower's obligations under the Nole and/os this Security Insirument


Lioan No: 0000479436 DRAW MRRS NV CVL DT \& WPF (OIOLDOCSTDEEDSICVLINV_MRRS CVL)
norma 3029 v/03


## TRANSEER OF RIGHTS IN THE PROPERTY

The beneficiary of thus Security Instrument is MERS (solely as normnee for Lender and Lender's successoft and assigns) and the successors and assigns of MERS Thus Securty Ynstrument sacures ia Lender (i) the copaxment of the Loan, and all rellewals, extenslons and modifications of the Note, and (di) the performance of Borroverts covenants and agreemenis under blis Securlty listrumient and the Note For thrs purpose, Borrowererervocably grats and conveys to Trustee, in trust, wath power of sale, the following described property logaled in the
COUNTY
|Type of Recording Jurssdiction]
of
LYON
[Name of Recording Jurissidudon]
LEGAL DESCRIPTION ATIACHIED HILRETO AND MADE A PART RITREOF AS EXHKBIM
 appurtenances, and fixtures now or hereafier a part of theppeperty All replacemenis and addildons shall also be covened by this Securfty Instrument All of Die Poregoing is rafented to in this Securty Instrument as the "Property " Borrower understands and agrees that MERS holds only legan ybe to tho interasts granted by Borrowor in this Security Instrument, bul, if necessary to comply wide law orecustont as nomsee for Lander and Lender's successors and assigns) has the right to exerelse any or ati ofttosesinteracis, induding, but not limuled to, the right to foreclose and sell the Property, and to take any actoo foqurestop Lander meluding, but not timited ta, releasing and canceling ths Secunty Instrumers

BORROWER COVENANTS that Borrower is tamtull selsed of the estate hereby conveyed and has the right to grant and convey the Property and that the Ppoperty is mencumbered, excapt for ancumbrances of record Borrower warranis and will dofend generally the dille to the Property aganst all clalms and demands, subjoct to any encumbrances of record



UNTPORM COVEMAN TS Bocrawer and Lender covenan and agree as follows
1 Payment of Princypar, intorest, Escrow Ltems, Prepaymenat Charges, and Late Charges, Borrower shall pay when due the promenpal dx and interest ory the debt evidenced by tho Note and any propaymant charges and late charges due onderthe Nole Borrower shall also pay funds for Escrow Yems pursuant to Sector 3 Paymants due undar haf Note and chls Securty yastrument shall be made in US currency However, if any check or other instrument recoived by Lender as payment under the Note or this Securty Instrument is returned to Leander
 be made in orie ar more of the follownge forms, as selected by Lender (a) cash, (b) momey order, (c) certhied check, bank wheck, trenserser's chack or casber's check, provided any such chech ws drawn upon an unstitution whora deposiss are unsured oy a federal agency, Instrumentialty, or enilty, or (d) Eleciroulc Funds Transiter

Paymentsara deemed recoived by Lender when recerved at the location deasgrated on the Note or at such other locatron as mayde deslgnated by Lender in accordance with the notice provislons in Section 15 Lender may refurn any payment or partal payment if the payment or partal payments are insufficleal to bring the Loun curraut Lender may acedpt any payment or pardal payment msufficeni to bring the Loan current, withoul waiver of any ceghts hereundey or prajudice to its rights to refuse such payment or parlial payments in the fulure, but Lender is
not obligated to apply such payments at the ifmo such payments are accepted If oacll Pertoduc Payment is applied as of Jis schedulad dua date, then Lender need not pay fnterest on unapplied funds Lander may bold such unapplied fimds untl! Borrower makes paymenl to bring the Loan curtent if Bortower does nol do so withen a rassonable periad of lime, Lander shall orther apply such funds or return them to Borrower If nol appited earlier, such funls will be appliad to the outstanding prineipal balanoe under the Note ummediately pmor to foreclosure Ne offseron clam which Borrower might have now or in the future aguinst Lender shall relleve Borrowar from ruakntgriymens due under the Note and thes Secunty Instrument or parforming the covenants and agrabments satured by thile Secuniy Instrument
2. Applloation of Paymouts or Proveeda, Excapl as otherwise described in Hids Secus on 2, all payynants accepted and appled by Lender shall be applied in the following order of procity (a) interest yue undar the fole, (b) pricipal due under tha Note. (c) amounts due under Sectuon 3 Such paymants shall be applied yo eaear 2 eftudic Payment io the ordor in which it became due Any remainung amounts shall be spplied fintita lanachanges second to any other amononis due vader thas Secunty Irstrument, and then to reduce the princifal balance of the woje
If Lender recenves a paymanil from Borrower for a dellinquent Puxlodic Fayment furch includes a sumficient amount to pay any late charge dub, the payment may be appled to the dollyquem payespat and bop late charge if mora than ona Pariodic Payment is outstanding, Lender may apply any hayment recafred fram Borrower to the repayment of the Femoduc Paymants if, and to the exters that, each payment can bs pald ha fult To the extent dial Bny excess exasls afier the paymeat is appled to the full payment of doe or more Perodily Payments, sucts excess may be applled to any late charges due Voluntary prepayments shall be appised first to any prepayment charges and then as described in the Note
Ady application of payments, insurance proceeds, or MLscellanaous Procaedsto pancipal due under the Noto shafl not extend or postpons the due date, or changs the ampum, of the Penodic Paymeats
3. Funds for Fgarow Items, Bonower shall pay to Lender ont he day Perlodic Payments are due under the Note, untal the Note is pard in full, a sum (the "Funds") to proylde for payment of amounts due for (a) taxes and
 Property, (b) leaschold payments or ground rents on the fronerth itreny, (c) premiums for any and all insurance required by Lender under Sectuon 5; and (d) Mortgage Insucancs premiums, If any, or any sums payablo by Borrower to Leader in freu of the paymeal of Mopgaga Inauranceforeaiums in accordance with the provishons of Secton 10 These tems are called "Escrow Items "Ah ongtuation or al any teme durlng the term of the Loan, Lender roay require that Commuruty AssociatfonDues, Rees and Assessments, if any, be oscrowed by Borrower, and such dues, fees and assess mento shall be au Escrow ftem Borrower shall prompty futnish to Lender all notices of anounts to be paidd under this saction bowower sfall pay Lander the Funds for Escrow Items unless Lender
 obigation to pay to Lender Pupd for any dealirnscrow tiems at any teme Any such waiver may only be ur writing In the event of such waver/Roteober shaily yavelirectly, when and where payable, the arnounts dua for any Escrow flems for which payment of Tysdo bats beer wayed by Leader and, if Lender requires, stall furnish to Lender recelpis evidoncing such paymem wailon such ume pertod as Lender may require Borrower's obligallon to make such payments anơ to providenracejpls statl Dor all purposas be deamed to be a cayenanl and agreement contamed In this Sectuly Instrument, as theplterese "covenant and agreement" Is used in Section 9 If Borrowar is obiggated to pay Escrow Ifems diterdy, porsuant by walver, and Borrower falls io pay the amount due for an Escrow Ilem, Lendor may exercasefis righls ender Section $\theta$ and pay such anauat and Borrower shall then be obligated under Section 0 to repray to LLender any gach ardount Lender mey ravoke tha watver as to aty or all Escrow liems al any time by a notce giventa accordhate with Section 15 and, upon such revocalom, Borrower shall pay to Leoder all

Lend dr fatay, el aty tama, collocl and hold Funds in an amount (a) sufficlent to parmet Leader to apply the Funds al \&et ime specitidedunder RBSPA, and (b) not to exceed the maxmum pmoumt a lender ona requre under REspA Leeder shall estirate the amount of Funds due on the bests of cutrent data and reasonable estumates of expenditures of futing Bscrow Itams or othervise in accordance with Appllicable Law

Loan No: 0000479436
 Parm 3029 1/01 DRAW MILA 5 NV CVL DT 4 WPT ( 0101 DOCSDREDSICVLINV_MBRS CVL) (mpge tofl3 pegas)

The Fuads shall ie held in au cosutulion whase deposits are sosured by a federal agency, mstrumartalty, or endly (Including Lender, if Lender is an mattadion whose deposits are so insured) or in any Pederal kome Loan Bank Lender shall apply the Funds to pay the Escrow Items no later lhan the lame spectifed onder EBSPA coander shall not charge Borrower for lioldng and applying the Funds, annually analyzing the escrow account, or versfing the Escrow Items, unless Lender pays Borrower Interest on the Punds and Appleable Law pernuls Lender to inhate such a charge Unless an agreementis made in wrilling or Apglicabie Lay requres interest to be pald ofliee Punds. Lender shall not be required to pay Borrower agy morest or eammgs on the Punds Borrower and Lender carraged in writing, however, that mlarast shall he paid on the Funds Lender shall give io Borrower, whoul charge, an annual accountong of die Funds as requred by RESPA

If there ts a surplus of Funds held in escrow, as deffned under RESPA, Lender shailucctaual to Bortower for the excess fundis in accordatice with RESPA If thare is a shortage of Funds held in secrowis gis definep under RESPA, Lender ghall nolufy Borrower as requrred by RESPA, and Borrowar sball pgy-ta Dender Lifermaunt necessary to make up the shortage in accordanca with RESPA, but in no more ban po monehly paymento tis there as a daficlency of Funds held la escrow, as defined under RESPA, Lender ghall noviux Borroweryas requited by
 RESPA, but or no more than 12 monihly payments

Upon paymant in full of all sums secured by lus Security Inslnument, Lender stall promplly refind to Barrower any Puads beld by Lender
4. Chargas, Liens Boriower shall pay all taxes, assessments, thames, ines, aqa mposituons auributabis to the Property whthen can attan proority over this Securnty Instrument, lexsefold-papments or ground rents on the Progerty, if any, and Community Assoclauon Dues, Fees, and Assessments, If any To the extent that thess Items are Escrow Ilems, Bornower shall pay them in the manner pavaded in Setion 3

Borrower thall promply discharge any lien which has prionte ever this Securdy Instrument unless Borcower (a) agrees in writhig to the paymant of the obligation secured by she ceertin a matnor acceptable to Lender, bul only so long as Borrower is performing such agreement, (b) consests the yed in good fath by, or defends agamst exforcement of the hen in, legai procsedings whach in Lendery spriatat operate to prevent ha enfocternent of the hen wille those proceedings are pending, but (Ondy wibl sum, prodeqdengs are concluded, or (c) secures from the holder of fie liven an agreoment sadisfaciory to Lendex aubordibange, the fien to this Securdy histrument If Lender delemmes that any part of the Property la subject to ehtien Whach tan attan prionty over this Securty Instrument, Lender may give Bortower a notice idenitfying Tliefilen Whithan 10 days of the date on whirch that nolice is grven, Borrower shall satafy the her or take one or more of che achons set forth above in bus Section it

Lender may require Borrower 10 pay y one-ime gharge for a raal esiate tax verlficador and/or reporimg seryce used by Lender ma compeofion yuith turs Loan


 mantansed in the amouns (onclading dedicetble levels) and for the pertods that Lender requires What Lender requires pursuant io the plepsang sentences can change during the lerm of the loan The usuramee carrlar providigg the Insuranca shall be chasen by Barrowar subject to Lander's cighl to disapprove Borrowar's choice, which right shall nol bo exarchech umeresenably Lender may requira Borrower (o pay, in connection with dis Loan, alther (a) a one-hum garge dor hood zone determonation, certufication and lracking services, ar (b) a one-lime
 smillar changes orcirr witach seaspnably maght affect such determination or certification Borrower shall also be responsible for tha payment offany Pees mposed by the Federal Emargency Management Agency in conmectonn wh the review of fry fidod zane detemination resultung from an objection by Bocrower
If Borrower fails tavalnian any of the coveragas descrithed above, Lender may oblain meurance coverage, at bendes's optomynd Borrower's expense Lender is under no obllgation to purchase any particular ype or amounl of covexgg Thenefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's
 or lesser covarage than was previously in effect Borrower acknowladges that the cost of the insurance coverage son pblaned theg bi significanily exceed the cost of msurance laat Borrower Could have oblalined Any amounts
desbursed by Lender under thls Section 5 shall becoms adduranal debl of Borrower secured by this Securty Instrument These amounis shall bear interest at the Note rata from the dafe of disburseatent and aindl be payable, whth such interast, upon natice from Lender to Borrower requesthgs payment
 disalpprove such policies, shall frclude a slendard morigage clause, and shall name Lender as mortgagpe and/or ess an addiluonal loss payee and Borrower furthor agrees 10 generally assign rughts to Insurance procedds ton ha notdag of the Note up to the amourt of the oulstandugg loan batance Lender shall have the ryght to hold the-peticties mend renawal cecilficales If Londer requres, Borrower shafi promplly glve io Lender all recelpis of pald pratiliums and renewal noluces ff Horrower obtains any form of msuramice coverage, nol otherwse requidred by Lequier, for oadmage to, or destruction of, the Property, such pallicy shall Include a atandard mortgage clause and stailitame Lomqer as mortgagee and/os as an addillonal loss payes and Horrower furdher agreas to ganaraly gssige ngats yommerance proceeds to the holder of the Note up to the amount of the oustiandlog loar balanco

In the event of loss, Borrower sholl give prompt nolice to the insurance carrier ahn Lendor Yahdar rowy) uake
 insurance proceads, whetbor or not the underiymg insurance was requred yy berber, stinit beapalied to resiorallon or repar of the Property, if tha restoration or repate is economically foudthí and Lendent's securty is noi lessened Ductog such repair and restoration pecidd, Londer shall baya the right o hold sucl sasurayce proceeds unill Lender Jhas had an opporlunty to inspect such Proparty to ensure the work has (peers completad to Lender's saisfacllor, provided that such inspectlon slall be undortaken prompdy Lender sray disburse prosaeds for the repars and restoration in a single payment or in a astres of progress payments as that toirtrecompietod Unless an agreemant is mada in watbng or Appllcable Law requires intirest to berpad on such jusurantre proceeds, Lender shall not be raqured to pay Borrower any Intarest or carnings on such proceded Fees for public adjusters, ar othar thurd partles, relamed by Borrower shall nol be pald oul of the nswante probeed and shall be the sole obligation of Borrower If the restoration or reparr is not economically feasible of-Lendaris securty would be lessened, the insurance
 if any, pald to Borrowor Such sosurance proceeds shad bo apglage fon hie oxder prondedf for in Section 2

If Borrower abandous the Praperty, Lenifor may (fle, higotudernd settie any avallable unsurance clafm and related matlers If Borrower does not respond Wibina 30 days le anguce from Leader that dia insurance carrier has
 notce is given In either event, or if Lender gegufirs tre Property under Soollon 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rigads to fay insuranen nroofeds in an amount not to exceed the armounts unpatd under the Nola or thas Secursty Instrumant, and (b) any quat of Borrower's rughts (athar that the reghl to aty refund
 are applicable to the covernge of the Propacty Lander may use the lasucance proceeds allher to repaur or reslore the Property or to pay ampngts untria under the Note or thes Securty Instrument, whether or not then due

6 Osouparoy. Bofrown shaltraccupy establish, and use the Property as Borrower's princlpal rostdence withen 60 days after the extcuiton of ithe Sacutity lostrumoni and stall contanus to occupy the Property as Borrowar's pancipal residercafonat loastepe year afer the data of occupancy, unless Lender olberwise agrees in writung, which consent shall not he unreasonably wilhbeld, ar unless axtenualing circumstances exdst which are beyond Bortower's control

7 Prestrvation Maintenanco and Profeation of tha Property; Inspeotions Borrower shall not destroy, damage or smpare the Eroparily, elldw the Property to deterlorate or corumitt watle on the Property Whether or not Borrowes is residing in the Propedy, Borrower shail soantan the Property is order to prevent the Property from deterioratag or, decreasing in madue due lo als condition Uniess it is delermuried pursuant to Section 5 that reparr or restorationng no econamically feasibla, Borrower shatl promply repar the Property if damaged to ayoid further detorioration of damage. yfetsturnace or condempaion proceeds are pald in connectoon with damage to, or the lakang of hie Propenty, 耳orrower shall be responslble for reparing or restoring tha Property only if Lender has reloased proceeds lace such pitposes Lender may disburse proceeds for the repairs and restoration io a singla payment or in a serles of progress payments as the work is completed if the insurance or condemnation proceads are not sufficlent to rehair or resiore the Property, Borrower is not relieved of Borrower's obligation for the complation of such repay or restoralion

Loan No: 0000479436


Fotm 3029 1/01
(0ugo of or 13 pagen)

BRECKOOD038

Lender or lis agent may make reasonahle entres upon and inspactions of the Property IF It has reasonabla cause, Lender may inspect the interior of the unprovements on the Property Lender shall grve Borrowar nollce at the lume of or ptor to such an interior inspaction specifying such reasonabla cause

8 Eorrower's Loan Application. Botrower shall be in default if, during the Loaft application progess, Borrower or any perbons or entrues acting at the drection of Borrower or with Borrower's knowledge-ar conseme gave malerally false, misleading, or inaccurate anformation or slatemends to Lendor (or faled to provide cemedes with matertal enformadion) in consechon wilh the Loan Material representatons melude, but arenak finaledtion representations concerning Borrower's occupancy of the Eroperty as Borrower's protelpal ressdeated
 Borrower falls to parform the covenanis and agreemenis contatned in ths Sacurty Instrumemts. (b) thare is) a legal
 insirument (such as a proceading in bankruptey, probate, for condembation or forfenturb, for-anarcemennof a lien which may allan promty over this Securlty Inatrument or to anforce laws or regulatons), or (ch Borrowey hes abandoned the Property, then Lender may do and pay for whatever is raasonghle or appreprata (o) pyolect Lender's
 of the Property, and securigg and/or repalifing ths Property Lender's actions can melude, but hra not limilad to (a) payng any sums secured by a lien whach has prority over thls Securfy ynstrument, (a) appaaring in court, and (c) paying rensonabit attomeys' fees to protect ths interest in the Preperty and/or rights under this Securty Instrument, sucluding its secured position in a banktupley praceeding Secturing the ploperty lncludes, hut is not Inroltad to, antenng the Property to make repars, change locks, replace or bagrd up doon and mnadows, dram water from pipes, eliminate building or other code violadions or dangerow conduans, mont have uthitles thrnei on or off Altiough Lender may take acion under this Section 9, Lender does not have to do so and is nol under any duty or obligation to do so it is agraed hat Lander jncurs do labillty fonnat talang any or all actions authorized under thls Section 9

Any amounts disbursed by Lender under this Sectlon-s-sbout becomieg dditional debt of Borrower secured by this Securify frstrument Thase amounls ahall bear mogest at noy Notergle from the date of disbursement and ahall be payable, with such interest, upoo notice fomy Lendgy do botroyof roquestiog payment

If this Security Instrument is on a leasehold Borrowbr whan comply with all the provisions of the lease if Borrower acqures fas ditle to the Property, the leasobaty and dhe fee wlle shall not marga unless Lander agrees to the merger in wrilung
10. Mortgage yaruranco. If Lendefrequtred Morigage Insurance as a condiluon of maknt the Loar, Bocrover shall pay the premumayrequired io maintian he Morlgage Insurance so effact If, for any reasan, the Morigage Insurance coverage pequired by Lendar ceases o be avallabla from the morigage wsurer that previoushy provided such assurance and Bor awerwabs equiced lo make separately designated payments toward the premuums for Morigaga Insurance, Botyower shan pay ine prarolums required to oblatm coverags substandally equrvilent to the Morlgage Insurance previgusy ineffect, alya cost substanlally equvalem to the cost to Borrower of the Morgage Insurance previousty an eftec, foom an allemate mortgage insurer selected by Lender If substantially equvalent Mortgage Insuratse caxerage bs nel avallable, Borrower stall continuc to pay to Lender the amount of the separately designated jaymanty that were due wben the insurance coverage ceased to be in effect Lender will
 reserve shall be mon refurdablen notwillastandlag the fact that the Loan is ullimately paud in full, and Lender shall not be required to pay Borrower ay linterest or earmags on such loss reserya Lender can no longer require loss
 by an listurep splected by Lender again becomes ayallable, is obialned, and Lender requdres separalaly designated payments fowird the premums for Morlgage Insurance If Lender required Mortgage Insuradce as a condition of mathing tre Lhan and Beyphwer was required to make separalely designaled payments loward the premiums for Moergage Imaurance, Borrawer shall pay the premusis requirad to mantas Morigage Insurance in effect, or to provide a ton-refindable loss reserve, untl Lander's requirement for Martgage Insurauco onds in accordance with any wrotem asceamett between Bacrower and Lender providing for such tarmanation or unot termination ta required by Applicabite Law Nothing in this Seciton 10 affects Botower's oblugation ta pay interest at the rate provided in Ihe Nole

Loan No: 0000479436
 DRAW MESS NV CVL DT 7 WPF (OLOIDOCSDEBDSICVELNV_MBRS CVL)
(pige for is puges)



#### Abstract

Morigage Insurance remburses Lender (or any antity thal purchases be Note) for certain losses il may ancur If Borrower doos nol repay the Laan as agreed Borrower is nal a party to the Morigage Insurince

Mortgage indurers evaluate their lolal risk on all such insurance so force from dme to tume, and mafenter into agreements wilh other parties that share or modify their risk, or reduce losses These agreements are onyeknas and condilous that are satisfactory to the morigage insurer and the other party (or partes) to these agreamente These agreerneats may requere the mortgage insurer to make payments using any source of funds that the moritgage msurer may have avalable (which may melude funds obtalned from Morigage Insurance premiumst

As a resull of these agreaments, Lender, any purchaser of tha Note, another insurer, any pernatrag, any other entity, or any affllate of any of the foregoug, may recetve (directly or indrectly) amounss hat derivefrom (or mighi be charscterized as) a portion of Borrower's paymenta for Mortgage Insurance, in exshange for shandag or  rakes a share of the lysurer's risk in exchange for a share of the premlums pard to the poster, the axrangement is often letmed "captive reinsurance "Further (a) Any wath parserionts will not affect the amomata that Botrower has hgied to pay for Mortgage  for Mortgage Ingurnnce, and they will nol entatle Borrown to any pefind (b) Any buch agreemente will not affect the rights Borrower hes ${ }^{*}$ If nny ${ }^{4}$ Find rospect to tho Mortgage rasurance under the Holueowners Protection Act of 1998 or any othot Inw. Thesor gente may includo the right to recosvo oortain disolosurcs, to requast and obtaln oancollation of the Mortgage Insurance, to have the Mortgage Iasurange formmated automatoally, aud/or to recetyo 2 rexisend of any Morlgage Insurance promioms that were anearned at the tume of such pancelletion or termatition.


11 Asslgnment of Miscollaneous Procende, Forfethure All Miscellaneous Proceeds ase hereby assignad to and strall be pald to Loader

If the Property is damaged, such Miscellineous Proceeds stathes appled to restoration or repare of the Proparty, if tha restoration or repalr is economically feprabionath Landary securty is not lessened Durmg such reparr and restoration period, Lender shall have the rugh(1o holdssuch Muscellaneous Praceeds undi Lender hag had an opportwinty to lispect such Yroperty to ensure the wark pas beby mompleted to Lander's satusfaction, provided
 disbursement or in a serjes of progress payments astbe work es completed Untless an agreement is made in wrxtug or Appllcable Law requires interest to be pald brispleh Miscallaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnagg on such phscollanegus Brodeeds If the restoration or repare is not aconomically feasible or Lender's secunty would be lessered, the Miskellaneous Proceeds shall be appited to tha sums securred by this Securily Instrumant, whether of not hen due, with the excass, If any, pad to Bomower Such Miscollaneous Proceeds shall be appliad in the oryerr provided far inesecilion 2

In the event of a loheryakine, destrichon, or loss in value of the Property, the Miscellaneous Proceeds shall be applled to the sums sefaed koy thes securty hastrument, whether or nol then due, with the excess, It any, pard 10 Borrower
 of the Property immedately berore ith partlal taldag, destruclion, or loss in value 13 equal to or greater than the amount of the sums sociread by this Secfurty instrumeni mmediataly belore die parllal takding, destriction, or loss to value, wulless Boxibyer and Dender olherwise agree in Fintug, tho aums secured by this Security Instrumeat shall be reduced by the arpount of the Moscollaneous Proceeds multipied by fhe following fraction (a) the total ammunt of the sums sacured momedsately y fore the partal takang, dastruction, or loss in valuo divided by (b) the farmarkat vilue of the Properff emitredrately before the parkal laking, destruction, or loss un valus Any balance ghall be pald 10 Borrower

In the exean of a paptinl tatang, desiruction, or loss in value of the Property in which the farr markel value of the Xenoperty inmediniely before the partial taking, destruction, or loss In value is less than the amount of the sums secimed Jungedately before the partal laking, destruction, or loss jo value, unless Borrower and hender otherwise agrae in writing, the Mlscellaneous Praceeds shall be applted to the sums sacured by tuis Secunty Instrument whefiner or nol the sums are then due

Loan No: 0000479436

Form $30291 / 01$

(pagy of of is pegas)

If the Proparty is abandoued by Borrower, or If, after nolice by Lender to Borrower thal the Opposing Party (as defined in the nexi senteace) offers to make an award to selle a clabm for damages, Botrower fank to respond to Lender withun 30 days affer the date the notice 25 given, Lender is authorized to collecl and appty the Miscollansous Proceeds elther to rastorathon or repar of the Property or to the sumbs secored hy thas Sequerty Instrumient, whether or not then due "Opposing Party" means the btrd party that owes Borrower Miscollankolss Proceeds or the party agabist whom Borrower has a nght of action in regard to Miscellineous. Procted .

Borrowar shall be in defaul if any action or proceading, whather civl or crimsali, is begun chac, m Domders judgment, could result so forfollture of the Property or other matersal mparment of Lerder's iniedgst trimerproparty or rights under this Secunty Instrumbat Borrower can cure such a dofault and, if accelgazan has getaured, < remsiate as provaded in Sechor 18, by causiag the actron or proceeding to be disnassed with a ruling that, in Lender's Judgment, prechudas forfallure of the Property or other material imparment of Lander's materter in the Proporty or rights under thus Securty Yasirument The proceeds of any award or cirnif for damagea that are altributable to the unparment of Lender's interest in the Property bre hereby esstgugd ded shallog paid ya Linder

All Miscollanoous Proceeds chat are not applied to resioration or repair of the Rropory stagit be applied in the order provided for in Section 2

12 Borrower Not Releastaf; Forbearanos By Lender Not at hyaver Exiensporioflun ume for payment or madification of amortization of the sums sectuced by thas Security gatrument granted by Lender to Bortower or any Surcessor in Inlerest of Borrower shall nol operate to release Ule Lablity of Botrowner or any Successors in Interest of Borrower Lendar shall not be required to commence procegange aganny any Successor in Ibterest of Borrower or to rehise to extend tme for payment or otherwise madify amorthation of the sums secured by this Securty Instrument by reasan of any demand mado by the onganal Borrower or any Successors In Interest of Borrowar Any forbaarance by Ladder in exarcising any Sight ver remedy laciudeng, without Imitation, Lender's acceplance of payments from thred persons, andides or Sucessinas In Intaresi of Borrower or in amounla less than the amount then dut, shall not be a walver of or prectude the axascesbof any right or remedy
 agrees that Borrower's obligatlons and hability shall be ongin ardessveral Howeyer, any Borrower who co-signs thals
 to mortgage, grant and convey the co-tigner's mitetast ta the property under the lerms of this Securty Instrument, (b) is not personally obligated to pay the sums sectured by und Security Insirument, and (c) agrees that Lender and any other Borrower can agree to exiend, modify forbrar er make any accommodations with regari to the ferms of thas Securty Instrument or the Note wiffonit the cosybier's consent

Subject to the provisions of Section LB, any Spcpessor in Interest of Borrower who assumes Borrower's obligations under this Secunty rights and banafles under this befurde Limbetmence Bomower shall not be released from Borrower's obligations and liability under thas Secudty Ingaumean whtess Lender agrees to auch release an willing The covenants and agreements of this Securlfy (nsy) asslgns of Lender
14. Loan Charges Cenden way ctracee Borrower fees for services performad in connecton with Borrower's default, for the parpose of probetring Lender's snterest in the Property and nghts under this Securty Instrumon, meluding, but nat timuegto athomess'sess, property inspection and valuation fees in regard to any other fees, the absence of express apithority in tod Securty Instrument to charge a specific fee to Borrower shall nol be construed as a probubltion on the charging df such fee Lender may nol charge fees that are expressly prohibited by the Securty Instrumant ox by Apallcable Law
 the milerest of odler lean charges collscled or to be collected in connection with the Loan exceed the permutted lymale, then ( in any such ip in charge ahall be reduced by the amount necessary to reduce the charge to the pernutied untr, and (B) ody sums already collected from Borrower which exceeded permulted lumlts will be refuaded to Borrabur Lender may choose to make this refund by reducmg the procipal owed under the Note or by malung a direct paymunt to Borrower If a refund reduces prncupal, the reducloul will be traaled as a pardal prepaymant withoul any preppayment charge (whether or not a prepayment charge is provided for ander the Nota) Borfowar's

Loan No 0000479436
 DRALW MERS AV CVL DT a WPT (OLDIDDCSWBTDSICVLINV_MERS CVL)

Hotm 3029 1/01
(ango 9 of fis pagac)
acceptance of any such refund made by direct paymeat to Borrower will constutute a waiver of any ragh of action Bnrrower myghl have arlsing oul of such overcharge
15. Notloes All nolices given by Borrowar or Lender in connection with thls Secturty Instrumeni gitust be In writing Any notico to Borrower in comection with thas Secumty Instrument shall be deemad to have beengyyen to Borrower when malled by firsl class manl or when actually deltyered to Borrower's nouce address if sent by d (har means Nollce to any one Borrower sball constule notice to all Borrowers uniess Applicablie Law exprepsly requiles otberwse The nolice address shall bo the Property Address unless Borrower has desigualed a sulbsultulf nettes address by notice to Lender Borrower shall promptly notfy Lender of Borrower's change of adderass X Lender specities a procedure for raporting Borrower's change of address, thent Bocrower shall oniyd report a aphagga of address through that specified procedure There may be only ono designated notice addrass uader thus soccurity Instrument at ady one trmo Any notice to Lender sball be given by dellvering at or by malling in hy ferstclass mad to Lender's addrass slated heretn unless Lender has designated another adde ess by nopegia- Borxower Kny notice
 by Lender If any noluce sequrred by this Security Instrument is also required under Applicable Lavo the Applicable Law requarement woll salisfy the correspondzg requirement under this security Ynstriment

16, Governing Law; Severability; Aules of Construction, Thla, Sacurlly Insingment-gtill be goversed by fedaral law and the law of the jurisdiction in whech the Property is lo aapad All righes and obligationa contaned in this Securlty Instrument are suibjeci to any requerements and limillatons bi Applicable Lavy Applicable Lavy nugha explcilly or mplictly allow the partes to egree by contrect or it migh foe sllent, buy such sllence shail not be construed as a prohibituon agacost agreement by confract In the evest that any-pravision or clause of this Securty Instrument or the Note conflicts whith Appllcabio Law, sicch seafict shall nof affectother proysions of thls Securly Instrument or the Noto which can be gavar effect without the eqnitucting piovision

As used in this Security Instrumen! (a) words of the munseuthe gender shall mean and include corresponding ueuter words or words of the frimenene gender, (b) words indes strgulax shall mean and uclude the plural and vice varsa, and (c) (fos word "may" gives sole discration willont-mis ebbigalan to laka any action
17. Borrowerta Copy. Borrower shall be giver gro codgot the Note and of this Securty Instrument

 unterests transferred er a bond for deed, contract for deed, indellmeat sales contract or escrow agreement, the ctetent of which is the transfer of ute by Borrower, at a guturb date to a purchaser

If all or any part of the Property or for Interestin that moperty 18 sold of transferred (or If Borrower is nol a datural person and a benefichal jpterest in (Berrower is sold or transferred) without Lender's prior writien conseal, Lender may requrre ammedrate paymentun full bfall syns secured by tils Securty Instrument Hovever, lus opton sball not be exercised by Leofer ty sueh exarcise Is prohbibied by Appllcaule Law
 a period of not less than ( 3 d desefrom the dade the notice ss givan in accordance with Secilon 15 within which Borrower must pay all stimg sopiredthy that Sectrity Instrument If Borrower falls to pay these sums pror to the expiration of this period, Lenden may invake any remedias permutced by this Securty Inslrument without further nolice or demand on Borrower

19 Borrowor'yx yght for oimstand Aftor Acooleration If Borrowermeels centan condituons; Borrower shall have the elight to have enforcenterng of flus Security Instrument disconthoued at any time proor to the eariest of (a) flve days before sale lod the Propqrity pursuanl io any powar of sale contadnad in this Securty Instrument, (b) such other period as Appheabita Latu moght spectify for the termination of Borrower's ight to ralnstate, or (c) entry of a judgment exforcung (biss Securty Instrument Those conditious ara diat Borrower (a) pays Lender all sums which then would bo dus atide fins Secursty tubtrument and the Nole as if no accelerallon had occurred, (b) curss any
 meludiog, buinot Jminted to, reasonable attorneys' fees, property inspection and valuadon fees, and obher fees meurred foe the purpgse of protectung Lender's miterest in the Froperty and rights under thes Securty Insirumant, and (d) takes yuch action as Lender may reasonably requre to assure that Lender's materest in bo Property and rigals under igls Security Instrument, and Borrower's obligation to pay the sums secured by this Security fingrument, ghall contunce unchanged Lender may require that Boirowar pay such relinstacement sums and expenses NEVABth single Family-ITaunio Mat/Troddio Mad UNIFORM NSTRUMENT Wift MERS

Loan No: 0000479436 DRAW MIRS NV CVL DT' 10 WPF (O101DOCSOBRESTCVLNV MRRS CVL)


un ons or more of fie following forms, as selected by Lender (a) cash; (b) money order, (c) certufied check, bank check, treasurer's check or casliuer's check, providied any such check is drawn upon an institutlon whose deposilts are nsured by a federal agency, Instruacantality or entuy, or (d) Electronle Punds Transter, Upon rounstatemmanthy Borrowar, this Securty Instrument and obllgatons secured hareby shall remalo fully effectrys as If no acceleration had occurred However, lius right to relosslate shall mot apply in the case of acceleratoon under Section 18
 (together will this Secinty Insirument) can be sold one or more umes without prior nobte to Borfover A satio
 Note and this Securnty Instrument and pariorma other mortgaga loan servicung obligatoons whder tha Nota the
 to a sall of hie Note If there is a change of the Lean Serncer, Borrower will be grven watien notite defthr phange which will sale the name and sadtress of the now Loan Servicer, (he address 10 wiuch paymentis should be made and any other informatuon RESPA requres in connectlon with a noluce of trawsfer of futhiclag हe the Nota fraold

 and are nol assumed by the Note purchaser unless othervise provided by he Noto purchaser-
 lutgant or the member of a class) bat arises from the other party's actuons pursuant to furp Security Instrument or thal alleges that the other party has breacited any provision of, or any Chty owed dy frasson of, this Security Instrument, ontla such Borrowar or Lender has noutfided the other pariy (weth stechnnourge given in compliance with He requicements of Sectuon 16) of such alleged breach and pfifrded the other paty therclo a seasoonable perlod affer dhe giving of such notice to lake correctlve action IP Applicebte Law provdes a ume perrod which must elapse before certain action can be taken, that time period will be deamed frabe reasonable Por purposas of tuls paragraph The notuce of aceeleration and opportunty to cure given co-Borrowerrpurstant to Section 22 and the notuce of
 corrective action provislons of fius Seclion 20




 protection, (c) "Envyronmenial Cleannup" Tddudes any response actlon, remedtal actoon, or removal action, as



Borrower shall not chuce or permbt ithe presence, use, dlsposal, slorage, or ralease of any Hazaridous Substances, or chreaten io relege (any) Hazardeuss Subsiarces, on or in the Property Borrower shall yot do, nor
 creales an Environnenila Cond ilion or (c) whych, due to the presence, use, or rolease of a Hazardous Subslance, creates a condition lyal adyersely y freese the value of the Property Tho preceding two sentences shall not apply to the presence, use, or Stirage on uhe Popperty of strall quantitus of Hazardous Substances thal are ganerally recogirized to be appropmate ton normal ressdential uses and to maurienance of the Proparty (includng, but not lemxied ta, hazardioul substances in consumer products).

Borrowor silall kromplys sfye Lender pritien notice of (a) any investlation, clatm, demand, lewsult or otider achon by any govemmmental or regulatory agency or privale party myolving the Propaty and any Hazardous Substence of Emyritymertal Law of which Borrower has aclual knowledge, (b) any Environmental Condition, angluding क कhit (nol limiled $\lambda$ o, any splling, lealang, discharge, release or tlirent of releast of any Hazardous Siltaslance, and (c) any conduion caused by tie presence, use or release of a Hizzardous Substance which adversely affects firevalue af die Property IP Borrowar learns, or is nothled by any governmental or regulatory authorty, or any privele party, hat any removal or other romedilaton of any Hazartious Substance affecing the Property is netessary, Eggrover shall promplly take all nacessary remadulal actions in accordance wilh Bnvironmental Law Nothang herymbsarl creale any oblugation on Lander for an Exyironmannal Cleanup

[^3]NON-UNIFORM COVBNANTS Borrowar and Lender furtber covemant and agree as follows
 Borrown's breach of may coveriant or agreminuit in this Seourty matrament (but not prior to accalernetion under Section 18 unloss Applicable Law provides otherwnse). The notico shall spoolfy, (a) the deftall; (b) ine astion required to ouro tho dofalt; ( 0 ) a dato, not less than 30 daya from tha dato the riotice to ghoos fo Borrower, by whuch tho default most be cured; and (d) that fachure to cars the defrult on or befare thedrate
 the Property. The notico ahall further inform Barrower of the xight to romatate affer adefloration and tho right to bring a court action to asbert the non-oximenco of a dofhult of any other doronse of Borsonfer to acooleration and saita. If the dofinall is not cored on or bofors the dute spearfed in the notion, Geater at its option, and wathout firthor domand, may tavoke the powor of als, thobdeng yry righte to abogerato fall paymout of the Note, and any other remediss permitted by Applleabla Law, Lender shall bopentitedrecolleot nill expanses incarred in puraung the remedios provided in thls seotion 22, inghathag, but pot llmited to, ratisamabie attorinoys' fees and corts of title ovidenco.
 the ocoutrence of an ovent of dofnult and of Lenders' eleotion to ons sp the Property to bo bold, and shall causo such notice to bo rocorded in sach county in whilah may part of the Propetty ts locented, Lander mall mail copies of thanotice as prosaribed by Applicabla Law to Barrower and it the per sorit prasaribed by Applicable
 Aftor the tume required by Applicable Law, Truste日, pathoat demand on Eorrower, ghall soill the Property at public avotion to the highest bidder at the tume and placirand ander the ferms deagnafed be the notice of sale in one or more parcels nad in any order Trustee detectuinta, Truste may postrune sale of all or any parool of the Property by publio amounconnent at tho tume-and jigobef any provioualy schedulod salo Lendor or ith deslgace may purahase the Proparly at any sale

Truateo shall doliver to the purchaser Truatsofs dend gonvesing the Propenty wilhout any covenant or
 of the statements made therdin, Trusteo ahall ayply the proceseds of tho sale to tho following order: (a) to all expenses of the sale, moludiag, but not lmated to, ressomeblo frusteo'y and attorneys' fecs; (b) to all gums

23. Reconvoganoe. Upon paymen of ail sums secturd by ths Securly Instrumeni, Lender shall request
 by thas Sacurty Jnstrument to Trustea Trigites shall ryconvey the Property withoul warranty to the person or persons dugally entufed to it (si (ch petamer parsons shall pay any recordallon costs Lender may charge such person or persons a fee forreconveston ye reparty, but only if the fee is pald to a third party (such as tha Trustee) for seryces rendered adylte charghg of the foe is permiltod under Applicable Law
24. Subattute Trubten, Venderatits option, ray from tme to time remove Trustee and appant a successor trustee to any Trustee appointid mareunder yathout convayanco of the Property, tha successor trustee shall succeed to all the tule, power and dutes confered upon Trustes herelin and by Applicable Law

BY SIGNING BRLOW, Borrower accepts and agrees to the terms and covenants contamed in this Security Instrument and In any Ruder executed by Borrower and recorded will il
 (Sell)
$\qquad$
$\qquad$ STATE OF NEVADA.


This instrument was acknowledged before me on
 Uicazta Xinncicom


THIS ADJUSTABLE RATE RIDER is rade thus 23 rd dgy of , MA 2007 , ant is ticorporated into and shall be deemed io amen by (hra uidersigneri(che "Borrower") to secure or Security Deed (Ule "Securlty Instrument") of Mole") Io
the Borrower's Adjustable Rate Nole (the "Nole") Io ANC., A CALIFORNLA CORPORRITYON (the "Lander") SIERRA PACIFIC MORIGAGE COMPANY, In . in the Securty Instrument and rogated at

> DAYTON, NV 82403
> [Property Addreas) of the same date and covering the propery 70 RIVERSIDA QRIVE



THE NOTE CONTAINS PROVISIONS ALLOWMNO FPE CHANGES IN THE INTBREST RATE AND THB MONTHLY RAYMRNX THE NOTE LIMTTS THE AMOMTM BORROWER'S INTEREBT RATB
 Borrower and Londer further covenany had agree no sollows
A. INTEREET RATR AND MONTHAY PAYMBENT CHANGESS

The Note provides So anty imal incerest hate of 6.875,
Interest rate ard the mondily gayments, as follows
4 TNTBREST RATE AND MOENTHLY PAYMBNT CHANGES
(A) Chango Datiob and may change on The interest rele I will pay pay cizange on which my viterest rate could change is called a "Change Dale that day every 12 th modts thereatig
 Begrang with the trst Chauge Dalo,


Loan No: 0000479436
Loan No: 0000479
Form 3131 3/04

dollar-denominated deposils in the London roarkel, as published in The Wall Strect Journal The masirecentinder flgure avaulable as of the date 56 days bofore each Charge Dale is called the "Cumront Iodex "

If the Index ts no longer avallable, the Nole Holder will choose a new Index which is beses upon comparable
unformation The Note tholder will give me notice of thes choice
(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new Interesl rale by addem IWO AND ONE QUARTER percenlage point ( $0125 \%$ ) Subject to the limats stated in Section 4(D) beloye this roubded among will be my new interest rate untal the nexi Change Date

The Nole Holder will than determene the amount of the monthy payment thar wrduld be sufficient to repay the unpad procipal that I am expected to dwe at the Change Daie in fund on the Matunfts) Date at my new interest rate in substanually equal payments The result of this calculation will he the rew amgunt of my monthly payment
(D) Lumats om Intorest Rate Chadges

The interesi rale I am required to pay ai the first Chagge Date will nortuegreater than $11875 \%$ or Jess than $2.250 \%$ Therester, my mierest rale wilmever be Increased or decreased on any single Cbange Date by more thas TWO percentage poids ( $2.000 \%$ ) from the rate of interesil I have been payng for the preceding 12 monilhs My interast ratg unil nover ye greater thon $11.875 \%$
(B) Effeotive Dste of Changes

My new naterest rate will become effective on exch Changan inate. I will pay the amoun of my new monthly payment begrning on the Plisi monthly pagitant date antes the chaterge Date until the amount of my monchly payment changes agaín
(F) Notice of Changes

Tha Note holder will delfyer or man! 15 mP a moteco of any changes m my interest rate and the amount of my montily payment bofore the effective dale of any phonge The nolice will include information requered by law to be given to me aud also the tithe and te (ephone numbler of a person who will answer any question I sazy have regurding the nolice

## B. TRANSEER OF THE R OPE ETY ORA BENEFICIAL INTEREST IN HORROWER

 1 UNTL BORROWHK EINTTMALNTEREST RATE CHANGES UNDER THB TERMS STATED IN SECTION A ABOVB, UNHORM COVENANT 18 OF THB SECUETYY INSTRUMBNT SHALL BE IN EFPECT AS FOLLOWS. "Interest in the property" Aheans any legal or beneflical interest in the Property, Inclualing, but not Lumtted to, thopebabeflemal nterests iransferred an a hond for doed, contract for deed, unstalment sales contract or sactoury ygagiont, the intent of which is the transfer of title by Borrower at a futura date to a purchaser
$\sqrt{\text { fi }}$ all ormank part of the Property or any Interest in the Property Is sold or transferced (or if
 Sender's piter wrillen cousent, Lender may require immedate payment in full of all sums secured by



Lendar's prior written consent, Lender may requare mmedate payment in full of all sums setured by Lendrs prior watemout ing option shall not be exercised by Lender of such exerdge is prohubied by Applicable Law

If Lander exercises this option Lander shall give Borrower notice of acceleration The notide shall provide a period of nol less than 30 days from the dale the notlee ss given jn-accardinco-wifin
 falls to pay these sums prior to tite exprration of this period, Leader may phoke any Yemadtes)

2 AFTIER MY INITLAL INTEREST RATE CHANGES UND PR THE TERMS STATED IN SBCTION



## Interest in Botrower As usad in thas Section 18,

 "Interest in the Property" meats any legal or benerion for ieed, contract for deed, inslallment sales Inmited to, those beneficial interesis transioned which is the transier af atle by Borrower at a future date to a purchaser

If all or any part of the Property or any nderefo in for roperty is sold or fransferred for if Borrower is not a natural person and a bendetisal miterest jn Borrowor is sold or transferred) whoul Lander's prior written consent, Lender may regulise nomadnte payment in full of all sums securad by this Securty Instrumanl However, hos opion stall gol be exercised by Lender if such exercise is prohibited by Applicable Law Landpralso shall not axercise lhis opllon if (a) Borrower causes to bo
 wero being made to the indusferae, atre (b) Lender reasomably determunes lhat Lender's securty will
 thas Security Instrumenizos acepepable io Lander

To the excent pernuited by Appucabo Law, Lomder may charge a reasonable fee as a condition to Lender's consant in the loan assumptlon Lender may also require the transferee to sign ath ussumplion agreemerfythey acceptsple to Londer and that obligates the transferee to keap all the promusbs and agreamants madelin the Note and in thls Security Instrument Borcower will conilnue to bs obligaled under tha Note and fils Secunty Insirument unless Lendar releases Borrower in writhg

If Lender exeroses the option to requre immedtato payment in full, Lender shall give Borrower notice of acce enain The prouce shail provide a peno which Borrower must pay all sums secured by this Secyaty hertmonant- If Borrower falls to pay these sums prior to the explration of this period, Lender (may myoke any ramedies pormilted by thls Secunty Instrument without further notice as


BREGK000048
)
407150 $95 / 25 / 2007$
017 027 of 20

BY SICNING BELOW, Borrower accepts and agrees to the terms and covenants contained ta y hare Adjustable Rale RIder


Loan No: 0000479436

1

BRECKD00047

## INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE<br>DAYTON, NV 89403

THIS ADDENDUM is made this 23 rd day of MAY (the veiter") daled the same dale and is incorporated into and mended to form a part of the Adjustable pare Rider (the "Rinder") dated the same dale as this Addendum axacuted by the andersigned and payable to SIERRA PACTFIC MCRTGXGO COMPANY, INC, A CALIEORNEA CORPORAMION (the "Lander")
IEEIS ADDRNDUM supersades Section 4(C) of the Rudor Nons of the other provartos of the Ruder are changed by thls Addendum

## 4. INTEREST RATB AND MONTHLY FAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder wrid calculala my now mierest rate by adding TWO AND ONE QUARTER to the Current Index for such Change Date THuryore Hodeor will then round the resulf of tirs addition to the
 amoural will be my new interest rate untl the naxt Chande Date
 that would be sufficient to vepay accrinedyserest Tris will be the amount of my monthly paymanil unill the earher
 during such period If I make a oolvataty propayment of principal during the Intarast-Onily period, my payatient amount Por subsequent paymenis will beraduned io the aroount necessary to pay Interest at the then current interast rate on tho lower pruncipal badanien A( the ond of the Interesi-Only Perlod and on each Change Date thereafter, the Note Molder will deterfras the amount of the montlly payment that would be suffcient to repay in full the unpad principal that I ame expected toperie at the end of the Yatarest-Only Period or Change Date, as applicable, in equal montuly payments ofe the remadning term of tha Note The result of thls calculaton poll bo the new amount of my montlily payment Astar the end of the Interest-Only Poriod, my payment amount will not be reduced due to voluntary prepaymunls

Loan No: 0000479436

[^4]

EXHIBIT "A" LEGALDESCRIPTION

Ordor No: 06041897-5A
The Iand refermed to herain in gituated in the state of zeryan, County of tyon, desaribed as follows:

 ON OCTOAER 20,2005 , AS DOCTMBNT NO. 365687.
TFXCEPTING THEREPROM ALL THAT PORTTON TMERROF, LYENG BELOW THE, NATURAL ORDINARY HIGA WATER LTHE OF THE CARSON RYUR.
ASGIABOR'E PARCEL NO, 029-401-1

## INTENTIONALLY LEFT BLANK

 EXHIBIT PAGE ONLY
## EXHIBIT 2

$\xrightarrow[\text { HUTCHISON \& STEFFEN }]{\text { Amorsamat le }}$

APN: 029-401~17
WHEN RECORDED MAIL TO;
Sables, LLC
clo Zleve Brodnax \& Steele
3753 Howard Hughes Parkway, Sulle 200
Las Vegas, Nevada 89169
(") ${ }^{11 / 03 / 2017}$
572258
OFFHClia
10:299M
Requested By
SERVICEITNK TITLLE AGENCY INC.
Lyon county - NV
Dawna L. Warr - 亻eecorder
Page: 1 of $6 \quad$ Fee: 5288.00
Racorded By BKC RPT: 30.00


## TS No, : 16-42397 <br> NOTIGE OF BREACH AND DEFAULT ANOOF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF YRUST

 F YOUR PROPERTY IS IN FORECLOSURE BECAUS $\angle$ YOU ARE/BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT AC for, zm you may have the legal Hight to bing your accounl in good standing by paying all befyour past dur pacount, which is normally five and expenses within the time permilted by law for re ar propestypursuant to NRS 107.080. No sale date (5) business day prlor to the date sel for the sale of your may be set untll three months from the date this $15 \$ 265,572,32$ as of 10/31/2017 and will inorease untll recordalion appears on thls noNOTICE IG HEREBY GIVEN THAT: SABLES, LL a Nevad limited liabillty company is either the original trustee, or the duly appolnied subsimbed Yrustee, or acting as agent for the Trustee or the Beneficlary under a under a Deed of Tryst datedefial2007, exeouted by VIGENTA LINOICOME, A MARRIED WOMAN, as Irustor to secure obligations in favor of Mortgage Electronic. Registration Systems, Inca, as nomineo fon bIERRA PAGIFICYORTGAGE COMPANY, INC, Its successors and
 modified by Loan Madiflgation Agreemant recorded as recorder of Lyon, County, Nevada seouring, 5/4/2011 of Official Recores /0 ihe ofice of among other obllgations ingliding
One note(s) for the Original_sump $\$ 381,150.00$, that the beneficlal Interest under such Deed of Trust and the obligations segureak seraby are presently held by Beneflolary; thal a breach of and defaulli in the obilgallons for which(such Deed o) Trustls securlity has occurred or that payment has not been made of:
The monthly installment whilen became due on $911 / 2008$, along with late charges, and all subsequen/ montmy mitaliments.
Yourareresponsibie to pay all payments and charges due under the terms and conditions of the loan documents whith come due subsequent to the date of this notice, inoluding, but not limited to; foreclostre trustee fees and costs, advances and late charges.
Kuntermore, ds a condition to bring your account in good standing, you must provide the underetgned wilth written prool
provide proof of insurenco

## T.S. No.: 16-42397

Nothing in this Notice of Default should be construed as a walver of any fees owing to the beneficlary under the Deed of Trust, pursuani to the terms and provislons of the loan documents.

That by reason thereof the present Beneflilary under such deed of Trust has exeoutesuland delivared to sald duly appointed Trustee a wrilten Deolarallon of Default and Demand for Sale and has deposited with sald duly appointed Trustee such Deed of Trust and all documents evidenoing-obllgations-seoured thereby and has declared and daes hereby deolare all sums secured theraby immedtately oute and payable and has elected and does hereby elect to cause the trust property (to be solid to satisnet the obilgations seoured thereby.

NOTICE
You may have the right to cure the default hereon and reinslate the one obllaallon secured by such Deed of Trust above described, Section NRS 107.080 permits certaln ©elaulls to be dured upon the Payment of the amounts required by that statutory seotlon without requiring payment of ihal portion of princlpal and interest which would not be due had no default occurred. As to owner-occupied property, where relnstatement is possible, the time to reinstale may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have thovight to bring a court aolion to assert the nonexistence of a default or any other defense of Trustor to acceeteretion and Sale.

To determine if reinstatement is possible and the amoant irany, to oure the delault, contact:
PROF-2013-M4 Legal Title Trust, by U.S. BankNational (Assec;aillon, as Legal Tille Trustea
c/o Fay Serviding, LLC
co SABLES, LLC, a Nevada limited liability company
3753 Howard Hughes Parkway, gulle 200
Las Vegas, NV 89169
Beneficlary Phone: 80
Truslee Phone: (702)
To reach a person with authorify to negritats a loan modilicailon on behalf of the lender:
Lauren Jowers
800-485-7166
Property Address: 7 C RRMERS, DE DRIVE, DAYTON, Novada 89403
If you have any questions, you should contact a lawyer or the governmental agenoy that may have insured you tran. Notelthstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale la concluded prior to the conolusion of the foreciosure.
REMEMBER, YOULYAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT AGTION.
Attached hergorg and incorporated hereln by reference is the Affidavit of Authority in Support of Nolloe of Default and gleclion to Sell pursuanl to NRS 107.080,
T.S. No. 16 - 42397

You may wish to consult a credit counselling agency to assist you, The Department of Housingeand Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll frap-number: (800) 569-4287 or you can go to HUD's website: htip://portal.hud.gov.

Dated; 11/1/2017


Sables, LLC
c lo Zieve Brodnax \& Steele 3753 Hoyrart Hughes Park
Las Vegas, Nevada 89169 (702) 448-86 5


A notary public or other officer completing this certifioato verifies only the identity of the individual who signed the document to who this certificate is attached, and not tho truthfulness, accuracy, or yalldity of that document.

Slate of CALIFORNIA
County of ORANGE


On 11/1/2017, before me, Christine O'Brign, Rg'sonalis appeared Mlohasl Busby who proved to me on the basis of satisfactory evidence to be/ pe persons) whose name (s) ls/are subscribed to the within Instrument and acknowledged to me ital he/she/they expected the same in his/her/their authorized. capaclyf(les), and that by hisilhatitheic signatures) oh the instrument the persons), or the entity upon behalf of which the person (s) acted exasutadiel hostrument

I certify under PENALTY OF EERHURY Indian the laws of the State of California that the foregoing paragraph is true and correct WITNESS my hand and oifflar seal

Signature of Notary


## Affidavit of Authority

(Nevada Revised Statute 8107.080 as amended effective June 1, 2013)
Re:
TS\# 16-42397
Borrower Name: VICENTALINCXCOME
Property Address; 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403
Veronica Talley am the

Foreclosure Spociallod!Ifiny Servicing LLC, the content servider for the benefiolary of the deed of trust dosoribed fa the nolloe of default and election to sell to which this afieprayit is attached ("Deed of Trust"). The following facts are based upon my personal review of dopurmonts thatero gi pablo record In the State of Nevada and personal knowledge acquired by my personal review of the bust hess records af tho beneficiary, which are within my ouslody and control. The business records of the benesflary contending entries meade In the ordinary course of business at or about the time the ovens reflected tharednecge
1(a). The full name and business address of the current trusts of roof tor the Deed of Tristirssables LLC, $a$ Nevada Limited Liability Company, 3753 Howard Hughes Raf Away, Suite 200 Las Vegas, Nevada 89169


1(b). The full name and business address of the current holder of Hbo Note secured by the Deed of Trust is PROR-2013-MA Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Aye EP-MN-WSS3D St. Paul MN S510, X Atm: Structured Finance Sarulces - PROF .
1(0). The full name and business address of the current beneficiary for the obligation or debt secured by the Dead of Trust is PROF-2013-MA Legal Tit JoThust, bUNS, Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-M APD gt, Rail Miry 55107, Attn; Structured Finance Services - PROT


Id). The full name and business address the outront sofyseer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S , LaSatiesin Suite 2000 , Chicago, IL 60605
2. From my review of tho foments of public record and the business records of the current beneficiary and a title guaranty of lite insurance issued by a title insurer or title agent authorized to do business in this Stale pursuant to Chapter 692d of the NRS, the name of each assignee and each recorded assignment of the De dd of Trust.
2(a). Assignor amp PROF-20in-Mry Legal Title Trust, by U.S. Bank National Association, as Legal Instrument anta Recording information: Assignment of Deed of Trust recorded on 11/25/2016 Instrumontion 544042
2(b). Assignee Nama Bant bf America, N.A. Successor by Merger to BAC Home Loans Sorvloing, LP FIA (Country wide Home Loans Servicing, LP Instrument and Recording Information; Corporation Assignment of Deed of Trust recorded on


Affidavit of Authority to Exerotio the Power of Sale
Revised 6/1/2013

encumbered by the Deed of Trust, pursuant to instruction from tho ourrenl beneficiary of record and current holder of the note secured by the Deed of Trust.
5. From my review of the documents of public record and the business records of the-numrent beneflolary, the beneficiary, service of the obligation, of an attomey of the beneficiary or services hasa emt to VICBNTA LINCICOME, a written statement of (1) the amount of payment required font the to pis and deficiency in performance of payment, avoid the existing before the deficiency in perfoftonauce or payment, conditions of the underling obilgalio or mount in default; (III) the principal amount of the obligation or
 debt secured by the dod of ind connection with the power of sale; and (Y') compact information for obtaining tho most current amounts due and the local or toll-free telephone number plat vispata obtaining
LINCICOME may call to recolvo the most current amounts due and a recitation of tho information in this affidavit.
6. The borrower or obligor of the loan secured by the Deed of Trust may cal Fay Serviolag, LLC at $800-495-7$

I declare under penalty of perjury of the laws of the St
this Affidavit was executed on
of Nevada that the foregoing is true and correct and that
vicing, LLC, Its attorney in fact

(Tito)
A notary pablo or other office completing this centifiturate verfics only the identity of ho indisingunt whin signed the document to which this coftifiongy is attached and not tho


 $\qquad$ Allison Aim dustin , Notary Public, Who proved to me on the baste of satisfactory evidence to executed the ama inhis/hertheir authorized capaolty(les), and that by his/her/their signatures) on the instrument the persinf(s), or the entity yon behalf of which the persons) acted, executed the instrument.

-
Affidavit of Authority to Exercise tho Power of Salad. Revised 6/1/2013


# Declaration of Mortgage Servicer Pursuant to NR 107.510 

| T.S. Number: | 16-42397 |
| :--- | :--- |
| Borrowers): | VICENTA LINCICOME |
| Mortgage Serviceri | Fay Servicing, LLC |
| Property Address: | 70 RIVERSIDE DRIVE |
|  | DAYTON, Nevada 89403 | declares that:



1. DX The mortgage services has contacted the borrower pyrauent to NRS-102.51O (2), to passes the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale", Thirty (30) days, or more, have passed since the initial contact was made,
2.The mortgage services has exercised due diligence to topatact the borrower pursuant to NRS 107.510 (5), to "assess tieverorrower's financial situation and explore options for the borrower to avoid foreciociure", Thirty (30) day 5, or more, have passed since these due diligence efforts ware ratlafled.
2. $\square$ No contact was required by the mortgages setybeer beaus meet the definition of "borrowers" pursuant to (N RS) for .410.
3. $\square$ $\square$ During the preceding annual Papoiting period, the Lender has foreclosed on 100 or fewer real properties locate g intuits state a gd therefore, pursuant to NRS 107.460, the
5.provisions of NRS 207.400 (o (107.560 inclusive, do not apply. The loan is portia "residential martespe loan" as defined in NRS 107.450.

certify that this declaration is acetate, complete and supported by competent and reliable evidence which the molt fane servicentlas reviewed to substantiate the borrower's default and the right to foredose--ficluding tho borrower's loon status and loan information.


## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 3

## Hutchison \& Steffen <br> A PROFESSIONAL LLE

APN No.: 029-401-17
[Recording requested by:]
[When reootded mall to:]
Sables LLC
c/o Zieve Brodnax \& Steele
9435 West Russell Road, Sulte 120
Las Yegas, Nevada 89148

T,S, No, 16-42397

## Doc \#: 587470

10/12/2016 02:27 PM Paga: 1 of 2 OFFICIAL RECORD
Requested Byi SERVICELINK TITLE AGENGY INC Lyon County, NV Dawna L. Warr, Recorder

Fee: $\$ 38,00$ RFTT: $\$ 0.00$ Reoordad By: mkassebaum


## NOTICE OF TRUSTEESSALE

YOU ARU IN DEFAULT UNDER A DEED OF TGUST DATED $5 / 23 / 200 \%$ UNLESS YOU TAKO ACTION TO PROTECT YOUR PROPRRTY, IT MAY DE SQLD AT A PUBLIC SALE, IP YOU NEED AN EXPLANATION OF THE NATURE OT THE PROCLERENG AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A publio auotion sale to the highost biddor for saagh, oa shier's oneck drasm oll a state or national bank, oheok drawn by a state or fedoral orodit unlon, or a check sarary by a shato or federal savings and loan assoctation, or savings ansociation, or savinga bank specified in Seaton sloz or the Ftungelal Codo and authorized to do business in this state will bo hold by the duly appointed trustegat-hopren Dealow, of all right, lite, and intorost conveyod to and now hold by the trusteo in the herelnatter dosoribod proparty under gnd pursuant to a Deed of Trust descibed below. Tho sale will be made, but without opvenan (or warratty exprossed or implled, regarding titls, possession, or encumbrances, to pay tho romainngeprinciphat sum of the noto(s) secured by the Deed of Trust, with intorost and lato
 charges and expenses of the Thuster thr the total ammont (at the time of the tidtial publioation of the Notice of Sula) reasonably estimated to bof self forth bolow. The ampount may bo greator on the day of sale.
TRUSTORVICENTA EINCICOMI AMARRED WOMAN
Duly Appointed Trustoe: SabresLecg a Nerfida Línilted Llabillty Company
Recorded 5/25/2007, n-Imstrumont No. 407150, The subject Dend of Trust was modified by Lonn Modification Agreement reeordeqd as Tnstrument 475808 and recorded on 5/4/2011 Official Records la tho office of the Recorde of Lyon Cquhty, Nevada, Described as follows:
THE LAND BAREMWKD TO HREREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, ARDTS DISSCRIBED AS FOLLOWS:

Lot 12 às sharyn onfthe official map of GOLD CANYON ESTATES, PHASE 2, fled in the oflice of the Lyon County, Nekada Recorder, on Ootober 20, 2005, as Document No. 365687.
the catsoon giver.
Date of Salo: 11/9/2018 at 11,00 AM

Place of Sale: $\quad 31 \mathrm{~S}$, Main Street Yerington, Novada 89447 Lyon County Courthousi
Bstimated Salo Amount: $\$ 666,632,22$
Street Address or other common dosignation of real property: 70 RIVICRSIDE DIUVE DAYTON, Nevada 89403
A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any llabillty for any incorrectnoss of the street addrasi ar other potamon designation, if any, shown above, If no street address or other common designation ds shows, directions to the location of the property may be obtalned by sending a wiften request to the beneficiary within lodays ofthe date of first publioation of thls Notice of Sole.

Date: 10/11/2018


A notary public or other officer completing thi
certificate verifles only the identity of the indivitual
who sigued the docoument to whith tuls certificate is
attached, and not the fruthfulnegs, gecuracy on validty)
of. that dacument.
State of CALIfORNIA
County of ORANGE
On 10/11/2018, before me, AN . Bubkelew Notary Publio, personally appared Miohael Busby who proved to me on the basis of satisfactoryeridencere be the person(s) whose name(s) ls/aro subscrlbed to the within instrumont and acknowledged to norbarte/stue/they exeouted the same in his/hor/thelt authorizod oapaoity(ios), and that by his/herthoir signaturd (s) on tho itsstument tho person( g ), or the ontity upon behalf of which the person(s) aoted, executed the instrumobit.
I oortify undor Pen Ailcy OF PBRUURY under the laws of the State of Callfomla that the foregoing paragraph is


## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 4

## Hutchison \& Steffen <br> A PROFESSIONAL LLC

JohnT. Steffen (430)
Matthexr K. Sohtidevar (10745)
Alox R, Volto:(14961)
HUTCEISON \& STEFBEN, PLEC
10080 Weat Alta'Drfve; Sulte 200
Las Wrgas, NV 89145
Te1. (702) 385-2500.
Fax (702) 385-2086
msohrijver@4utcollegal, com
Casoy J.Nelson, Esq. (12259)
Wedgowood, MLC
Qfefice of tho Generat Counisel $2 \$ 20$ Potos Streeth, Suite 130
Las Yégas, Nevada, 89146
Tel (702) 305-915:7
Fax (3:10) 730-596.7
oaseynalron@ @redgewnod-hoscom
Aithorney for Defendants. Coturiterolaimaint, arid Cross-Plamintiff Brectientidge Property Fund 2016, LLLC

ALBERT ELLIS LIENGICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Truste of the Deed of Thust given by Vicenta Liluclcome and dated $5 / 23 / 200: 7$; TA: SERVICENG, LLC, a Delatwate limited liablity campariy and subsidiatry bfFay Pinarbial, LLC; PROF-2013-MF LEGAL TITLE TRUSI' by U, S . BA:NK $\mathrm{N}_{1} A .$, as Legral Title Trastec; for BANK OF AMERICA; NA:BRECKENRTDGE PROPERTY FUND 2016: NEWRELLLC dba SHELLPOINT MORTGAGB SERVICNYG, LLC; 1900 CAPITAL TRUST $\mathrm{H}_{\text {, }}$ BY U.S. BANK TRUSTNATIONAL ASSOCLATION: MCM-2018-NPL2 arid DOES 1-50

Defendants.
AND RELATED MATLERS.

Tho undopignce; Jason Chmpoill Heelares: under penalty of pertury that the:following assertions are trate

1. Jam an authorzzed agent of Breelkandidgo Property Fund 2016, LLC. ("Breokenridge").
2. I ati competent to testify to the matters asserted hereim of which I have persenal knowiledge, except is to those mattess stated upon tifomation and 'beliefi. As to thoss thatters stated apon information and belief, I bolieve them to be true. $\ddagger$ make thls doclaration 'in support of Brecikenrtdge's motion for summary'judement quainst Platutffs.

 ("Foreclosute Sale").
3. Breckemridge was the highost bidder and patd $\$ 294 ; 000,01$ to: purchase the Stibject Property at theitonedosure Sale.
4. Breckentidge relied on the fact that tha notioed Foreelesure Sale was valid, because, Plaintiff failed to post the coutt-ordered bond.
5. Breakenridge had no solo in this, dispute prior to its purchase of the Subject Froperty at the Rorediosure Sale.
6. Breckenridgeis entitled to an order quideting fitle in ifs faver because thite wert no defeets in the Foreclosure Syle aud any yiphits, title, of 估terest that Plaintiffs praviously had it the Subject Property ibas beer torminated by waiy of the Foreolosure Sale
7. I declara;udor penalty of periery of the laws of the United States and. the State of Nevada that these facts aro.true to the best of miy Kinowledge and belief.


## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

EXHIBIT 5

## Hutchison \& Steffen

A PROFESSIONAL LILC

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 5

## $\xrightarrow[\text { HUTCHISON \& STEFFEN }]{\text { serenemuc }}$

## 70 RIVERSIDE DR

A.P.N.: 029-401-17

RECDRDNA REQUSSTED BY:
AND WHEN RECORDED TO:
Breckoaridge Property Fund, 2016, LLC
2320 Potosi St Ste 130
Las Vegas, NV 89146
Rectodod As AnActormodalion
Forfard Tay Slatements to
the address given aboyb
Outy Yilliont Lablily

## Doc \#: 591393

 OFFICIAL RECORD
Requatiod By Frrot amerioan ticla insuranoi 0
Lyon County, NV
Margle Kassebaum, Recorder
Feo; SAB,00 RPTT: $\$ 1,140,66$
Reocided Byi Inhumildad
T.S. $1116-12397$

Order fl: $160069595-\mathrm{NY}$-voo

## TRUSTEE'S DEED UPON SALE

Transt Tax: 51140.55
The Orantee Herdin WAS NOT the Porecolosing Benoficlay,
Tho Amourat of the Unpald Debl wis $\$ 671,449.39$
The Amount Pald by the Orunten was $8994,000,01$
Sald Propetyy is io the Clly or DA YTON, County of Lyon
SABLBS, LLC, a Novaial Imited llability company, is Trustee, (whereas so designated in the Deed of Thut bercunder moro parteculorly desoribed or as duly appointed Trustes) does hereby ORANT and CONVISY to

Bredkentidge Property Fund, 2016, LLC
(fitereln called Omates) but wilhout covenana or wartanty, expressed or implied, all rights, tlle and Interess conveyod to and now hold by $1 t$ as Trustes inder the Deed of Trust in and to the property sliusted In the county of Lyon, State ofNoyada, desertbod as follows:

THR LAND RBPERYQD TO HEREIN BELOW IS SITUATED IN THE COUNTY OP LYON, STATE OF NEVADA, ANO IS DESCRIBED AS FOLLOWS:
All that certalo reni property situato in (he County of Lyon, State of Nevada, desertibed as rollowsy Lot 42 ns shown on the official map of GOLD CANYON ESTATES, PHASE 2 , filed in the office of the Lyon County, Nevnian Recorder, on October 20, 2005; as Document Na, 365687.
EXCEPTING THRREPRROM all that portion thereof, lying belows the antural ordtary high waler llas of the Carsoa River.

Proporty Address: 70 RIVERSTOG DRTVE, DAYTON, Nevada 89403
Thls conveyunce is made in compllance with the terms and provisions of tho Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trusior, daled 5232007 of the Official Records in the office of tho Recorder of Lyou, Nevada under the authorlty and powers vesied in the Trustes designalod in tho peed of Thust or as the duly appolated Truslee, deffail having ocourred under tho Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Doed of Trust recorded on $5 / 25 / 2007$, as tostrument No. A07150, The subject Deed of Trust was modified by Loan Modificallon Agreement recorded as Instrument 476808 and recorded on 5/4/2011, of officilal records,
A.P.N.: 029-401417
RBCORDING RBQUBSTTBD BY:
AND WHEN RBCORDED TO;
Brockenrldge Property Iruad, 2016, LLC
2320 Potosi St. Ste 130
Las Yegas, NY 89146
Recoriled As An AccomimnalationForward Tax Statements toOnly Withon Llability
the address given aboyo
T.S. \#16-42397
SPACB ABOYB LINB POR RECORDRR'S USE
Order \#: 160069595-NY-VOO
TRUSTEL'S DEED UPON SALE
Transfor Taxi S 1148.55
Tho dranteo Horoln YPAS NOT Ho Forcolesing Bonefiolary,Tho Aroount of tho Unpald Debtwas \$671,299,3y
The Amount Pald by the Grantoo was $\$ 294,000.01$
Sald Property Is to the City of DAYTON, County of Lyon

SABLES, LLC, a Neyndn Himited llabillty company, ag Trusteb, (wheroas so dealgnatod in the Deed of Truat herounder more partoularly desoribed on' at daty appointed Truste日) does hereby GRANT and CONVEY to

## Breckenridgo Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all itghts, title and tntorest oonveyed to and now held by It as Trustee under the Doed of Trust in and to the property situated in the county of Lyon, State of Noyida, dosorlbod as followa;
 NEYADA, AND IS DESCRIBED AS YOLLOWS:
All that certain real property sliante in tho County of Lyon, Stato of Noyada, described as follows: Lat 42 as shown on the offlelal map of GOLD CANYON ESTATESS, PHASE 2 , filed in the office of the Lyou County, Nepada Recordor, on October 20, 2005, as Document No. 365687 ,
EXCEPTING THRREFROM all that portion thereof, lylng below the maturnl ordhary high wnitor line of the Carson Riyen.

Property Address: 70 RIVIRRSIDLDRIVE, DAYTON, Neyada 89403
This oonveyance is made in complianoe with the terms and prowsions of the Deed of Trust executed by VICENTA LINCICOMG, A MARRUCD WOMAN is Trustor, dated $5 / 23 / 2007$ of tho Officiad Records in tho offee of the Rooorder of Lyon, Novada under the authortty and powors yested in the Thustoo designalod th the Dood of TYuet or as the duly appointed Trustes, default having ocourred under tho Doed of Trust pursuant to the Notloe of Broach and Eleotion to Soll under the Dead of Truat reeorded on 5/25/2007, as Instument No, 407150, The subject Deod of Trust was modifted by Lona Modifleatlon Agrooment reoorded as chatrument 475808 and rocorded on 5/4/2011, of offlolal reoorda.

## TRUSTEE'S DEED UPON SALE

T,S. \#: 16-42397
Order \#: 160069595-NVYOO
Trusteo haying compliod with all appiloable statutory yoquiromonts of tho Stato of Novada and porformod all duttos requetrod by tho Dood of Trust inoluding sending $n$ Notloe of Breadi and Eloction to Sall within ten days aftar its recording and a Notice of Saie at loast typenty days prior to the Salo Date by cortified return reoejpt mall, postaga prepald to each porson outtled to notico in complianco wilh Nevada Revised Statutes 107,080,

All requirements per Nevada Statutes regarding the malling, persounl delluery and publioation of coples of Notloo of Default and Blection to Sell underDeed of Truat and Notioe of Truatesia Sale, and the poatheg of noples of Notloo of Truateo's Sale have been compilod with. Trustes, in complyanoe with sald Notioe of 'Tuyetee's sale and in exarolse of tis poweis under sald Deed of Trust sold sald roal property at publlo anotion on 1/4/2019. Grantee, being tho highast bidder at gald sale beoame the purbhaser of said property for tho amont bid, boing $\$ \$ 294,000,01$, In lawful money of the United Stator, in pro per, recelpt there of is hereby aoknowledged in full/parthal satlaflaction of the debt spoured by sald Deod of Trust.

In witness thereof, SABLBS, LLC, a Nevade limiled Habllity company, as Trustee, has this fay, caused its name to be hereunto affixed.

Date: 1/15/2019

A notary publio or other officer completing thit certifloate vertifies only the identity of the Individual who slgned the dooument to whito this cortifioato is athachod, and not tho truthfulnoss, nocuraoy, or validity of that dooumonh.

## Stato of CALITORNIA.

County of ORANGB
On 1/15/2019 before me, the undersigned, $J$, Develasen Notary Publio, personally appearad Geoffrey Noal who proved to mo on the basls of satisfaptory pyldonoe to bo the parson(g) whiose name(s) ls/are subsollbod to the within instrumont and. noknowiedged to mo that ho/she/thoy oxcoutod the samo in his/hor/holr authorizod oapsolty(los), and that by his/hor/thoir signature(s) on the instrument the person(s), or the outtly' upon behalf of whoh the person(s) aoted, executed the instrumont.

I oertfy uuder PENALTTY OF PERJURX under the liwa of tho State of Callitornata that the foregoing paragraph is true and cortrot.
J. Develasco


- Tul Tigel Exarres 3lalino


$$
\begin{aligned}
& ? \\
& \text { 1. Assessor Parcol Number(s) } \\
& \text { a) } 029-401-17 \\
& \text { b) } \\
& \text { 2. Type of Proporty: } \\
& \text { 3. a. Total Value/Saios Pujoc of Proporty } \\
& \text { b. Deed in Leu of Foreclosure Only (value of property) } \\
& \text { o. Tranafer Tax Valuo: } \\
& \text { 4. If Ixemotion Claimed: } \\
& \text { 4. Trausfer Tax Exemption par NRS } 375,090 \text {, Sootion } \\
& \text { b. Explinin Reason for Exemption: } \\
& \text { 5. Partial Interest: Percentago being transferred } 100 \% \\
& \text { The undersigued declares and acienowledgos, undor penalty of porjury, pursuant to } \\
& \text { NRS } 375.060 \text { and NRTS } 375.110 \text {, that the information provided ls corrrot to the best of their Information and bellef, } \\
& \text { and caul bo supportod by documentation If called upon to substautlate the informator provided hevein. Purthermore, } \\
& \text { the partios agree that disallowanoe of any clained exemption, or other determinntion of additional tax due, may } \\
& \text { rosult In a panalty of } 10 \% \text { of tho tax due plus intorost at } 1 \% \text { per month, Purbuant to NRS } 375.030 \text {, tire Buyer and } \\
& \text { Sollor shali be jolutly and severylly lilable for nny additional amount owed. }
\end{aligned}
$$

Signature $\qquad$ Capacity AGENT

Signatura $\qquad$ Capaoity AGENT

## SKLLICR (GRANTOR) INHORMATION (REQUIRED)

Print Name: Sables, LLC, a Nesada limiteal liability cirnpony Address: 3753 Howard Hughes Parkway, Sudte 200, Las Vegas, NV 89169

## BUYER (GRANTIG) INTORMATKON (REQUKRED)

PintName: Breckentidge Property Fund, 2016, LLC
Address: 2320 Potosl St. Ste 130
Las Vegas, NV 89146

COMAPANX/PIGRSON REOUESTING RISCORDING (requiled if not sollor or buyer)
 Addrass: (x) $x^{\circ}$ (nCenAmlestro Clty: fs efaas

## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 6

## $\underline{\text { HUTCHISON \& STEFFEN }}$

## THRED-DAY NOTYCE TO QUIT

## TO: VICENTA LINCICOMB <br> TENANT AND SUBTENANT AND ALL OCCUPANTS <br> 70 RIVERSIDE DR. DAYTON, NEVADA 89403

Or any occupants of the aboye-named property or any persons in possession of the abovementioned property,

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 et seq ., and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surnender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections $40.255,40.280$, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HBREBY NOTIFIED that if you are a tenant of the prior owner of the Propeity, you are to refer to the Notice to Tenant which is attached as Exhlbit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twentyfour (24) hours after the receipt of the aforesaid order.

DATED this 75 day of January, 2019.
WEDGEWOOD, LLC
CASEY J. Neison, ESQ.
Nevada Bar \#12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Attorney for Plaintiff
Breckenrtdge Property Fund 2016, LLC

## EXHIBIT A

## EXHIBIT A

## NOTICE TO TENANT

VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403
PLEASE TAKE NOTICE that the above-described real property has been sold at a foreciosure sale, pursuant to NRS 107 et seq., and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECLKBNRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property within three (3) business days of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
2) The lease or tenancy was the result of an arms-length transaction; and
3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Pederal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or temancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, you must still yacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to ayoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other oourt of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25 day of January, 2019.

## WEDGEWOOD, LLC

CASEY S. Krysorr, ESQ.
Nevada Bar \#12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Attorney for Platntiff
Breckenridge Property Fund 2016, LLC

| Attomey or Party wilthout Attorney: |  |  |  | For Count Use Only |
| :---: | :---: | :---: | :---: | :---: |
| Wedgewood, LLC |  |  |  |  |
| CaseyJ. Nelson, Esq, (SBN 12259) |  |  |  |  |
| 2320 Potosl Street, Sulte 130 |  |  |  |  |
| Las Vegas, NV 89146 |  |  |  |  |
| Telephone No: (702) 305-9157 |  |  |  |  |
| Altorney forr Plaintiff |  | or Flla RSID |  |  |
| Insert name of Court, and Judiclal District and Branch Court: |  |  |  |  |
| Plaint/ff: BRECKENRIDGE PROPERTY FUND 2016, LLC <br> Defendant: VICENTA LINCICOMEi TENANT AND SUBTENANT AND ALL OCCUPANTS |  |  |  |  |
| AFFIDAVIT OF SERVICE | Hearing Date: | Tme: | Dept/D/v: | Cose Number: |

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served coples of the Three-Day Notice to Qult, Notice to Tenant
3. a, Party served; Vicenta Linclcome; Tenant and Subtenant and All Occupants b. Personserved; Posted
4. Address where the party was served: 70 Riverslde Drive, Dayton, NV 89403
5. Iserved the party:
a. By Posting. Oni Mon, Jan $282019^{\circ}(2)$ at: 02;20 PM by posting a copy of the documents in a consplcuous place on the property. b. By Malling، On: Mon, Jan 282019 by malling a copy of the documents, addresset as shown In Item 4, va Certfled Mall Issued by Unlted States Post Office from: Las Vegas, NV,
6. Person Who Served Papers;
a. Tonl Ruckman (R-052005, Washoe) d. The Fee for:Service was:
b. FIRST LEGAL 2920 N. Green Valley Parlway, Sulte 514 Henderson, NV 89014
c. (702) $671-4002$

Pursuant to NRS 59.045
7. Ideclare under penalty of perfury under the laws of the state of Nevada that the foregoing is true and correct.



[^5]
## INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY

## EXHIBIT 7

## Hutchison \& Steffen <br> A PROFESSIONAL LLC

## FLLED

## 

Case No.: 18-CV-01332
Dept. No.: II
co:
him ADPl4STRMOR
Dhat JuTCliL UG;ikier
Wiulctis Tova,
nom! $v$

## IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR, and VICENTA LINCICOME,

Plaintiffs,
vs.

SABES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4

ORDER ON
BRECKENRIDGE MOTION FOR SUMMARY JUDGMENT LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.: BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

Defendants.
I. STATEMENT OF THE CASE

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 10, 2021,

Breckenridge filed a Reply.

## II. ISSUE PRESENTED

Should the Court grant Breckenridge's Motion for Summary Judgment?

## III. SUMIMARY OF DECISION

The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to summary judgment as a matter of law.

## IV. PRINCIPLES OF LAW

A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. "NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party, Posada v. City of Reno, $109 \mathrm{Nev}, 448$ (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party. Richards v. Republic Silver State Disposal, Inc., $122 \mathrm{Nev}, 1213$ (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. Wood v. Saferray, Inc., 106 Nev. 601, 603 (1990).
B. NRS 40.010

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

## D. NRS 111.180

NRS 111.180 states:

1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.
E. NRS 40.250

NRS 40.250 states:
A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant, In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $\$ 381,150.00$ secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed documents creating the deed of trust and note and understood she had a 30 -year maturity date.
2. On August 15,2011 , MERS recorded an assigrment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $\$ 417,198.58$. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010 , the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $\$ 381,000$. The Plaintiffs made no payments at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment,
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure, All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $\$ 2462,30$ as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred
to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.
18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject property.
19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.
20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.
21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $\$ 172,610.67$ and additional security in the amount of $\$ 2,105.10$ per month thereafter. The Plaintiffs did not file the bond. .
22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $\$ 294,000,01$.
23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.
VI. ANALYSIS

The Court incorporates the legal findings, factual findings and analysis contained in its separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4 LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims to title of the property.
VII. CONCLUSIONS OF LAW

Breckenridge is entitled to a motion for summary judgment in its favor.

## ORDER

Therefore, good cause appearing, IT IS HEREBY ADJUDGED and ORDERED that Breckenridge's Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is VACATED. The Court found the pleadings sufficient to enter an order without argument.

DATED: This $23^{\text {rd }}$ day of June, 2021.



I hereby certify that I, $\square$ , am an employee of the Third Judicial was mailart, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423
Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson, Esq.
Wedgewood, LLC
2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Shadd A. Wade
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd,, Ste. 120
Las Vegas, NV 89148
Matthew K, Schriever, Esq.
Hutchison \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave,, Ste. 200
Las Vegas, NV 89117

DATED: This $23^{\text {rd }}$ day of_J vhe. 2021.


Employee of Hon. Leon Aberasturi

Case No: 18-CV-01332
Dept.: II
The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A. 040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON

```
ALBERT ELLIS LINCICOME, JR. and)
```VICENTA LINCICOME,

Plaintiffs,
v.
SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust )
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK ) OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,
vs.
ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5. Counterdefendants.

REQUEST FOR TRANSCRIPTS

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby request preparation of a transcript of the proceedings before the District Court, specifically:

Judge hearing the proceeding: Hon. Leon Aberasturi
Dates of proceedings: November 20, 2018
April 15, 2019
February 4, 2020
Portion of Transcripts: Entire Proceedings

This Notice requests a transcript of the above-proceedings. I recognize that I must serve a copy of this form on the opposing parties and the court reporter in the above-referenced mater, and that the court reporter shall have 30 days after the date that a request form is served to (i) file the original transcript with the district court clerk; and (ii) deliver to the party order the transcript 1 certified copy and an additional I certified copy for the appendix.

Respectfully submitted \(30^{\text {th }}\) day of September, 2021
MILLWARD LAW, LTD.


John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
ORIGINAL
HUTCHISON \& STEFFEN, TLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
bwirthlin@hutchlegal.com
Casey J. Nelson (12259)
WEDGEWOOD, LDC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Telephone: (702) 305-9157
Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant / Counterclaimant Breckenridge Property Fund 2016, LLC


\section*{THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA}

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,
Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LC; 1900 CAPITAL TRUST II, BY USS. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED ACTIONS

Case No.: 18-CV-01332 Dept No.: II

BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS

Breckenridge hereby incorporates it Opposition to Plaintiffs' Motion for Stay Pending Appeal as its reply in support of its Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents.

Dated this \(5^{\text {th }}\) day of October 2021.

\author{
 \\ Wedgewood, LLC \\ Office of the General Counsel \\ Casey J. Nelson, Esq. (12259) \\ 2320 Potosi Street, Suite 130 \\ Las Vegas, Nevada 89146 \\ E-mail: caseynelson@wedgewood-inc.com \\ Attorneys for Defendant \\ Breckenridge Property Fund 2016 LLC
}

\section*{CERTIFICATE OF SERVICE}

I hereby certify that on the date indicated below, I served a true and correct copy of the BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS via U.S. Mail to the parties designated below.

Michael G. Millward, Esq. MILLWARD LAW, LTD. 1591 Mono Avenue Minden, NV 89423
Attorney for Plaintiffs
Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY \& ZAK, LLP
7785 W. Sahara Avenue, \#200
Las Vegas, NV 89117
Attorney for Prof-2013-M4 Legal Title Trust by US. Bank, National Association as Legal Title Trustee; Fay Servicing, LLC, and Shellpoint Mortgage Servicing, LLC

Melanie Morgan, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, \#200
Las Vegas, NV 89134
Attorney for Bank of America

Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410
Attorney for Plaintiff

Shadd A. Wade, Esq
ZIEVE BRODNAX \& STEEL
9435 W. Russell Road, \#120
Las Vegas, NV 89148
Attorney for Sables, LLC

DATED this 5th day of October 2021.


\title{
In The Matter Of: ALBERT ELLIS LINVICOME,JR.AND VICENTE LINCICOME vs SABLES,LLC,
}

November 18, 2020

\author{
Capitol Reporters \\ 628 E. John St \# 3 \\ Carson City, Nevada 89706 \\ 775 882-5322
}

Original File 11-20-18lincicome.txt

Case No. 18-CV-01332
Department II

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA BEFORE THE HONORABLE LEON ABERASTURI

DISTRICT JUDGE, PRESIDING

LINCICOME, )
Plaintiff, )
vs.
SABLES, LLC, et al.,
Defendants.
)


JAVS-RECORDED TRANSCRIPT OF PROCEEDINGS MOTIONS HEARING TUESDAY, NOVEMBER 20, 2018 YERINGTON, NEVADA

Transcribed by:
CAPITOL REPORTERS (775) 882-5322

APPEARANCES:

For Lincicome:

For Fay Servicing, LLC:
For Bank of America:

Millward Law, LTD.
Michael G. Millward, Esq.

Ramir Hernandez, Esq.
Akerman, LLP
Brent Lachman, Esq.

CAPITOL REPORTERS (775) 882-5322

YERINGTON, NEVADA, TUESDAY, NOVEMBER 20, 2018
-oOo-

THE COURT: Okay. All right. So we're going to go on the record on \(18-C V-01332\). We're here on the restraining order, and could I have the parties state their names for the record and counsel?

MR. MILLWARD: Your Honor, Michael Millward on behalf of Alvarez, Lincicome and then (indiscernible) Lincicome.

THE COURT: All right.
MR. HERNANDEZ: Ramir Hernandez, Bar Number 13146, on behalf of Fay Servicing and the U.S. Bank of Trust, Your Honor.

THE COURT: Okay. All right. And have there been any discussions and possible agreements or anything of that nature before I start the hearing?

MR. HERNANDEZ: Your Honor, we briefly talked about it before the hearing, but we have not come to any resolution.

THE COURT: All right. Would it help if I gave you more time? This is the only matter I have this afternoon, so if you wanted to discuss for 15,20 more minutes, \(I\) don't have a problem.

CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: After the discussions, Your Honor, I don't think there's agreements (indiscernible) possible resolution.

THE COURT: Okay.
MR. HERNANDEZ: With opposing counsel, unless opposing counsel disagrees. If he wants to talk 15 minutes, I'm happy to do it.

THE COURT: Yeah, do you want more time?
MR. MILLWARD: Your Honor, we discussed authority that he has to settle under certain terms.

THE COURT: Okay.
MR. MILLWARD: And he doesn't have such authority.

THE COURT: Okay.
MR. HERNANDEZ: But I can get my client on the phone if I need to, Your Honor, but I think we're so far apart on anything realistic, but I think it (indiscernible).

THE COURT: Okay. All right. That's fine. I just always ask. You know, it's always easier if we can come up to some resolution and then depending how this goes, I can always bring in a mediator if that helps.

All right. So as the moving party, Mr. Millward, I'll have you go first and I did receive a copy of the exhibits from the bank and I appreciated that. And are there CAPITOL REPORTERS (775) 882-5322
any other exhibits or anything else?
MR. MILLWARD: Those are our exhibits, Your Honor, that has been (indiscernible).

THE COURT: Oh, these are your exhibits?
MR. MILLWARD: That's right.
THE COURT: Okay.
MR. MILLWARD: Your Honor, with regards --
MR. HERNANDEZ: Are you sure, Your Honor? I know
I -- my office sent a binder up here.
THE COURT: Yeah, I have a binder, Mr. Millward.
It's -- the first filing I have is the response to application.

MR. MILLWARD: Yeah, Your Honor, the binder I've provided starts with a promissory dated May 23rd, 2007, (indiscernible). So it might be the other binder to your left.

THE COURT: Where is that? Oh, okay.
THE CLERK: (Indiscernible).
THE COURT: All right. All right. Is there going to be any objection to the Court considering any of the exhibits that have been previously presented?

MR. HERNANDEZ: Mr. Millward (indiscernible) couple of documents. For the purposes of this hearing, Your Honor, I'm not going to object to those documents. CAPITOL REPORTERS (775) 882-5322

THE COURT: All right then. And how about you, Mr. Millward?

MR. MILLWARD: Your Honor, I'm not sure what the binder (indiscernible) that's been provided contains. If it provides no other documents that I provided in the response, then I have no objection.

THE COURT: All right. Yeah, no, these are the documents that were attached to the response.

MR. HERNANDEZ: Okay.
THE COURT: All right.
MR. MILLWARD: All right. Your Honor, as to the other defendants in this matter, I understand that there was a request for them to attend by phone. I'm not sure if that -THE COURT: All right. Is that the Ackerman law firm?

MR. MILLWARD: I believe so.
THE COURT: Okay. Get them.
All right. Good afternoon. This is Judge
Aberasturi. Who do I have on the telephone?
MR. LACHMAN: Your Honor, this is Scott Lachman from Ackerman on behalf of Bank of America.

THE COURT: All right. One more time. I'm having difficulty hearing you.

MR. LACHMAN: I'm sorry, Your Honor. This is CAPITOL REPORTERS (775) 882-5322

Scott Lachman.
THE COURT: Scott Lotson?
MR. LACHMAN: Lachman. That's L-A-C-H-M-A-N.
THE COURT: Okay. All right. And are you having any difficulty hearing him or --

MR. LACHMAN: I'm hearing an echo.
THE COURT: Yeah, let me just try to adjust.
Does Judge Schlegelmilch have anything going on?
THE CLERK: No.
THE COURT: All right. Can you speak up again, sir?

MR. LACHMAN: Yes, this is Scott Lachman from Ackerman on behalf of Bank of America, Bar Number 12016.

THE COURT: All right. Okay. All right. Was anyone else intending to participate today?

MR. MILLWARD: I'm not aware of any other person. I know that there is another individual representing Sables, LLC. I don't know if he had made any request.

THE COURT: All right. I don't believe that there were any other requests in the --

What I'm going to do is I'm going to put you on hold, sir. We're going to have to go to the other courtroom and use the -- the other courtroom has a better sound system. All right.

CAPITOL REPORTERS (775) 882-5322

So I'm going to put you on hold, sir, and we'll probably pick up in about five minutes.

MR. LACHMAN: Okay. Great. Thank you, Your. Honor.
(Recess.)
THE COURT: We're back on the record in
18-CV-01332. We've switched courtrooms due to the problems with the telephone. Let's hope it works now.

All right. Good afternoon. This is Judge Aberasturi again. Who do I have on the telephone?

MR. LACHMAN: Your Honor, this is Scott Lachman from Ackerman on behalf of Bank of America.

THE COURT: All right.
MR. LACHMAN: Bar Number 12016.
THE COURT: All right. And I can hear you a lot better, so thank you. All right. So we've just discussed the -- previously that I have the two binders from the different parties.

On behalf of your client, had you filed anything or were there any documents that you wanted my to see on behalf of Bank of America?

MR. LACHMAN: No, Your Honor. I was retained as counsel yesterday, so I'm just getting up to speed. Based on my review of the public record, it does not appear, at first CAPITOL REPORTERS (775) 882-5322
glance, that Bank of America has an interest in the property or the foreclosure.

THE COURT: Okay. All right. So did you wish to remain in on the case or what are your druthers?

MR. LACHMAN: I intended to listen.
THE COURT: Okay.
MR. LACHMAN: And chime in if necessary.
THE COURT: Okay. All right. So how it goes, Mr. Millward, it's your motion and then Mr. Hernandez next, and then I'll do Bank of America and that's the routine we'll follow. All right?

MR. MILLWARD: That sounds fine, Your Honor.
THE COURT: Okay.
MR. MILLWARD: And, Your Honor, if I may --
THE COURT: And let me just ask, though, if you would pull the microphone as close as you can to yourselves so --

MR. MILLWARD: Sure.
THE COURT: -- we don't have any issues. All right. Go ahead.

MR. MILLWARD: Your Honor, if the Court will allow, I would like to just make a brief opening.

THE COURT: All right. Go ahead.
MR. MILLWARD: And then present witness testimony CAPITOL REPORTERS (775) 882-5322
as well as --
THE COURT: Go ahead.
MR. MILLWARD: (Indiscernible).
MR. HERNANDEZ: Your Honor, I am not prepared for an evidentiary hearing today. This is a hearing on the motion of the merits. If the Court wishes to (indiscernible) evidentiary hearing, I believe it would be, I would need to call my own witnesses as well, Your Honor.

THE COURT: Okay.
MR. HERNANDEZ: That's how -- I'm sorry, if that's the way that things are done here. That's not generally -- and this is my first time appearing before this district court.

Generally, when I've appeared in Washoe or Clark County, generally we have an evidentiary hearing and I get to prepare for that evidentiary hearing and bring my own witness (indiscernible) hearing on the motion and then if you decide you need more evidence, you just kick it out. I'm just here --

THE COURT: All right. What evidence were you intending to --

MR. MILLWARD: Your Honor, the evidence I was going to present would conform with the evidence presented in the motion, primarily the affidavit and statements of my CAPITOL REPORTERS (775) 882-5322
client.
I guess if opposing counsel would have the Court consider those -- that affidavit as actual evidence and testimony of my client in the proceeding, then I would be fine without --

THE COURT: Putting on additional.
MR. MILLWARD: What's that?
THE COURT: Without having to put your clients on for additional information. Okay. All right. Is there --

MR. HERNANDEZ: That's fine, Your Honor. If Your Honor believes there's still issues of fact, you know, of course, if the Court wishes to hold an evidentiary on the preliminary injunction motion, I believe that we can prevail on the legal merits without having to go based on the facts that they presented.

But if the Court wants to do that, then that's at the Court's discretion obviously.

THE COURT: All right. Well, I -- what the Court intended to do was to look at the -- in terms of the facts presented in the affidavit. The only thing I'm concerned in terms of what you provided to the Court as well seems to -you've added additional facts to their affidavit.

And so in terms of my review under the applicable rules, I guess that's where I'd have a concern. But, again, CAPITOL REPORTERS (775) 882-5322
if this is -- was set as a preliminary, I'm required to set it within so many days and I've done that.

MR. HERNANDEZ: Well, Your Honor, I have included declaration (indiscernible) documents.

THE COURT: Right.
MR. HERNANDEZ: So that's our position,
Your Honor, with our (indiscernible) that these documents were documents that were -- we've readily produced here, so --

THE COURT: Okay. All right. So let's just go ahead. I'm not hearing any objections to the facts as contained in the affidavit or the need to clarify, so go ahead with your argument.

MR. MILLWARD: All right, then, Your Honor. Then what I'm going to do is make legal argument and point out a few things from the documents provided to the court as evidence and I guess extract information that I really want the Court to pay close attention to.

The -- this matter, Your Honor, pertains to a 2009 loan modification agreement that was breached by Bank of America. And when I say "breached," payments were refused from my client.

My client worked for a year and a half trying to make payments to Bank of America, calling regularly, trying to find out why a loan modification that she entered into with CAPITOL REPORTERS (775) 882-5322

Bank of America in 2009 was not accepted.
Thereafter, Bank of America signed the loan modification agreement and recorded it, and there is no dispute as to the parties that it was signed and recorded. There's no dispute that it exists and that it's effective and, in fact, Your Honor, the notice of default here refers to the loan modification.

However, every statement provided to the Court that is admitted now as evidence reflects terms from the original 2007 agreement.

If, in fact, this loan modification was an effective agreement and all of parties would agree that it is effective, then the terms of the current statements that have been sent by Bank of America and by Fay Servicing in this case would reflect those terms, but, in fact, they do not. They only reflect the terms of the 2007 agreement.

The loan modification agreement was not followed and it continues not to be followed. It was breached in 2009 and the parties continue to be in breach by not adopting the lower interest rate, by not adopting low -- the extended length of the term.

And so as to that factual piece, I would like the Court to be aware that there is no documents -- documentary evidence showing that even though it was recorded, signed and CAPITOL REPORTERS (775) 882-5322
agreed to, and that my client made a payment on it in September 1st of 2009, there is no documentary evidence showing that Bank of America or Fay Servicing has in any way honored that agreement or accepted payments on it.

Next, as to the legal argument for the leading my client's duty of performance on the agreement. Fay Servicing, U.S. Bank would like to foreclose on this property because payments haven't been made. Payments haven't been made because my client couldn't make them because no bank would accept them.

At no time has either Bank of America or U.S. Bank and Fay Servicing gone back and said, oh, we recognize that there's a problem here.

There's this agreement that you entered into in 2009 and apparently there was this mix-up and you weren't able to make payments on that agreement. We're willing to fix this and go back so that you can make your payments. That hasn't happened.

The accrual of interest and non-payment shouldn't be prejudiced to my client, should be -- my client shouldn't be held accountable for it under general contract law principles and a recent case that \(I\) just found in Nevada, Cane versus Price, which is 134 Nevada Advanced Opinion 26.

THE COURT: What was the number? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: 134.
THE COURT: Yeah.
MR. MILLWARD: Advanced Opinion Nevada 26.
THE COURT: Okay.
MR. MILLWARD: And it's a 2018 case. And it simply says, when parties exchange promises to perform, one party's material breach under this promise discharges the non-breaching party to the duty to perform.

So you -- the Court can't hold my client accountable for missed payments when they weren't able to make them in the first place under the loan modification agreement.

And under that rule of law, the Court should see this case not as a foreclosure case, but as a case where we've got a bank trying to enforce a loan modification agreement and an original deed of trust when, in fact, that bank's predecessor in interest breached the agreement, relieving the Lincicomes of any duty to perform.

Now, the Lincicomes aren't asking for their house for free. The Lincicomes are just asking for what they agreed to, which is to be given the right to makes payments on this loan modification agreement and to be relieved of all the accruing penalties, interest and non-payments over the years. They are relieved of that duty under the law, they should be relieved of it now.

CAPITOL REPORTERS (775) 882-5322

As to the Homeowner's Bill of Rights. So NRS \(107.5001(b)\) requires that information be provided before a notice of default is recorded and it requires the information be provided 30-plus days prior to the recording of the notice of default.

The information that's supposed to be provided pertains to the interest rate, the principle balance, the term of the loan, the accrued missed payments, the accrued interest, all of the material terms so that the debtor, the homeowner can make good on the mortgage payment and correct and reinstate the loan essentially.

THE COURT: All right. And let me just ask in terms of what they received, that's Exhibit \(16 ?\)

MR. MILLWARD: And that's Exhibit 16 in the Lincicomes' binder, Your Honor.

THE COURT: Yes.
MR. MILLWARD: That is the notice of breach and default. That's the recorded default I do not have and neither does my client have the actual notice. It would appear that according to the terms of the notice of default and the declaration or affidavit attached thereto, that that document would have been provided in --

THE COURT: I guess what did they receive that you're claiming doesn't meet 107.500?

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Well, that's the problem, Your Honor. It hasn't been produced. We don't have it. But there's no evidence to the -- no evidence whatsoever that they, all of a sudden, would have adopted the loan modification terms in that notice, even though every statement made since then and every statement made before then included incorrect information.

THE COURT: Okay. But what did they receive in order -- they must have received something from the bank saying we're ready to foreclose?

MR. MILLWARD: Right, right. The indication that that happened is in the affidavit attached to the notice of default. And so that's, what, two or three pages into the notice of default.

THE COURT: All right. What document is the notice of default?

MR. MILLWARD: I'm sorry, Your Honor.
THE COURT: I guess I need to understand, what did they receive -- in order for me to make a finding as you're requesting that 107.500 wasn't met, I would have to look at what they did receive.

MR. MILLWARD: Right.
THE COURT: Compare it to what 107.500 requires.
MR. MILLWARD: That -- my client's affidavit -CAPITOL REPORTERS (775) 882-5322

THE COURT: Right.
MR. MILLWARD: -- provides that they didn't receive anything --

THE COURT: Okay.
MR. MILLWARD: -- that complies with 107.500 .
THE COURT: So what was the first document that they received that indicated the bank was foreclosing? Or has the bank even started foreclosure at this point?

MR. MILLWARD: Yeah, the bank has. The bank reported the notice of default.

THE COURT: Okay.
MR. MILLWARD: And the notice of default says that -- and I'm just looking at -- the affidavit saying that the NRS 107.500 statement was provided is dated October 5th of 2016.

So sometime prior to October 5th of 2016, some kind of statement was sent and the person signing this affidavit says that that affidavit -- or that statement was sent.

THE COURT: Okay.
MR. MILLWARD: But my clients' testimony and affidavit provides that nothing was received.

THE COURT: Okay.
MR. MILLWARD: At least nothing indicating the CAPITOL REPORTERS (775) 882-5322
correct terms of the loan, the correct interest rate, the correct term -- the correct principle balance.

All of the things that are required by NRS 107.5001 (b) were not provided correctly and/or the document wasn't provided.

THE COURT: Okay.
MR. MILLWARD: As to -- and maybe this is a point that I needed to clarify. Not only are my clients seeking a preliminary injunction under the Homeowner's Bill of Rights as it provides for the -- by the Homeowner's Bill of Rights, but they're also seeking an injunction because Fay Servicing and U.S. Bank do not have a contract that's enforceable because of the breach that occurred in 2009 and the successive breaches in failing to recognize the loan modification agreement thereafter.

THE COURT: All right. Explain that argument to me.

MR. MILLWARD: Well, if you don't have an effective deed of trust on property because you breached the agreement to enforce -- breached the agreement allowing you to enforce that deed of trust, then you can't seek to foreclose.

And one of the relief -- a part of the relief sought in the complaint is declaratory relief as to the rights and duties of the parties.

CAPITOL REPORTERS (775) 882-5322

And as to the Lincicomes, the duty to make payment was relieved as to Bank of America, Fay Servicing and U.S. Bank. The duty was to honor the agreement, and because of their failure to do so, they are no longer able to enforce that agreement and its terms because of a material breach of the contract.

THE COURT: All right. But is the -- isn't the agreement separate from the deed of trust?

MR. MILLWARD: Actually, here, it's a modified deed of trust. So it's not a note.

THE COURT: Okay. Was --
MR. MILLWARD: It's a modified deed of trust and so --

THE COURT: So the 2009 agreement, there was a modified deed of trust and was that filed?

MR. MILLWARD: Yes.
THE COURT: Or recorded?
MR. MILLWARD: It was recorded. And it was recorded in 2011.

THE COURT: So a modified deed of trust is filed and -- all right. What document is that?

MR. MILLWARD: Yeah, that is going to be the loan modification agreement Number 3.

THE COURT: Number 3. All right. It says loan CAPITOL REPORTERS (775) 882-5322
modification title of document.
MR. MILLWARD: And you'll see that it states that a man (sic.) supplements the mortgage deed of trust deed to secure debt (indiscernible) dated May 23rd, 2007.

THE COURT: Okay.
MR. MILLWARD: And you'll also note in this document that the principle balance is adjusted to 417,196.50 -- I believe that's 58. You'll also note that the interest rate that is to be charged from 2009 to 2014 is 4.875 percent.

THE COURT: Okay.
MR. MILLWARD: On the next page is a step-up loan modification addendum, which notes that the interest rate in August of 2014 should step up to 5.375 percent.

THE COURT: Okay.
MR. MILLWARD: No statement provided in the evidence, Your Honor, anywhere indicates the extension of the term that the modification makes, the interest rate, or the change in payment or the change in principle balance.

It provides on that first page of Exhibit 3 -excuse me, second page of Exhibit 3, that the maturity date is extended to 2049 rather than 2037. In essence, it created a 40-year fixed rate loan rather than a 30-year adjustable rate loan.

CAPITOL REPORTERS (775) 882-5322

\section*{IN THE SUPREME COURT OF THE STATE OF NEVADA OFFICE OF THE CLERK}


\section*{APPELLANTS' APPENDIX TO OPENING BRIEF}

\section*{INDEX OF APPENDIX}

VOLUME I
\# Document
1 Complaint
2 Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction

VOLUME II
2 (Continued) Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction
3 Affidavit of Counsel
4 Notice of Lis Pendens APN 29-401-17
5 Order After Hearing Concerning Restraining Order and Preliminary Injunction
6 Corrected Order Concerning Restraining Order and Preliminary Injunction
7 Response to Application for Ex Parte Restraining Order, Preliminary Injunction, and Permanent Injunction

\section*{VOLUME III}

7 (Continued) Response to Application for Ex Parte 11-15-2018 AA00501 Restraining Order, Preliminary Injunction, and Permanent Injunction

\section*{VOLUME IV}
7 \begin{tabular}{llrl} 
(Continued) Response to Application for Ex Parte & 11-15-2018 AA00751 \\
Restraining Order, Preliminary Injunction, and \\
Permanent Injunction
\end{tabular}

8 Declaration of Fay Servicing, LLC in Response to 11-15-2018 AA00778 Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction
9 US Bank Trust's Answer to Complaint
11-29-2018 AA00782
10 Defendant Bank of America, N.A.'s Notice of Motion and Motion to Dismiss Plaintiffs' Complaint11 Declaration of Non-Monetary Status (Sables)12-24-2018 AA00805
12 Order After Hearing Concerning Restraining Order12-31-2018 AA00809and Preliminary Injunction and Setting Aside OrderEntered 11-8-18 and Corrected Order 11-14-18.
13 Objection to Declaration of Non-Monetary Status
14 Sables, LLC's Response to Objection to ItsDeclaration of Non-Monetary Status
15 Sables, LLC's Motion to Set Aside Default16 Plaintiffs' Motion for Leave to File AmendedComplaint to Substitute Parties
17 Motion for Rule 11 Sanctions Against Plaintiffs18 Declaration of Ramir M. Hernandez, Esq. in Supportof Motion for Rule 11 Sanctions Against Plaintiffs
19 Defendant Bank of America, N.A.'s Motion to ..... 03-22-2019 AA00935Dismiss Plaintiffs' Complaint
20 Opposition to US Bank's Motion for Rule 11 ..... 03-28-2019 AA00944
Sanctions
21 Opposition to Bank of America’s Motion to Dismiss ..... 04-04-2019 AA00975 Plaintiff's Complaint
VOLUME V21 (Continued) Opposition to Bank of America'sMotion to Dismiss Plaintiff's Complaint
22 Response to Declaration of Shadd A. Wade ..... 04-11-2019 AA01078
23 Defendant Bank of America, N.A.'s Reply to04-12-2019 AA01094Opposition on Motion to Dismiss Plaintiffs'Complaint
24 Reply in Support of Motion for Rule 11 SanctionsAgainst Plaintiffs
25 Motion to Intervene and Expunge Lis Pendens ..... 05-24-2019 AA01111
26 Order
27 Plaintiffs’ Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims for Relief
28 Opposition to Motion to Intervene
30 Reply in Support of Motion to Intervene and ..... 06-19-2019 AA01230 Expunge Lis Pendens
31 Sables, LLC’s Opposition to Plaintiffs' Amended Motion to Amend
32 Reply to Breckenridge Property Fund 2016, LLC’s Opposition to the Amended Motion for Leave to Amend Complaint
33 Petition for Writ of Mandamus (Supreme Court)06-20-2019 AA0123506-10-2019 AA01213
29 Opposition to Plaintiffs' Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims and Relief ..... 06-19-2019 AA01225
06-07-2019 AA01127
\begin{tabular}{|c|c|c|c|}
\hline 42 & Plaintiffs' Opposition to Breckenridge's Motion for Order to Show Cause Re Writ of Restitution & 10-18-2019 & AA01445 \\
\hline 43 & Plaintiffs’ Answer to Counterclaim and Counterclaim Against Intervener & 10-23-2019 & AA01473 \\
\hline 44 & Order Denying Ex Parte Motion and Setting Hearing & 10-24-2019 & AA01495 \\
\hline 45 & Sables, LLC's Response to Petition for Writ of Mandamus (Supreme Court) & 10-25-2019 & AA01498 \\
\hline & VOLUME VII & & \\
\hline 45 & (Continued) Sables, LLC’s Response to Petition for Writ of Mandamus (Supreme Court) & 10-25-2019 & AA01501 \\
\hline 46 & Breckenridge’s Answer to the Counterclaim Filed by Albert Ellis Lincicome, Jr. and Vicenta Lincicome & 11-18-2019 & AA01516 \\
\hline 47 & Order Concerning Motion for Leave to File Motion for Reconsideration of the Court's August 23, 2019 Order Re Declaratory Relief. & 11-22-2019 & AA01521 \\
\hline 48 & Petitioners’ Reply to Responses to Petition for Writ of Mandamus (Supreme Court) & 11-27-2019 & AA01523 \\
\hline 49 & Order (Concerning Motion to File Second Amended Complaint) & 12-06-2019 & AA01544 \\
\hline 50 & Plaintiffs’ Motion for Reconsideration & 12-13-2019 & AA01546 \\
\hline 51 & Plaintiffs' Second Amended Complaint & 12-20-2019 & AA01553 \\
\hline 52 & Answer to Second Amended Complaint (US Bank, Prof-2013 M4-Legal Title Trust and Fay Servicing) & 01-07-2020 & AA01697 \\
\hline 53 & Breckenridge Property Fund 2016, LLC’s Answer to Second Amended Complaint & 01-08-2020 & AA01721 \\
\hline 54 & Order Denying Petition for Review (Supreme Court) & 01-22-2020 & AA01726 \\
\hline 55 & Bank of America, N.A.'s Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint & 01-23-2020 & AA01728 \\
\hline 56 & Order Denying Without Prejudice Ex Parte Motion for Order to Show Cause Why a Temporary Writ of Restitution Should Not Be Granted and Request to Shorten Time to Answer & 02-11-2020 & AA01748 \\
\hline
\end{tabular}

\section*{VOLUME VIII}

57 Answer to Second Amended Complaint (Newrez, 03-19-2020 AA01751 LLC, d/b/a Shellpoint Mortgage)
58 Breckenridge Motion for Order Requiring Plaintiff to 03-27-2020 AA01776 Deposit Rental and/or Mortgage Payments With Court
59 Plaintiffs' Opposition to Motion for Deposit of
04-13-2020 AA01806 Payments With Court
60 Breckenridge Reply in Support of Motion for Order
04-24-2020 AA01839
Requiring Plaintiff to Deposit Rental and/or Mortgage Payments with Court
61 Breckenridge Property Fund 2016, LLC’s Reply in 09-11-2020 AA01844 Support of Motion for Leave to File Crossclaim Against Prof-2013-M4 Legal Title Trust by U.S. Bank National Association, as Legal Title Trustee
62 Breckenridge Property Fund 2016, LLC’s
10-02-2020 AA01853
Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
63 Answer to Breckenridge Property Fund 2016, LLC's
11-02-2020 AA01860 Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
64 Bank of America, N.A.'s Motion for Summary Judgment and Motion for Sanctions

\section*{VOLUME IX}

64 (Continued) Bank of America, N.A.'s Motion for
03-17-2021 AA02001 Summary Judgment and Motion for Sanctions
\(65 \begin{aligned} & \text { Breckenridge Property Fund } 2016 \text { LLC's Motion for } \\ & \text { Summary Judgment Against Plaintiff }\end{aligned}\)
66 (Plaintiffs') Motion for Partial Summary Judgment 03-19-2021 AA02230 VOLUME X
66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02251 Judgment

\section*{VOLUME XI}

66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02501 Judgment

67 Shellpoint Mortgage Servicing, LLC’s Undisputed 03-25-2021 AA02540 Statement of Facts in Support of Motion for Summary Judgment

\section*{VOLUME XII}

67 (Continued) Shellpoint Mortgage Servicing, LLC’s 03-25-2021 AA02751 Undisputed Statement of Facts in Support of Motion for Summary Judgment
68 Prof-2013-M4 Legal Title Trust, By U.S. Bank, 03-25-2021 AA02764 National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment
69 Request for Judicial Notice in Support of Prof-2013M4 Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment and Shellpoint Mortgage Servicing LLC's Motion for Summary Judgment
70 Shellpoint Mortgage Servicing, LLC’s Motion for 03-25-2021 AA02785 Summary Judgment
71 Prof-2013-M4 Legal Title Trust, By U.S. Bank,
03-25-2021 AA02796
National Association, as Legal Title Trustee's and Fay Servicing LLC’s Undisputed Statement of Facts in Support of Motion for Summary Judgment

\section*{VOLUME XIII}

71 (Continued) Prof-2013-M4 Legal Title Trust, By
03-25-2021 AA03001
U.S. Bank, National Association, as Legal Title

Trustee's and Fay Servicing LLC’s Undisputed
Statement of Facts in Support of Motion for Summary Judgment

72 Bank of America, N.A.’s Errata to Bank of America, 04-02-2021 AA03017 N.A.'s Motion for Summary Judgment and Motion for Sanctions
73 Bank of America, N.A.'s Opposition to Plaintiffs'04-14-2021 AA03021Partial Motion for Summary Judgment
74 Plaintiffs' Opposition to US Bank, Fay Servicing,and Shellpoint's Motions for Summary Judgment
75 Plaintiffs' Opposition to BANA's Motion for Summary Judgment
76 Plaintiffs' Opposition to Breckenridge's Motion for
Summary Judgment04-15-2021
04-15-2021 AA03089
77 Plaintiffs' Statement of Undisputed Material Facts ..... 04-15-2021 AA03136
VOLUME XIV
77 (Continued) Plaintiffs' Statement of Undisputed Material Facts04-15-2021 AA03251
78 Prof-2013 M4-Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's, and Fay Servicing LLC's Opposition to Plaintiffs'Motion for Partial Summary Judgment
VOLUME XV
78 (Continued) Prof-2013 M4-Legal Title Trust, By ..... 04-19-2021 AA03501
U.S. Bank, National Association, as Legal Title Trustee’s, and Fay Servicing LLC’s Opposition to Plaintiffs' Motion for Partial Summary Judgment
79 Bank of America, N.A.’s Reply Supporting Motion 05-05-2021 AA03506 for Summary Judgment
80 Supplement to Plaintiffs' Statement of Undisputed ..... 05-06-2021 AA03519 Material Facts
81 Reply to Bank of America, N.A.'s Opposition to ..... 05-06-2021 AA03671Plaintiffs' Motion for Partial Summary Judgment
82 Reply to US Bank \& Fay Servicing, LLC’s ..... 05-06-2021 AA03698 Opposition to Plaintiffs' Motion for Partial Summary Judgment
83 Shellpoint Mortgage Servicing, LLC’s Reply in ..... 05-10-2021 AA03720Support of Motion for Summary Judgment
84 Prof-2013 M4-Legal Title Trust, By U.S. Bank, ..... 05-10-2021 AA03727

Fay Servicing LLC's Reply in Support of Motion for Summary Judgment
85 Breckenridge Property Fund 2016 LLC's Reply in Support of Motion for Summary Judgment Against Plaintiff
86 Order on Breckenridge Motion for Summary Judgment

\section*{VOLUME XVI}
87 \begin{tabular}{l} 
Order Denying Plaintiffs' Motion for Partial \\
Summary Judgment/Granting Motions for Summary \\
Judgment filed by BANA, Prof-2013 M4 Legal \\
Trust, US Bank and Fay Servicing LLC
\end{tabular}
88 Notice of Entry of Order (Order on Breckenridge

07-06-2021 AA03769
 Motion for Summary Judgment)
89 Notice of Entry of Order (Order Denying Plaintiffs ..... 07-06-2021 AA03780 Motion for Partial Summary Judgment)
90 Notice of Entry of Order (Order on Breckenridge ..... 07-06-2021 AA03801 Motion for Summary Judgment)
91 Lincicomes' Notice of Appeal07-19-2021 AA03812
92 Case Appeal Statement07-30-2021 AA03815
93 Order Regarding Permanent Writ of Restitution08-20-2021 AA03823
94 Breckenridge Property Fund 2016’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents09-09-2021 AA03826
95 Plaintiffs' Motion for Stay Pending Appeal96 Opposition to Breckenridge Property Fund 2016’s09-24-2021 AA03904Motion for Entry of Order Granting Permanent Writof Restitution and Payment of Overdue Rents
97 Defendant Breckenridge Property Fund 2016, LLC’s 10-01-2021 AA03906 Opposition to Plaintiffs' Motion to Stay PendingAppeal
98 Request for Transcripts10-04-2021 AA03974
99 Breckenridge Property Fund 2016’s Reply in10-06-2021 AA03976
Support of Motion for Entry of Order Granting

Permanent Writ of Restitution and Payment of Overdue Rents

100 Transcripts of Hearings
10-18-2021 AA03979

\section*{VOLUME XVII}

100 (Continued) Transcripts of Hearings
10-18-2021 AA04001

\section*{VOLUME XVIII}

100 (Continued) Transcripts of Hearings
10-18-2021 AA04251
101 Order Concerning: Breckenridge Property Fund
11-05-2021 AA04257 2016, LLC’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs’ Motion for Stay Pending Appeal

102 Lincicomes’ Ex Parte Motion for Additional Time to 11-15-021 AA04267 Obtain Supersedeas Bond

103 Breckenridge Property Fund 2016’s Opposition to 11-16-2021 AA04274 Plaintiffs’ Improper Ex Parte Motion for Additional Time to Obtain Supersedeas Bond and Request for Sanctions

104 Order Denying Ex Parte Motion (for additional time 11-17-2021 AA04301 for bond)
105 Permanent Writ of Restitution (order permitting 11-22-2021 AA04304 eviction of Lincicomes from their home)

THE COURT: Okay. And who was the servicer at the time that this document was filed?

MR. MILLWARD: The servicer was Bank of America or its predecessor, I believe it's Back Home Loan Servicing.

THE COURT: Okay. All right. And if I -- again, I apologize. I don't have the opportunity to read all and everything in seven days.

MR. MILLWARD: Sure.
THE COURT: But was the amended agreement
transferred?

MR. MILLWARD: Was it transferred to the new --
THE COURT: To the new bank and the new servicer?
MR. MILLWARD: Well, if the original deed of
trust was amended by the loan modification agreement and then that -- excuse me, yeah, by the loan modification agreement and then the deed of trust is assigned, I would -- I believe that there's no reason to separate.

THE COURT: All right. And this loan modification agreement, did it supplant or did it simply amend the original?

MR. MILLWARD: It amends. According to its terms, it amends.

THE COURT: Okay.
MR. MILLWARD: It says it does amend and CAPITOL REPORTERS (775) 882-5322
supplement, but not supplant.
THE COURT: Supplant, okay.
MR. MILLWARD: So it's in addition to those terms.

THE COURT: All right.
MR. MILLWARD: So I think, next, we have to go to the statements to kind of understand -- well, let's move to Exhibit 4, Your Honor, just real quick.

Exhibit 4, and I was mistaken earlier, I provided this document to counsel, not believing it was in the binder, but it made the binder anyway.

Exhibit 4 provides that these are the terms of the loan modification agreement. This is the letter that was provided to my client from Bank of America, saying, this is how we're modifying your loan, this is when the payments are going to be due, this is the interest rate.

THE COURT: Okay.
MR. MILLWARD: So this isn't the agreement, but this is the information provided with the agreement before it was signed. Then we have some statements.

So the first statement that fails to recognize the loan modification agreement is under Number 5, and it is a statement dated October 29th, 2009. It would appear from this statement that they have not capitalized the loan or CAPITOL REPORTERS (775) 882-5322
recapitalized the loan. But the principle balance is still 381,150 as the original loan agreement says.

It still says it's a 30-year conversion loan. It still says that the interest rate is 6.875 , rather than the 4.285, and it still shows a past due amount of \(\$ 42,000\) at that point in time, rather than zero, because of the loan being capitalized -- recapitalized.

Under Exhibit 6, Your Honor, you'll see all the evidence that my client was contacting Bank of America. You'll see this first page, December 15, 2009, that they recently received authorization requests from the law offices of Charles K. Marshall to access their loan information. They were looking for help at that time. They reached out to other counsel.

You'll see that on March 12th, 2010, that there's a response to request for information. You'll see on October 19, 2011, a request for information and an explanation that they'll receive a letter.

They didn't ever receive any document indicating what happened to this loan modification, where it went, why it is not being enforced, why its terms haven't been applied with the loan. Nothing like that was provided.

And to that point, I think they have to go back to the loan modification agreement itself to understand what CAPITOL REPORTERS (775) 882-5322
may or may not have happened here. But if you look at the date of recording, it's recorded on May 4th of 2011 and it's signed by someone that looks like -- I think it says James Smith on March 22nd, 2011.

So it would be speculation for me to say what happened here. But we have an agreement that's effective September 1st -- or, excuse me, effective July 31st of 2009 that's been agreed to and signed, before a notary even, and recorded and yet its terms have never, ever been applied to this loan and the bank has -- U.S. Bank continually rejected payments according to the modification agreement and no statement from Fay Servicing has ever incorporated the terms of the loan modification agreement.

And that's evidenced by the list of statements here by (indiscernible) Exhibit -- yeah, Exhibit 13.

So under Exhibit 13, which is a large stack of exhibits, you'll see that this is now from Fay Servicing. The outstanding principle balance isn't 417 like the loan modification would say there would be.

It's still incorrectly 381,150 as of
September 1st of 2015. The interest rate 6.875 , instead of the 4.825. And, in fact, as of September of 2015, it would have already bumped up to the five point -- 5.375.

The unpaid balance is assumed to be wrong because CAPITOL REPORTERS (775) 882-5322
we would assume that they would include the 42,000 that Bank of America was still saying was owed in October of 2009. Being as -- being as Bank of America never recognized the terms of this loan in any of the statements, it has to be assumed that because of all the terms continuing to be incorrect, that these balances are also still incorrect.

We don't have a spreadsheet or any type of evidence showing the history of the loan to go off of. We can't state one way or the other that they incorrectly applied the interest rate. However, if we go off this statement, then they would have.

The statements provided in Exhibit 13, Your Honor, go through October 10th of 2018. It's the last two pages of the Exhibit 13. And what's interesting about the last few statements is the interest rate fluctuates all over the place for no known reason.

It doesn't -- it doesn't relate to the original agreement in 2007. It also doesn't relate to the loan modification agreement. It's just wrong as to both agreements.

The interest rate on, for example, the November 1st, 2018, statement -- or excuse me, the -- yeah, the October 10th, 2018, statement is 5 percent. You go back to several pages and look at the July 10th, 2017, statement, CAPITOL REPORTERS (775) 882-5322
it's at 4 percent.
This loan should have never been below 4.285 and we're not complaining that they were charging the wrong rate, but I think it proves something, that they're not following the terms of either agreement.

It looks like the last time that they used the six point -- 6.875 rate is the 5/10/17 statement. So May 10th, 2017, was the last time that they used the 6.875 rate. All rates thereafter are all over the place and I don't know of any rhyme or reason why they're going from 4 to 5 percent and that doesn't make sense. But it's certainly not a recognition of the loan modification agreement because the rates don't equal what they would be under the loan mod.

With regards to modifications attempted by my client, they attempted a half modification according to their -- the affidavit of -- and verifications of both my clients, they attempted a modification with Fay Servicing.

They attempted a modification with Bank of America and then ultimately the failure to modify, I think, does nothing but show an attempt by my client to correct this error that occurred in 2009 when Bank of America chose not to, for whatever reason, adopt the terms of this loan and accept payments.

THE COURT: All right. Now, you say they CAPITOL REPORTERS (775) 882-5322
attempted to modify. Didn't they, in fact, modify?
MR. MILLWARD: They have not modified. There's no modification agreement other than the 2009 modification agreement. So when I talk about the loan modification agreement, it's a signed agreement that's now part of the deed of trust. That's essentially the binding contract that the parties are operating under. That's the -- that's stated within the notice of default and admitted to by the parties or at least by Fay Servicing and U.S. Bank.

As to other modifications, in 2015, my clients attempted to modify with Bank of America. They made two payments. In fact, they -- the interest rate was a great rate. The terms were great for them. They were excited to modify to those terms.

They made two payments. And then on August 1st of 2015, when they went to make a third payment, Bank of America said, I'm sorry, we have transferred your loan. You'll have to make your loan with Fay Servicing.

And so it's the testimony of my client that Fay Servicing told my client on the phone that we will not accept payments under a modification from Bank of America.

So my client ran to Bank of America, hopped in the car, drove to Bank of America, the local branch, to make a payment and Bank of America refused that payment. And I know CAPITOL REPORTERS (775) 882-5322
that that piece of evidence was provided in the -- in the motion, I'm just looking for it here, see if I can find it. Yeah, that's Number 12, Your Honor.

THE COURT: All right. But I guess I'm having trouble following you, because if there was no modification, then why do I even look at whether or not they made payments or Bank of America?

MR. MILLWARD: I completely -- I get that point and I'm with you on it. You're right. My clients wanted, however, not to deal with this issue like we are today. My clients didn't want --

THE COURT: But as a matter of law, they either amended or they didn't. It's not \(a\), we felt like it, we tried.

MR. MILLWARD: I get it. I get it. The point of me making the representations, the point of me discussing the evidence is not for the Court to consider that they didn't believe that their modification was invalid. It's because they wanted to save their home and they were willing to look past it if a bank would work with them to do so.

They knew that Bank of America, for example, was continuing to send them statements, saying that you haven't paid your mortgage. They knew that threats of foreclosure were just down the road.

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. Well, let's stop there. So you -- first I'm hearing it was amended in 2009.

MR. MILLWARD: Yeah.
THE COURT: Now I'm hearing that there was action taken in 2015.

MR. MILLWARD: Statements were given in '15, a motion for relief of stay from their bankruptcy, and I kind of skipped over that. We can just discuss that.

THE COURT: Well, the bankruptcy, like I say, I'm not concerned about the bankruptcy because all the bankruptcy did was say we're not going to take it under our pages.

MR. MILLWARD: Well, kind of, it actually proved something. Bank of America did file a claim in the bankruptcy. They didn't have to. I mean, a creditor doesn't have to file a claim.

But the whole point of their bankruptcy was so that Bank of America would file a claim so that they could adjudicate the loan modification and force Bank of America to honor it. Well, Bank of America didn't even appear. They didn't even ask to be paid.

THE COURT: Yeah, but that doesn't resolve the issues as to what the underlying deed of trust is, and so --

MR. MILLWARD: Well, you're right, Your Honor, but I don't think that's at issue. Everybody admits it.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Well, no, I -- what I -- we have an issue. I'm hearing that there was an amended in 2009, it wasn't filed until later. Then I'm hearing that there was a HAMP program.

MR. MILLWARD: Sure, but --
THE COURT: You're listing 2015.
MR. MILLWARD: But none of those modifications actually occurred, happened. So the 2015 attempt by my client --

THE COURT: So there was -- there was no documents executed by both parties saying --

MR. MILLWARD: That's correct.
THE COURT: -- this is changing what's been previously --

MR. MILLWARD: That's correct.
THE COURT: Okay. All right. So then after 2015, what's the next attempt?

MR. MILLWARD: Right. So then Fay Servicing has their loan. They attempt to do a modification with HAMP, so they apply. Fay Servicing says, sorry, you don't qualify, we can't do it.

They then applied under a program that I'm not familiar with called HAMP unemployed or underemployed, unemployed, something like that, where somebody is unemployed, CAPITOL REPORTERS (775) 882-5322
and therefore, the program is designed for people that don't have current income so that they can save their homes.

THE COURT: All right. When was that?
MR. MILLWARD: That was in, I believe, 2016. Yeah, 2016.

THE COURT: 2016. Okay. And again, you're stating that there's no written documents, nobody signed anything.

MR. MILLWARD: That's correct.
THE COURT: We just tried to do it and --
MR. MILLWARD: Right. They wanted to save their home, Your Honor, and they believed that all these threats that they were receiving from Fay at the point, that they were receiving from Bank of America were going to lead to where we are today.

THE COURT: Okay.
MR. MILLWARD: And they didn't want to be here. THE COURT: All right. What was the next action taken?

MR. MILLWARD: The next action after that, they started working with Senator Reed's office. And after working with Senator Reed's office, they were offered modification by Fay.

They made the three payments on the trial
CAPITOL REPORTERS (775) 882-5322
modification, then the terms were provided and they realized that they would be making a payment of \(\$ 2800\) a month, which they couldn't afford.

THE COURT: Okay. But, again, you're telling -you're representing to the Court no documents were signed, no agreements were entered into.

MR. MILLWARD: That's correct.
THE COURT: That could have possibly affected the amended deed in 2009.

MR. MILLWARD: That's correct.
THE COURT: Okay.
MR. MILLWARD: Otherwise, I think the statements would reflect something other than the original agreement from 2007, which they don't.

THE COURT: Okay.
MR. MILLWARD: I mean, it's -- all the statements are complied with.

THE COURT: All right. So when was the Senator Reed's -- he recommended Fay, what year was that?

MR. MILLWARD: That was 2016, Your Honor.
THE COURT: 2016. Okay. Then what happened?
MR. MILLWARD: After that modification
(indiscernible) Fay began this process.
THE COURT: What is this process? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: The foreclosure process.
THE COURT: Okay. And how did they begin this foreclosure process.

MR. MILLWARD: Well, according to the affidavit attached to the notice of default, they submitted documents in 2016 to the Lincicomes, saying that this is the current balance you owe. This is the current interest rate, what not, you need to make a payment or we'll foreclose.

Then after the modification fell through, they filed a notice of default. It's the 27 NOD that is referred to in the exhibit and that would be 16.

THE COURT: 16.
MR. MILLWARD: And you'll see that in the notice of default, it talks about the original agreement, the original instrument executed -- or recorded, excuse me, on 5/25/2007. It talks about the principle balance being 381,150. It talks about monthly installments being due on September 1, 2008. Yeah, it references the loan modification agreement that was recorded on 5/4/2011.

THE COURT: Right.
MR. MILLWARD: And so that's the document.
THE COURT: Now, in terms of the amended, which is what, Exhibit 3?

MR. MILLWARD: I believe so, yeah. CAPITOL REPORTERS (775) 882-5322

THE COURT: Did they substitute a note?
MR. MILLWARD: Did they substitute a note?
THE COURT: Right.
MR. MILLWARD: They didn't at the time, but I believe the note becomes -- as to the discharge entered by the bankruptcy court, I believe the note essentially goes away and the deed of trust being secured by the real property is the only document effective as to being enforced by the creditor.

THE COURT: Okay. All right. So then what happened after the notice of breach and default?

MR. MILLWARD: So then my clients began the mediation program. So they started mediation, applied for mediation, and they had a mediation that occurred in the fall of 2017. The mediator was unsatisfied with the documents provided, and therefore, declined to give a certificate.

THE COURT: To foreclose. Then what happened?
MR. MILLWARD: Right. Then the mediation was continued to -- I believe it was April 2018. And I heard, again, at this point in time, I guess appropriate documents were provided. I don't know what the mediator hasn't looked at.

But the mediator encouraged the parties to resolve the case, to dissolve the matter, the mediation, and the parties agreed to resolve it with a deed in lieu.

CAPITOL REPORTERS (775) 882-5322

And so as to the Lincicomes, they agreed that the mediation would be over, that no longer would the mediator have jurisdiction over -- to prevent the foreclosure of the case and that the mediation would cease essentially upon an agreement that they do a deed in lieu.

THE COURT: Okay.
MR. MILLWARD: I've looked for the terms of -that applied to that agreement. There's no doubt that my clients signed off and that the mediator checked the box deed in lieu, but there are no other terms to that agreement that I see effective.

I certainly don't see anything that would show that my clients waived their rights to making any of the claims that they're making now, that they agreed that there was an enforceable, you know, deed of trust, that they agreed to waive any breach by either Fay Servicing or Bank of America of the Homeowner's Bill of Rights. None of those things were stated in the document provided by the mediator.

THE COURT: And why would they have to be stated in the document if they're agreeing to do a deed in lieu?

MR. MILLWARD: Why would they have to?
THE COURT: Right.
MR. MILLWARD: Because what my clients believed that they were agreeing to is simply what's there, that the CAPITOL REPORTERS (775) 882-5322
mediation will end and that they will do a deed in lieu.
And so as to a breach of that agreement by my clients, right, what would the other side be entitled to, the foreclosure to enforce their rights if they --

THE COURT: Yeah, they'd also be entitled to specific performance, which would be that your clients turn over the deed.

MR. MILLWARD: Yeah.
THE COURT: In lieu of foreclosure.
MR. MILLWARD: I agree, but only if they have those rights in the first place.

THE COURT: No, if they enter into an agreement that states we're willing to walk away from this house, we will give the deed in lieu.

MR. MILLWARD: Okay.
THE COURT: Then everybody signs that document, the bank could come to court and say, we want specific performance, force them to do the deed in lieu transaction that they promised to do in a mediation, which everybody agreed that they'd be bound by.

MR. MILLWARD: Right. I understand the Court's point. In fact, from the testimony and discussions with my client, I'm now making representations because this isn't part of the --

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right.
MR. MILLWARD: -- motion. And if the Court wants to hear testimony, I would be happy to put my client on.

But as to my clients's understanding, they were given three options: A modification, a short sale, or a deed in lieu. They --

THE COURT: Okay. They had counsel at this, did they not?

MR. MILLWARD: They did. They did. It wasn't explained to them. They didn't understand.

THE COURT: All right. So --
MR. MILLWARD: That there was no -- well -- but even back to my point, if I'm sitting as counsel in a mediation and I look at the agreement that my clients are being set with, I'm looking at they're not waiving their rights to make a claim that the lender actually has rights to foreclose. I mean, that's not the statement that's being agreed to.

THE COURT: Why not?
MR. MILLWARD: Because --
THE COURT: Because if you're counsel for them and they're not waiving rights, you sure as hell want to have on the agreement that my clients are not waiving anything.

MR. MILLWARD: I did that. But, in fact, there CAPITOL REPORTERS (775) 882-5322
is no agreement. There is no statement as to what it means or what has been complied with, or what my clients rights were that they were giving up or what they were agreeing to.

THE COURT: But do you understand the implications of what you're asking me to do? You're basically saying, we throw the mediation program out and that parties go to mediation, they can agree to whatever they want to do, and then just throw it out the window because we're not going to follow anymore.

MR. MILLWARD: Well, yeah, but that seems a lot worse than giving somebody something that they weren't entitled to for nine years.

THE COURT: It also means in terms of good faith, when people participate in a modification process and they go to a mediation --

MR. MILLWARD: Right.
THE COURT: -- and they state to the mediator, we're willing to settle this by doing this, and then they sign off on it after they're represented by counsel, for them to come back afterwards and say, well, we're not bound by what the mediator says.

MR. MILLWARD: Right. I understand that point. And, in fact, the law that's cited by opposing counsel as to what the report is referring to, as to what the effect of a CAPITOL REPORTERS (775) 882-5322
mediation agreement is right.
THE COURT: Okay.
MR. MILLWARD: That lawfully comes from Jones v. Suntrust Mortgage Inc., which is cited by counsel in their response. It's interesting because the arguments made in that case relate to not whether or not a -- the agreement satisfies -- it is an agreement of waiver of rights, an agreement as to anything other than as to the code that surrounds mediation; right?

One of the arguments made, for example, in that case is that the lender had failed to offer them alternatives in the past. And so they were citing the code in the mediation -- or after the mediation, right, so they failed to follow the terms of the mediation and failed to modify like stated; right? And so they then assert these --

THE COURT: Well, let me just ask, though. On the basis of the mediator's decision, did the lawsuit go forward?

MR. MILLWARD: Did the lawsuit go forward?
THE COURT: Or did the foreclosure go forward?
MR. MILLWARD: In that case?
THE COURT: No, in this case. Everybody stopped what they were doing because they believed that they had an agreement to the case and therefore --

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Well, actually it's kind of
interesting. The mediation certificate --
THE COURT: Right.
MR. MILLWARD: -- didn't come out until October of 2018, October 4th. So my clients reacted as quickly as they could.

THE COURT: Okay.
MR. MILLWARD: They found counsel immediately once the certificate was issued. And, in fact, based on my client's testimony, they didn't know that they had agreed to anything at mediation.

THE COURT: Even though they were represented by counsel?

MR. MILLWARD: Even though they were represented by counsel.

THE COURT: And so --
MR. MILLWARD: They believed that they were given three options and that those three options were it, and there was no option for no agreement. Nobody explained that to them. The mediator didn't explain that to them.

THE COURT: All right. Counsel, I'm just having a real hard time with this.

MR. MILLWARD: I guess it.
THE COURT: You're asking -- the whole idea of CAPITOL REPORTERS (775) 882-5322
the foreclosure mediation is the parties get together, they have a mediator. And in terms of your clients, they're represented by counsel and the whole idea is, we work this out, the mediation goes through and then the parties are done.

MR. MILLWARD: Okay. I get that point,
Your Honor. But let's just assume that we follow your line of reasoning and we say you're right. They should be allowed to foreclose because of what happened in mediation, right. Okay. So what balance --

THE COURT: No, and it's not in terms of foreclosure. What they agreed to was your clients would do a deed in lieu of foreclosure.

MR. MILLWARD: Right. Right.
THE COURT: And I don't understand your argument as to why they can't expect that your clients are going agree to what they signed off on.

MR. MILLWARD: The reason is because of the way it happened and I would prefer to put my client on the stand so I can address my client's testimony as to that, what my client believed she was agreeing to.

THE COURT: No, I think that's for a later date. That doesn't have to do with the foreclosure as to whether or not they can prevail on their claim.

MR. MILLWARD: Give me a second, Your Honor. CAPITOL REPORTERS (775) 882-5322

THE COURT: Yeah, that's fine. Take your time. MR. MILLWARD: Okay. Your Honor, I have a piece of evidence. I don't believe that it's provided in the (indiscernible).

MR. HERNANDEZ: Your Honor, I would object to any evidence being presented.

THE COURT: Well, no, I'm just -- in terms of the argument, where I guess I'm hung up when I read through all this is I -- you have a fine argument until we get to the -MR. MILLWARD: Well, this --

THE COURT: The last mediation.
MR. MILLWARD: Well, this, in fact, I think, resolves the Court's issue.

THE COURT: All right.
MR. MILLWARD: I don't see that I've got this document, though, provided anywhere.

THE COURT: Well, I think with the loan -- the mediator.

MR. HERNANDEZ: (Indiscernible) 2018 letter? MR. MILLWARD: No. MR. HERNANDEZ: May 2000 (indiscernible). MR. MILLWARD: This is June 20th.

THE COURT: Yeah, I think that one is in the document, what the parties signed off on. CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Your Honor, this is the response to the (indiscernible) claims.

MR. MILLWARD: Yeah, that's what I thought, yeah.
MR. HERNANDEZ: But I disclosed that.
THE COURT: All right.
MR. MILLWARD: Do you know where it might be?
MR. HERNANDEZ: Yeah, I can tell you the
specifics. It's Exhibit U, Your Honor.
THE COURT: U. Okay.
MR. MILLWARD: And do you have it? I don't have it in the May 16th, 2018, letter.

MR. HERNANDEZ: The revised May 16th, 2018,
letter.
MR. MILLWARD: Yeah, the (indiscernible) program letter. So, Your Honor, the number -- I guess \(U\).

THE COURT: Right.
MR. MILLWARD: June 20, 2018; is that right?
THE COURT: Um-hum.
MR. MILLWARD: So my client has informed me that they believed that the deed in lieu option for them was closed off because of the statement made at the bottom of -- the bottom paragraph there in April of 2017.

If you read the last sentence of that paragraph as to that page, the first page, the enclosed deed in lieu CAPITOL REPORTERS (775) 882-5322
program closing document was mailed to you May 16th, 2018, to notify you that your ineligibility to participate in the deed in lieu program has been terminated.

THE COURT: Okay. When was the deed in lieu agreement made?

MR. MILLWARD: So the mediation occurred in April. And so by May 16th, according to this statement, their opportunity to participate was closed. And at least as to my client's understanding from what they has informed me, she understood that no deed in lieu was an option after May 16th.

THE COURT: Okay. All right. Go on with your argument.

MR. MILLWARD: Your Honor, with -- you don't need testimony as to that fact?

THE COURT: No. No, I have the documents that were admitted.

MR. MILLWARD: Okay. So I think we have to then -- I think the Court maybe is satisfied with the history that we've covered.

THE COURT: Right.
MR. MILLWARD: Do we need to go beyond October of 2018? There was a notice of sale recorded, the notice of sale is what it is.

THE COURT: Well, what was the last notice that CAPITOL REPORTERS (775) 882-5322
was filed in terms of them starting the foreclosure process? MR. MILLWARD: The notice of sale was recorded October 11th, 2018. It's the only notice of sale recorded since the notice of default.

THE COURT: Okay.
MR. MILLWARD: There is a nine-month requirement for someone to file a notice of sale and within nine months of the notice of default, that requirement is stayed when someone enters the mediation program. And so there's no problem for timing for the notice of sale. That's not an argument that my client's making.

THE COURT: Okay.
MR. MILLWARD: But as to the enforceability of this loan, because of the breach that occurred in 2009, and essentially the successive breach with every month that had gone by that every institution involved had not applied the terms of the modification and allowed the client to make payments -- allowed my client to make payments according to those terms, I think, is serious, Your Honor.

I think that the ultimate resolution of this matter for my clients would be seeking to return back in 2009, so that they then get what they wanted to get back then, which was to make payments according to that modification that was agreed, signed and recorded, and that's been acknowledged by CAPITOL REPORTERS (775) 882-5322
all parties.
To say that my client had a duty to pay any amount of money from that time forward, that my client had a duty to -- I mean, we've been going into mediation. Mediation is a response to the notice of default. Mediation's in response to a failure to provide my client with terms that were the loan modification agreement.

I mean, everything that occurs from there on out results from the failure and breaches of Bank of America and Fay Servicing to honor their agreement.

THE COURT: All right. Anything else?
MR. MILLWARD: Let me just make sure I've covered everything.

THE COURT: All right.
MR. MILLWARD: And just briefly, Your Honor, it's difficult to establish irreparable harm when I can't have my client on the stand.

MR. HERNANDEZ: I concede irreparable harm.
MR. MILLWARD: You can.
MR. HERNANDEZ: Yes, I concede the irreparable harm one.

MR. MILLWARD: Fantastic.
MR. HERNANDEZ: (Indiscernible) it's always
(indiscernible) same thing in our HOA case, Your Honor, so I CAPITOL REPORTERS (775) 882-5322
can't come back and say we're not irreparable harm.
THE COURT: Well, let's just say you shouldn't.
MR. MILLWARD: With regards to likelihood of proceeding, Your Honor, most of the evidence that proves that this (indiscernible) was breached is in front of the Court on documentary evidence provided by the defendants in this matter, either directly to my client or provided in response.

I mean, every statement shows that the terms were not acknowledged. Every statement shows that the balance, the principle balance is wrong. Every statement shows that the interest rate was wrong.

My client's affidavit establishes that my client couldn't make payments and made attempts. She has dates and names of individuals she spoke with or met with to discuss these issues to find out why this modification isn't being honored or accepted or why what -- why she's receiving statements saying she owes \(40,50, \$ 60,000\) and not being able to move forward under the agreement that they agreed to.

I think that there should be no question as to what's happened here and that's simply that there was an agreement made that \(I\) agree it's been recognized by all parties, though it wasn't honored, and failure to accept (indiscernible) from the very beginning is a material breach of the agreement.

CAPITOL REPORTERS (775) 882-5322

And it has to -- as a matter of equity, fairness as a matter of law, it has to estop, the servicer here and its predecessors in interest from seeking to enforce the documents for which (indiscernible) breached.

THE COURT: Okay.
MR. MILLWARD: As to the Homeowners Bill of Rights, Your Honor, it's -- the Homeowners Bill of Rights has been violated simply because the terms stated within their notices can't be accurate and aren't accurate.

It's argued by opposing counsel that in California, if you misstate the terms, that's not a material violation. What would be the point of NRS \(107.5001(b)\) if everybody can just make up numbers and make up interest rates and make up the corrected payoff balance?

It has to mean something and to say that providing it absolutely 100 percent incorrect reflection of what is owed on the mortgage in this case, it has to be a material violation. Otherwise, the statute is meaningless.

I mean, the only thing -- I guess if you provide 100 percent incorrect document and comply with the statute, well, that can't be right. Otherwise, it sends somebody a foreclosure notice and have the wrong names and the wrong address and misstate everything. Why would it matter?

THE COURT: Why would you be entitled to some CAPITOL REPORTERS (775) 882-5322
type of relief in terms of a -- if the Court just ordered, okay, fine, you can't foreclose on this notice, go back and do it right?

MR. MILLWARD: Right. Well, I think that -because they can't. It's two stabs. The first argument is they can't foreclose because we've got a breach.

THE COURT: Okay. That, I understand. But under the --

MR. MILLWARD: And then on top --
THE COURT: But you're asking for an injunction to keep them from --

MR. MILLWARD: All right. And then on top of that, the Homeowners Bill of Rights says that when do you this wrong, you're entitled to an injunction. When it's a material violation of the statute, you're entitled to an injunction.

And so your statement is, what kind of relief does that give my clients? Well --

THE COURT: What are you saying, though, that you're entitled to an injunction from them ever again trying to foreclose on the property?

MR. MILLWARD: I -- if we went back and adopted 2009 terms and moved forward under what had happened and -THE COURT: Right.

MR. MILLWARD: -- recognized the breach, well, CAPITOL REPORTERS (775) 882-5322
then I wouldn't say that. I mean, what -- because they would then, in their future notice of default, say that the loan modification principle, balance and interest rate and how many payments have been missed and whatnot, but it would require them to accept those terms. It would require them to up --

THE COURT: Right. But what I'm just saying, if I go that route and I say, okay, fine, take it back to 2009, recalculate it, but --

MR. MILIWARD: But I don't think that solves the problem because my client's never been able to make payments on that.

THE COURT: Well, but it would solve the problem as to the notice issue.

MR. MIILWARD: I don't think so, because the difference is this: If you have a duty to pay, then the balance accrues from 2009 forward. If the breaching party by failing to recognize the terms and not accepting payments under those terms --

THE COURT: All right.
MR. MILLWARD: -- (indiscernible) breaching, then my client --

THE COURT: All right. I accept that argument. But if \(I\) don't rule in favor of your client as to the breach and the material, but \(I\) find that there was a different and CAPITOL REPORTERS (775) 882-5322
your client's not willing to do and I don't order a deed in lieu, but I find that there was no material breach and that they did fail to abide under the 2009 agreement, then certainly they could go back, readjust the note. You can't get an injunction on that.

MR. MILLWARD: I don't think so.
THE COURT: Okay.
MR. MILLWARD: And if they corrected everything, then I couldn't see the future injunction.

THE COURT: Right.
MR. MILLWARD: Right. As to the Homeowners Bill of Rights, as to my clients claiming that they still have -the servicer and U.S. Bank have no rights to pursue a foreclosure, which is the first argument I started with, then yeah, they would be entitled to an injunction there, but not under the Homeowners Bill of Rights.

THE COURT: Okay. All right. Anything else?
MR. MILLWARD: I don't think so. Thank you.
THE COURT: All right. Mr. Hernandez.
MR. HERNANDEZ: Your Honor, I apologize.
THE COURT: You want to take a five-minute break?
MR. HERNANDEZ: Let's take a five-minute break.
THE COURT: All right. Let's go ahead and take a five-minute break. The only thing is I have to get this done CAPITOL REPORTERS (775) 882-5322
by 5:00 or I get in trouble with overtime.
MR. HERNANDEZ: If I go longer than 30 minutes,
Your Honor --
THE COURT: Okay.
MR. HERNANDEZ: -- you can throw something at me.
THE COURT: All right. So, sir, on the
telephone, I'm going to put you on hold -- or actually I'll just leave the phone open. Okay? We'll be back in about five minutes. Court's in recess.
(Recess.)
THE COURT: All right. So let's go back on the record in \(18-C V-03112\). Go ahead, Mr . Hernandez.

MR. HERNANDEZ: Thank you, Your Honor.
Your Honor, I think you're beating
(indiscernible) over the head (indiscernible). The Jones versus Suntrust Mortgage case, which is a binding Nevada (indiscernible) published opinion that says that a mediation contract is a -- a mediation agreement is a binding contract that is enforceable by the parties.

In this instance, on April 3rd, 2018, the parties entered into a mediation agreement. We included that mediation agreement as Exhibit \(Q\) in our book.

In the mediation agreement, it specifically states that the party -- that the Plaintiff -- I'm sorry, that CAPITOL REPORTERS (775) 882-5322
the borrower (indiscernible) and, Your Honor, I want to be clear that even though both (indiscernible) is the only one named on the loan documents as being in the contract -- the trustor or the person who (indiscernible) anything (indiscernible) and I just want to be clear on that.

It states on the agreement that the parties would agree that the (indiscernible) foreclosure pursuant to the terms of March 6th letter, which we included as Exhibit \(P\) in exchange -- the consideration is this, is there can be no contract without a consideration. The consideration was that they could delay the foreclosure (indiscernible) July 15, 2010.

Mr. Millward has attempted to come up here and try and make an argument that somehow there was a mistake at the mediation or that she wasn't fully informed.

Your Honor pointed out very well that the -- that they were represented by counsel. And it's funny, you heard from Mr. Giles. I -- Mr. Giles (indiscernible) have had a lot of other cases because we're frequently both opposing counsel, and out here, \(I\) guess, defending Mr. Giles (indiscernible).

And if they had a problem with Mr. Giles's work, then they should talk to Mr. Giles about that or they should come back to the court or seek some other form of relief. They didn't. They agreed to this modification and they've not CAPITOL REPORTERS (775) 882-5322
gone back to court in the mediation case, they're trying to change the terms of that agreement.

I want to talk about one of the elephants in the room here and it's that May 16 th letter. Your Honor, I really can see here and I didn't include it as an exhibit, but I can produce it later as a supplement if you want. There was a May 16th letter that stated that Ms. Senta no longer qualified for a loan modification.

I want to be clear. The terms of that letter were that she had not submitted all the necessary paperwork to do a deed in lieu. However, Your Honor, I want to point out that on June -- July 12th, 2018, Fay sent Ms. Senta a letter indicating her eligibility for (indiscernible) and this is Exhibit W.

THE COURT: Okay.
MR. HERNANDEZ: And then there's another one, Your Honor, and it's Exhibit Y, an October 7th letter, stating that, again, that they would accept a deed of foreclosure. And that was five days prior to the recording of the notice of default.

Your Honor, as you're well aware, under (indiscernible) or anything, if there was -- obviously there was some error on the part of -- if -- let's assume the worst case scenario, if there was some error on the part of Fay in CAPITOL REPORTERS (775) 882-5322
terms of the deed in lieu, it was subsequently corrected by those two letters.

And I would argue here, Your Honor, that if you wanted -- if she wanted -- if we wanted to come back and give her another chance to sign the deed in lieu, we would not object to that at this point, okay, because that's the terms of the agreement.

However, Ms. Senta never presented any documents or a deed in lieu. Instead, what she did on May 21st, 2018, was send a letter to Fay, this is Exhibit S, where she backed out of the deed in lieu and agreed -- and demanded that Fay renegotiate her loan with her. Okay?

So again, Your Honor, there was an agreement between the parties, an enforceable agreement. They -- she agreed to relinquish the property. In fact, if you look at the complaint, the complaint specifically alleges that we have to take the alleged allegations of the complaint as true.

On paragraph 65, he alleges certificate of mediation provides that the Lincicomes will voluntarily relinquish the property. Okay. I think Your Honor is crystal clear, they have agreed to a relinquishment of the property. They have a signed agreement.

Now, opposing counsel is trying to come up here and say a signed agreement is not anything what it is and, CAPITOL REPORTERS (775) 882-5322

Your Honor, I think the signed agreement is very clear. He wants to try to bring up his clients to come argue it. Your Honor, this is an agreement relating to real property. As we know, real property is subject to the statute of frauds. It doesn't allow for any type of paroled evidence. Okay?

So we have a binding agreement for relinquishment of the property here, okay? That's been provided in this case. All right. That's why she would never be able to succeed on the merits of any type of foreclosure because you're entitled to foreclosure. She's agreed that we can foreclose on the property.

All right. And also, Your Honor, I cited this in my case. I think we also applied the theory of equitable estoppel here and I think I cited it In Re: Harrison living trust case. Your Honor, when a party relies on promises to do something and then the other party doesn't go through with it and then they're estopped from arguing that they can't do it. She has not provided any documentation, any attempt to do a deed of foreclosure.

It would be different if she (indiscernible) here that, yes, here is my deed of lieu -- here's my documents (indiscernible) foreclosure and you're refusing to record them. Yes, then I would argue that there's a case of estoppel of foreclosure of that case.

CAPITOL REPORTERS (775) 882-5322

That's not what's pleaded hereto, Your Honor. The law -- the mediation agreement is a brand new agreement that changed the relationship between the parties. Everything else that happened before that doesn't exist anymore.

When we sent that May 16th letter, we may have technically violated that -- the terms, but that didn't stop the agreement from being the new agreement that was in effect. And our argument is that we corrected it after the fact anyway. So at that point, we were still going on with it.

There's no evidence, no legal argument that says that that deed modification agreement is a void contract. They have provided no defenses. They've provided nothing that says it was done under the pretences of fraud. They've provided nothing that says that she was incapacitated when she did it.

As far as we're -- as far as (indiscernible) nothing happened. That agreement is binding on the parties. Okay. So I guess that's my own (indiscernible) on that issue. Do you have any questions about that issue?

THE COURT: No.
MR. HERNANDEZ: Okay. I want to talk about next the 2009 loan modification agreement, Your Honor. I want to bring your attention to the complaint. The complaint has two causes of action.

CAPITOL REPORTERS (775) 882-5322

One is for a protective cause of action, is for breach of contract. That's on page 12 of the complaint. Okay? It is (indiscernible) in the complaint that on July 31st -- this is Paragraph 82 -- 2009, all received the offer. Plaintiff, Senta Lincicomes, accepted and executed the (indiscernible) provided by Bank of America. Okay.

Following Ms. Senta Lincicome's execution of the (indiscernible), she immediately sent the agreement via Federal Express in the envelope that I provided with Bank of America. (Indiscernible) relief, Bank of America failed to process (indiscernible).

Okay. Now, third cause of action, there's a very similar paragraph on the third cause of action. I believe on Paragraph 90 -- yeah, 97, where they fail to accept payments from October 1st, 2009. Then, Your Honor, the fourth cause of action. All right. The declaratory relief.

Now, I think the reason that opposing counsel is pushing declaratory relief a lot here is because he thinks that's the way to get around the six-year statute of limitation requirement.

As we know, Your Honor, NRS \(11.1901(b)\) places a six-year statute of limitation for the enforcement of any written agreement. That's the maximum statute of limitation that's (indiscernible).

CAPITOL REPORTERS (775) 882-5322

The cause of action accrues, Your Honor, when a party discovered or should have discovered the facts that gave rise to the cause of action. And that's a case I'm sure you're very familiar with, Your Honor.

THE COURT: Um-hum.
MR. HERNANDEZ: It's the case that everybody cites to, which is the Lemus case. Okay? Your Honor, the allegation presented in the complaint is that Bank of America failed to process the loan modification and that was in 2009.

Let's just say we would be going to 2011, which was actually recorded, and still we're beyond the six-year statute of limitation there.

The point I'm making is, Your Honor, is that there's no cause of auction for two or three because they knew about Bank of America's violation all the way back in 2009 and they did nothing, Your Honor. They sat on it. Okay? And this statute, that means the contract is no longer enforceable. They can't come here and say, oh, this is now a valid contract (indiscernible).

Now, the reason I bring this is up is because in the fourth cause of action, Paragraph 101, because the Defendants (indiscernible) material breach in July 11, 2011, (indiscernible) trust and promissory note was modified and excused.

CAPITOL REPORTERS (775) 882-5322

Your Honor, there was no excuse. They never brought any cause of action to prevent the (indiscernible) of it. Okay? And that's important here. They have no -- they have no standing here because they should have brought that by 2015.

They have (indiscernible) -- now, here's the interesting thing, Your Honor. In 2011, or I forget what year it was, they filed for bankruptcy. They claimed -- he just came up here and argued that Bank of America did nothing during the bankruptcy.

But, Your Honor, he alleges in his complaint on Paragraph 37 -- I'm sorry, Paragraph 36, on November 26, 2014, Bank of America appeared in the (indiscernible) case and filed a motion for a relief of stay (indiscernible) appellate U.S. 362.

Okay. Now, he claims that in that motion, Bank of America did not inform -- this is Paragraph 37, did not inform the bankruptcy court 2008 (indiscernible) 2011. Okay. Now, I don't (indiscernible) bankruptcy, Your Honor, and I don't know if you're familiar with bankruptcy court.

But the way it works in bankruptcy is if you file a motion for relief of automatic stay, the other party gets to file their objection.

At that point, they could have filed an CAPITOL REPORTERS (775) 882-5322
objection, saying, hey, you're not (indiscernible) because there was no violation because there's no -- we didn't default on the loan because you didn't honor the 2009 loan modification agreement. Okay? I don't know what happened, Your Honor, because that's not part of the record.

However, on Paragraph 39, it says, prior to discharge, but after the (indiscernible) granting -- I'm sorry. I apologize, Your Honor.

Yes, there's no -- the dates aren't clear. But it says, prior to discharge, but after the Court had entered an order (indiscernible) Bank of America motion for relief of stay, the Lincicomes again applied for a loan modification.

Okay. So at that point, Your Honor, they had a chance to object to all of this, and whatever happened -- I don't have the full record, Your Honor, I can supplement if you want, the bankruptcy court felt that it was sufficient (indiscernible) to provide that the lien provided without the -- that the loan provided without -- that the loan provided without (indiscernible) 2009 loan (indiscernible) agreement was sufficient to proceed with the relief from the (indiscernible).

So what does that mean? That means at that point, they could have had a right to raise an objection and they didn't. So at this point, they're waiving. They're CAPITOL REPORTERS (775) 882-5322
estopped from arguing in 2014 when the motion from (indiscernible) was filed, they're estopped from arguing that the 2009 agreement is in effect. Okay. So that's the first time they're estopped from it.

But I would argue there's a second time they're estopped from it. Your Honor, in 2015, they entered into a trial loan modification.

Now, the way the loan modification works, Your Honor, is you get a loan modification and you recapitalize. Unless there's principle forgiveness, the entire debt back in. She signed and agreed to a temporary loan modification.

When they did that in 2015, Your Honor, she was agreeing at that point that the terms of the new balance of the loan, the way it was recapitalized was correct.

THE COURT: All right. But do I have that document before me today?

MR. HERNANDEZ: I think it's Exhibit 9 to the complaint.

THE COURT: Exhibit 9. I have Bank of America statements.

MR. HERNANDEZ: I wasn't necessarily saying it was Exhibit 9 (indiscernible).

MR. MILLWARD: Exhibit 9 does refer to a loan mod; right?

CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Right. Exhibit 9 refers to a loan modification.

MR. MILLWARD: Yeah, it's not a signed document, it's a --

MR. HERNANDEZ: Well, okay, I understand his point that it's not a signed document, Your Honor, but the minute that she started making payments and she agrees in the complaint that she started making two payments, she was ratifying at that point that that was a valid -- that the numbers were valid loan numbers at that point. Okay.

And she's estopped now from arguing those aren't valid loan numbers based on that. And if we need to supplement the record, I'll supplement the record with official documents.

THE COURT: All right. I'm having trouble finding Exhibit 9.

MR. HERNANDEZ: The complaint?
THE COURT: Yeah. There's Exhibit 4. Okay. Here's Exhibit 9. So Exhibit 9 is the letter to -- sent to Lincicomes, proposed modification terms. If we do not receive acceptance to this by one or more options, we can only accept the first trial payment and certified.

Okay. So it appears to be an offer rather than --

CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: That's true, Your Honor. But the minute -- why would she make payments on an offer if she thought that the --

THE COURT: All right. So --
MR. HERNANDEZ: The terms -- the original terms from 2009 were the ones in effect?

THE COURT: All right. So --
MR. HERNANDEZ: When that loan modification was based on the original deed of trust.

THE COURT: All right. But in terms of accept your offer, make your first trial payment, you're stating that the -- by their own allegations, they made the first trial payment.

MR. HERNANDEZ: They made the first two trial payments, Your Honor.

THE COURT: Okay.
MR. HERNANDEZ: Then there was another one in 2000 (indiscernible) well, that one failed (indiscernible) and, Your Honor, they argue that we refused -- that they refused to accept their payment.

Our position is if you look at the COPD response letter and the Nevada (indiscernible) division letters, our position is that we never -- that either Fay or Bank of America were offered the third payment. CAPITOL REPORTERS (775) 882-5322

THE COURT: Okay.
MR. HERNANDEZ: And opposing -- the Plaintiff's have not produced any proof that a third payment was presented in any of the documents.

THE COURT: Okay. But for purposes of today's hearing, I'm not -- they could very well have --

MR. HERNANDEZ: I understand, Your Honor.
THE COURT: (Indiscernible) the allegation at face value.

MR. HERNANDEZ: All right. And then, Your Honor, again, when they did the 2016 loan modification, the one where they made three payments, but didn't make the final payment, again, Your Honor, that was based on the original terms of the deed of trust, not the modified deed of trust. So again --

THE COURT: Okay. But have you provided me any documents with the 2016 --

MR. HERNANDEZ: No, Your Honor. It's allegations that he's made separate from the complaint.

THE COURT: Okay. All right.
MR. HERNANDEZ: If we need to supplement the record after we finish, we can supplement the record.

THE COURT: Okay.
MR. HERNANDEZ: Okay. All right. So our
argument, Your Honor, is that the -- that there's this issue CAPITOL REPORTERS (775) 882-5322
about whether or not the 2011 -- the 2009 loan modification is in effect.

My two arguments is: Number one, statute of limitation has run, and number two, by entering into these (indiscernible) temporary loan modification agreements and ultimately, Your Honor, the deed in lieu at the end, those were three examples of instances where she (indiscernible) the original debt. Okay.

And I would argue that she was estopped at this point even if there was no statute of limitations from arguing enforcement of the 2009 agreement. That's the point I'm trying to make.

THE COURT: Okay.
MR. HERNANDEZ: Okay. The last point I want to make, Your Honor, is material violations of (indiscernible).

NRS 107 -- and I think this is what we agreed to earlier. I think opposing counsel concedes this point. In NRS 105.563 allows for mitigation violations of (indiscernible) after the fact.

And, Your Honor, our argument is that material violation of the statute that -- I'm sorry, Your Honor, NRS 107.561 -- one more time, NRS 107.5601 states there must be a material violation of NRS 107.400 through 560 in order for this Court to grant injunctive relief.

CAPITOL REPORTERS (775) 882-5322

And we cited California cases, the material violation is a violation where you change the course of the foreclosure. There's no Nevada law, Your Honor, of what the material violation law is.

THE COURT: Right.
MR. HERNANDEZ: The good news about California's Hobar statute is we basically cut and pasted it when we created our Nevada statute. I think that's very persuasive authority here.

I think it's the burden here for the opposing side to come up and say, hey, how would this (indiscernible) the course of the foreclosure had we been provided the information that we got requested. Okay. I'm going to get to my (indiscernible) in a second.

So what happened was -- and this is where I'm a little confused, Your Honor, he claimed -- he claims that his client didn't get any preforeclosure, 30-day preforeclosure notice letter as required under NRS 107.5001. Okay.

However, he elected -- his client elected into mediation in 2016, and this is where I'm a little bit confused, because usually you don't elect into mediation unless there was a notice of a default recorded first. So this was under the old program.

THE COURT: Right.
CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: I could not find, for the life of me, a recorded in 2016. However, what we did produce in this litigation is the letter dated -- I want to draw the attention to this exhibit, Your Honor, December 15th, 2015, and this is the Exhibit I, is the notice of default and intent (indiscernible).

This is, Your Honor, I present to you the NRS 107.5001 letter because it includes all the information, including the indebtedness, foreclosure mediations, options, everything that needed to be done. The notice of default in this case, Your Honor, was recorded in 2017. The statute of limits says 30 days prior to the notice of default being recorded.

Now, I can see where somebody says, well, two years seems to be a very long time. Well, let me -- let -there's a reason why the notice of default wasn't recorded here, Your Honor, and I think we can infer why it took two years to record it.

Because if you look at the allegations set forth in the complaint and the statement of facts that \(I\) presented here, from 2000 -- December of 2015 up until recording the notice of default in November of 2017, the Lincicomes went through a series of loan modification proposals, temporary loan modifications.

CAPITOL REPORTERS (775) 882-5322

They even allegedly went through a foreclosure mediation, and I couldn't find any record of that foreclosure mediation, Your Honor, (indiscernible) didn't seem to have it.

And so through that entire time, they kind of dragged that whole process out, because as you know, Your Honor, if you're going through that process, you can't -because of the dual tracking laws, you can't record a notice of default.

So what happened was for those two years, they exhausted all their remedies and that's when there was a default recorded.

My position here, Your Honor, is that the December 15th letter, that we provided to you is the NRS 107.5001 letter and it shows compliance. Okay.

Now, they claim that that's in error and I've argue here, Your Honor, by legally -- the date they're estopped from arguing that the papers (indiscernible) were in error.

Now, even if those figures were in error, Your Honor, it's not like we didn't provide them with a ton of (indiscernible) two mediations and a ton of loan modifications and also short sale options and a deed in lieu option. Okay.

And during that time, Your Honor, they could have come up and tried to stop the foreclosure or, Your Honor, they CAPITOL REPORTERS (775) 882-5322
could have even sent a RESPA letter, a real estate settlement procedures act letter to the bank and the bank would enforce respond to a qualified written request that says, oh, my God, this error, fix it, and that would have been an actual claim in Federal Court.

They did nothing of the sort, Your Honor. They just went through the modification process. They went through the mediation process. They did nothing up until the very last minute when they had their last resort here to do, Your Honor, the last resort that they tried, Your Honor, was on the 11th hour right before the foreclosure was before the Court, that's when they tried to settle it.

NRS -- that's not fair to my client. My client has presented them with a whole bunch of different options under Hobar and they've refused to take any of them until she agreed to take the deed in lieu. And then at that point, she's now backing out of that deal.

The reason this is important, Your Honor, is because 107.560 only allows for injunctive relief for the violations of 400 through 560. However, he's claiming as an independent reason to stop the foreclosure, the notice of deficiencies in the NOD notice that was (indiscernible), he says there's wrong numbers in there.

Your Honor, the notice, the NOD notice is covered CAPITOL REPORTERS (775) 882-5322
under NRS 107.085. The reason that's important is because it's not under 400 through 560. There is no mechanism under the Hobar statute for this court to grant an injunction based on a defective notice of default. And I've cited a California case, which also stands for that same proposition in my briefing. Okay. So -- and that's Travis versus Nation, sorry.

Your Honor, I would argue that at this point -I'm almost done, at this point, there was no violation of the Hobar because they got the mediation. They went through apparently mediation twice.

They were offered multiple options. They did not -- they actually elected to one of those options, which was the deed in lieu, and now they're backing out of it. Okay.

A Hobar violation occurs when, hey, we're foreclosing on you and the bank's not cooperating with you. That's the purpose of the Homeowners Bill of Rights is to give homeowners alternatives prior to the foreclosure occurring. That's what (indiscernible) those alternatives, I'm positive, were presented here in this case.

THE COURT: Okay.
MR. HERNANDEZ: So unless you have any questions,
Your Honor, that's all I have to have (indiscernible) CAPITOL REPORTERS (775) 882-5322
pleadings.
THE COURT: Let me just say in terms of the letter after the mediation, is there an anticipatory breach or a --

MR. HERNANDEZ: If there was an anticipatory breach, Your Honor, and her -- and if you could -- I could cite -- if there was an anticipatory breach, Your Honor, then she could come back and sue us and force us to enforce the agreement.

THE COURT: Right.
MR. HERNANDEZ: Your Honor, the fact of the matter is that even under Hobar and mixing the legal standards here --

THE COURT: Right.
MR. HERNANDEZ: -- we fixed that later. We offered a deed in lieu twice.

THE COURT: All right.
MR. HERNANDEZ: I suspect what happened --
THE COURT: All right. But are they entitled, the breach themselves, even if they went with that?

MR. HERNANDEZ: Well, Your Honor, I would argue that we -- that these are (indiscernible) that they sent her that letter and I don't have that letter and I can produce it for you.

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right.
MR. HERNANDEZ: Is the reason they sent that letter is because they waited for a month for her to produce the documents. They requested documents and she never produced it.

THE COURT: Okay.
MR. HERNANDEZ: And I think what ended up happening was they figured out, oh, we have an agreement, we have to send her these letters and they did offer her that opportunity to it.

THE COURT: Okay.
MR. HERNANDEZ: I understand that, you know, Your Honor, that doesn't look great for us, but that's an immaterial fact because we did fix it and the fact of the matter is she (indiscernible) just sent the letter saying she didn't want (indiscernible) either.

But, Your Honor, just because the parties don't mean it, doesn't mean you don't have and forcible agreement here. And I argue that we do have an enforceable agreement here to proceed with the (indiscernible) -- and, again, if she wants time to do the deed in lieu, I think that's something we could do.

You know, she (indiscernible) on her record, but right now, these -- this is just a last-minute attempt to stop CAPITOL REPORTERS (775) 882-5322
what's inevitable. And I want to make another point, Your Honor: In Nevada law, it's just common knowledge that if you're in default, you're -- you can't contest the foreclosure. There's no question here that she's in default. THE COURT: All right.

MR. HERNANDEZ: Now, let's say we're going to go back to the 2009 (indiscernible), and I don't mean to be mean to the Lincicomes, but have they saved up all the money to make all the back payments from 2009 to get the loan current, you know, because, you know, that would be the requirement here to fix it.

I had issues like that, Your Honor, where we had loan modification agreements with my other clients where they weren't properly stated and the way to fix that is, okay, the borrower pays what they owe back and then we continue on forward.

THE COURT: Right.
MR. HERNANDEZ: I have seen no evidence, nothing here from the Lincicomes that they -- that they would be willing to reinstate the loan. I don't know how we can go back in time at this point, Your Honor. They had a right after 2009 to go to the court and enforce it and they sat on their rights.

So if they can't provide -- Your Honor, I would CAPITOL REPORTERS (775) 882-5322
argue that if you are going to grant any type of injunction or any type of relief, then they have to post the bond and the payments that they believe are true, right, because and at the end -- and they can post that bond at the end, but they can't post those -- the payments amounts, then this is all an academic exercise because then they're in default no matter what.

THE COURT: Right.
MR. HERNANDEZ: It's just a question of how much their indebtedness is.

THE COURT: Okay. All right.
MR. HERNANDEZ: Anything else, Your Honor?
THE COURT: No, I think you've answered. All right. On the telephone, any argument?

MR. LACHMAN: Your Honor, again, this is Scott Lachman on behalf of Bank of America. I've listened for the past two hours and I'm aware of all the arguments from both parties.

Like I said (indiscernible) this hearing, based on the -- based on my review of the public record, it doesn't appear that Bank of America has any property right, any interest in the foreclosure.

That being said, I agree with the statements from counsel for U.S. Bank regarding statute of limitations and the CAPITOL REPORTERS (775) 882-5322
claims against Bank of America.

Looking at the complaint, it looks like there's two causes of action against Bank of America, breach of duty to act (indiscernible) fair dealing and breach of contract.

And based on the complaint and what Plaintiff's counsel -- also states that Plaintiff counsel's mentioned during his argument this afternoon, the only dates regarding Bank of America are 2009 and 2011. I have no idea why Bank of America was even named in this complaint.

THE COURT: Okay. Anything else?

MR. LACHMAN: That's it, Your Honor. Thank you.
THE COURT: All right. Mr. Millward.

MR. MILLWARD: Thank you, Your Honor. I've tried to keep up.

THE COURT: Okay.
MR. MILLWARD: The statute of frauds argument is an interesting argument as to mediation and the agreement.

First of all, parole evidence isn't allowed, and so we have to look directly at the agreement, what the agreement provides. And all that \(I\) have seen, and counsel can correct me if I'm wrong or the Court if I'm wrong, all \(I\) have seen is to an agreement is a checked box saying deed in lieu.

The statute of frauds requires that agreements in -- affecting property rights be notarized. There's no CAPITOL REPORTERS (775) 882-5322
notary on anything, so that doesn't really work.
Furthermore, the specific terms of what my clients were agreeing to is not provided. I couldn't tell my clients, would you agree to a deed in lieu without fully explaining what that means other than a check box and state what those rights that they would be giving up are or are not.

THE COURT: Did you --
MR. MILLWARD: And the law doesn't afford (indiscernible) --

THE COURT: Well, let me ask: Did your clients try to appeal or have they done anything to argue that the deed in lieu?

MR. MILLWARD: My clients have learned about the deed in lieu check box after they came to meet with me because --

THE COURT: Well, but that's -- see, that's not -- and I'm not going to allow you to go there. They're two adults, they're with an attorney. I have the signatures on the document.

So this idea -- you know, I guess you could argue at trial they're incompetent and so forth, but the problem I'm having with is I -- again, Lyon County is one of the most heavy hit, I've seen plenty of these and what you're arguing is you basically want to undo the last ten years of mediation. CAPITOL REPORTERS (775) 882-5322

And again, this is a typical -- what I've seen in terms of the agreements, this is a typical order that we get back from the mediators.

Patty Shipman is a top notch mediator. I've had other cases involving her and so forth, and so the idea that your clients left that mediation not knowing, I -- again, I'll hear the evidence, I'm not here today to make that decision, but for me to find that you're going to prevail on that point is kind of difficult.

MR. MILLWARD: Well, I think, though, that the Court like is 4 or 5 steps ahead of that. For us to be here on a foreclosure matter, they should have the right to foreclose; right?

And mediation and everything else that derives from that, derives from that right. All of the steps that are required under the law to essentially give them the right to foreclose here are dependent on the facts and agreements that they've admitted are accurate and are --

THE COURT: Right. But even --
MR. MILLWARD: (Indiscernible).
THE COURT: But even by your own allegations and so forth, I have allegations that we all went to mediation, we all agreed to deed in lieu.

MR. MILLWARD: Right.
CAPITOL REPORTERS (775) 882-5322

THE COURT: Your allegations are that they didn't agree to the deed in lieu and so, therefore, they can't foreclose.

MR. MILLWARD: Right. But it's not --
THE COURT: So if you can't prevail, then they have a right to foreclose --

MR. MILLWARD: Well --
THE COURT: -- because you didn't follow through on the mediation.

MR. MILLWARD: But, Your Honor, what would they foreclose on?

THE COURT: That's a separate issue.
MR. MILLWARD: Well, I get that it is. But let's say that we go there.

THE COURT: Okay.
MR. MILLWARD: And then we go to say, okay, they can foreclose because no payments have been made as of October 1st of 2009.

THE COURT: Right.
MR. MILLWARD: Because their predecessor rejected payments.

THE COURT: Right. But, again, they're pointing to the mediation where nobody seemed to care what the balance was, what the interest rates were and so forth.

CAPITOL REPORTERS (775) 882-5322

The mediation statement appears to bring in the March 6th letter, which sets forth the terms as to what payments they were going to make and so forth in terms of the deed in lieu.

And so, again, you have a hard estoppel issue. How are you going to get over the estoppel when they went through three different modification --

MR. MILLWARD: Attempts.
THE COURT: -- attempts?
MR. MILLWARD: I don't think that any of those modifications change the terms of the agreements because there was no signature. The statute of frauds isn't changed.

THE COURT: Okay. But what about the --
MR. MILLWARD: And then all of those --
Your Honor, I'm sorry, I don't mean to move by it.
THE COURT: Yeah.
MR. MILLWARD: All of those are attempts by my client to solve this problem. I mean --

THE COURT: Yeah, but it's an attempt, but at the same time, they get a letter saying, here's our offer, go ahead and make a payment to accept it and they send in a payment.

MR. MILLWARD: Right.
THE COURT: So now we're going to throw out offer CAPITOL REPORTERS (775) 882-5322
and acceptance and we're going to go to a whole new contract theory in Nevada?

MR. MILLWARD: I would love, and so would my clients, to go back to 2015 and say we'll accept that 2015 modification.

THE COURT: And she did, she sent in a payment. It's in your own terms.

MR. MILLWARD: Sent in two and the third was rejected.

THE COURT: Okay. And then what about the other one?

MR. MILLWARD: But even beyond that, they -those temporary agreements can't be enforced by a homeowner. I've been in multiple cases where judges have said, no, we can't accept the trial -- the trial payments as a modification of the agreement. I dealt with one just recently.

Without a signature on the document, there's no modification. The statute of frauds hasn't been followed through with. So it can't be used both ways by the banks, Your Honor.

THE COURT: Okay.
MR. MILLWARD: I get it, but my clients --
THE COURT: All right. Let's jump to the gorilla in the room. Your clients have the ability to put up a bond, CAPITOL REPORTERS (775) 882-5322
several hundred thousand?
MR. MILLWARD: Well, no, because one isn't owed. Under the law, this is a material breach as of 2009.

THE COURT: Yeah, but they would still have to show that they have the ability. So you're saying this basically wipes out all the terms and then I'm reconstructing.

MR. MILLWARD: Well, that's what the law says,
Your Honor. That's what --
THE COURT: No, the law doesn't say that in terms of mortgage law.

MR. MILLWARD: It does.
THE COURT: It does not state that you get to -that the Court gets to re-construe the whole mortgage.

MR. MILLWARD: No, it -- the law says,
Your Honor --
MR. HERNANDEZ: I got it.
MR. MILLWARD: Oh, there it is. The law says, when the parties exchange promises to perform one parties material breach of the promises discharged in the non-breaching party's duty to perform; right?

THE COURT: So you're saying they get something for free.

MR. MILLWARD: Not at all.
THE COURT: Okay.
CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: No, I'm saying --
THE COURT: So if they're not getting something for free, they must have been saving up all that money for all these years and they're able to put up a bond.

MR. MILLWARD: No, in fact, what I'm saying --
THE COURT: Okay.
MR. MILLWARD: -- Your Honor, is that they aren't seeking their house for free.

THE COURT: Okay.
MR. MILLWARD: They're not trying to nullify anything at this juncture. They are trying to say that they don't have the right to foreclose because of this material problem with this 2009 agreement.

This breach by them damaged the document to such a degree that they can't enforce it and enforcement means anything beyond 2009. My client hasn't been afforded the opportunity to act under the agreement. How do you --

THE COURT: But that's incorrect, though. Your client made payments and so forth over the years.

MR. MILLWARD: Only one payment, Your Honor.
THE COURT: And I can't read -- I can't redraft the agreement. So I can't give them additional times on the end. I can't -- so if I agree with your theory that we go back to 2009 --

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Right.
THE COURT: -- then they're going to have to make the payments to catch up.

MR. MILLWARD: I don't -- I don't think so.
THE COURT: They have to.
MR. MILLWARD: Well, if you have no duty to
perform, then how do you -- how do you perform?
THE COURT: Okay. So under your theory, I just say, okay, start the 2009 agreement nine years later.

MR. MILLWARD: Right.
THE COURT: Okay. Now, the 2009 agreement was a 40-year mortgage.

MR. MILLWARD: Right.
THE COURT: Right? So how are they going to make all the payments that they were supposed to make under the 40-year agreement within the next 31 years?

MR. MILLWARD: No, I'm saying that we go back and enforce the agreement as it was written starting today, give my clients the opportunity --

THE COURT: And we put both parties in the position that they would have been had the agreement been in place.

MR. MILLWARD: Right. And putting it -- starting today, I'm not saying starting back --

CAPITOL REPORTERS (775) 882-5322

THE COURT: Well, how do I put both parties in the position that they would have been had the agreement been followed if your clients don't come up with the payments --

MR. MILLWARD: Right.
THE COURT: -- to get current?
MR. MILLWARD: There's a really good argument as to why they can't be forced to do that and that goes to the bankruptcy. When they filed the bankruptcy, it was to catch up. It was to force Bank of America to (indiscernible) and Bank of America didn't show up. They didn't file a claim during the claims period.

They didn't show up until six months before the bankruptcy was over, they filed a motion for relief of stay six months before. And so my clients, instead of paying maybe 30 percent to creditors and making up the necessary --

THE COURT: Wait, wait, wait. But your clients didn't have a right to have the bankruptcy court decide on that. Bankruptcy courts all the time, they're a secured lender. They had a right to go in and ask for relief, which was granted. Am I wrong? Am I misunderstanding the facts?

MR. MILLWARD: I think you're misunderstanding the way Chapter 13 banks works. In a Chapter 13 --

THE COURT: Wait. No, no, no. I'm asking you, counsel, did the bankruptcy court issue a relief? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: No.
THE COURT: Or did they not?
MR. MILLWARD: They issued relief as to discharge (indiscernible). But I think you're misunderstanding the mechanics of Chapter 13. Once you enter into a Chapter 13, you know, and you propose a payment plan and you propose these things, you still have claims that have to be made.

And if a claim is not made by a creditor, then the creditor doesn't receive payment; right? And so my clients were seeking to make payment of the mortgage through the Chapter 13 bankruptcy process. No claim was filed, so --

THE COURT: All right.
MR. MILLWARD: -- according to the five-year plan, they didn't have --

THE COURT: No, I -- again, I'm not going there.
MR. MILLWARD: Well -- and, Your Honor, it's all about the means testing (indiscernible). I do bankruptcy, so I know how this works.

THE COURT: I -- and like I said, I've dealt with the bankruptcy courts, too. Counsel, again, Lyon County was one of the top counties, I've been through these foreclosure things for the last 11 years I've been on the bench.

MR. MILLWARD: Again, I understand that, but I think the Court's missing what I'm saying. When the CAPITOL REPORTERS (775) 882-5322
bankruptcy court looks at what you have to pay your creditors right, they look at their claims right.

THE COURT: Right.
MR. MILLWARD: They do what your claims are and when the claim relates to your house right, to approve that claim by the trustee means that they're going to afford essentially a portion of your payment to that necessity of life, right.

And so when there is no claim there, the rest of the creditors eat up the balance. And so the, the, the left over amount of their income wasn't necessary for their survival of life went to other creditors, went to pay other people at a hundred percent.

THE COURT: Okay. Like I say, so, why didn't they go back to the bankruptcy court and seek relief?

MR. MILLWARD: What relief do you seek in bankruptcy court.

THE COURT: Well you're saying, you're saying they were deprived of some right under the bankruptcy action and now you're coming to a state court asking a state court Judge to make up for something that happened in the bankruptcy.

MR. MILLWARD: I'm actually just trying to correct the argument, Your Honor. The argument is that my CAPITOL REPORTERS (775) 882-5322
clients should be forced to repay nine years of arrearages.
Well I've got five years where Bank of America, right, five of those years didn't seek any relief on their own. When they're in front of a court, a bankruptcy court, they provide the relief that my clients were willing to give them.

And so then why did my clients go forward and not object to the motion from relief of state because their counsel said hey, yes the officer was going to object or do what I think they want to do and that's seek modification and fix this whole loan thing for you and get you outside of the problem and that's exactly what happened.

A loan mod was sought they tried to make payments and Fay Servicing rejected according to my client's affidavit, Fay Servicing rejected her payment. I've shown you evidence that they ran to Bank of America right as soon as they found out there was a rejection and tried to make a payment Bank of America refused. The check is provided.

It's not like my clients have been dallying this whole time trying to defraud somebody. We're not taking advantage of a bank. My clients have just been trying to get what they agreed to from the beginning. And when that wasn't working, they tried to modify the loans over and over and over again.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Right.
MR. MILLWARD: And it didn't work.
THE COURT: And, see, that's the problem I'm having here with how you can succeed when your clients tried to take advantage, and I'm not saying advantage in a bad way or a pejorative way, the law set forth for all these different programs and so forth --

MR. MILLWARD: Right.
THE COURT: -- that homeowners in debt could try to take advantage of to try to keep the home.

MR. MILLWARD: Right.
THE COURT: Now, they went through it several times and then we finally get to a mediation where everybody signs off, including their lawyer, saying this is how it's going to be done, and yet the third time wasn't the charm and we're back to Step 1.

And I'm having difficulty understanding how we don't have estoppel, we don't have changes and how I can go back to the 2009.

Then the other issue I'm having, if I go back to the 2009, all right, 1 can't rewrite contract law and say, well, fine, we're going to go back to 2009 because one of the theories of contract law is put the parties in the position that they agreed to.

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Right.
THE COURT: Right?
MR. MILLWARD: And sue for specific performance.
THE COURT: And so your clients agreed to make payments over the years under this agreement. They agreed to accept them and I can't redraft the agreement. If I go back to the 2009, I then can't go and redraft it. Courts can't do that.

MR. MILLWARD: And I think the Court might also misunderstand, then, what we're asking for; right? I'm not saying we filed a complaint and cause of action for specific performance. That's not what we've been asking for.

We're not -- we're not -- that's not where we're going. I'm saying that might be a solution for us to restate the terms now, starting now and moving forward.

THE COURT: And that would give your clients an additional nine years on -- and so we're now up to what would now be a 59 or 49 or 50 -year mortgage.

They got the benefit of living in a house free, because they didn't pay. Whether or not they had to or not, they had that benefit; right?

MR. MILLWARD: Well, I get the point.
THE COURT: And this is all equitable; right?
This is what you're telling the Court, this is equitable? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Well, it's not -- it's equitable. I'm not asking the Court to say that they had a duty not to pay any equity. I'm saying it as a matter of law.

And so the -- I'm asking the Court to go, okay, if somebody rejects their payment on a mortgage so that they can later foreclose, if somebody does that, is that a breach on that party and is it material.

THE COURT: Right. And in theory they're supposed to put the payment in the bank and then when it comes to court, they have the ability to though show that they had the ability to perform and they had -- all right.

MR. MILLWARD: But the material breach doesn't require performance.

THE COURT: All right.
MR. MILLWARD: And that's the -- that's what they -- the case that I cited.

THE COURT: Right. But in order for them to come forward and ask for the Court to grant the requested relief, they're going to have to show at that point in time, they can perform, because you're basically asking me to enforce the agreement in 2009.

MR. MILLWARD: I'm providing that as a possible remedy. I'm asking the Court to hold that the agreement in 2009 was an effective enforceable agreement, that it was CAPITOL REPORTERS (775) 882-5322
breached by their side, by the Bank of America and its successors, and that because of those breaches, there is no right to foreclose.

THE COURT: Right.
MR. MILLWARD: That's it.
THE COURT: And we're not -- we're just spinning wheels. All right. Do you have any additional evidence?

MR. MILLWARD: I do. I just have some responses, Your Honor, just real quick.

With regards to the idea that the mediation resulted in a modification in the loan, I think that's absurd primarily because it doesn't fulfill the requirements of the modification to an interest in property, so nor do I believe there's sufficient statements of material terms at all.

THE COURT: What about sufficient terms for novation or satisfaction and accord?

MR. MILLWARD: I don't think so either.
THE COURT: Why not?
MR. MILLWARD: Because satisfaction and accord means waiver of rights and there's nothing stated in a -- as to a waiver of rights.

THE COURT: Sure, there is. In the agreement, it says we'll take -- we'll give you the deed, you won't come after us. It sounds like a satisfaction and accord.

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: What agreement are you looking at? Because I might not understand what the Court's reading.

THE COURT: Well, I'm saying, if you look at the mediators agreement, everybody left that mediation saying this is how it's going to go down.

MR. MILLWARD: Well, and the reason I prefaced when I started, I don't know if this agreement as to anything more than a check box saying deed in lieu was the resolution.

THE COURT: Okay. Now, I understand you want to go to statutes of fraud because you're thinking you want to argue against the modification. All right.

And you're saying in order to modify -- all right. But in terms of parties coming together at a mediation and agreeing, this is how we're going to resolve all of our differences, all right, that sounds like a satisfaction and accord.

Everybody agreed, I'll drop this, you drop that. I would agree with you, it's not a modification of the underlying deed. I would agree with you there.

MR. MILLWARD: Okay. And to that point, if it's not, then it's a separate issue and it doesn't change --

THE COURT: Well, it does. It gets into the estoppel arguments that they're making as to how are you going to overcome the -- your clients being estopped.

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Well, so if they are allowed to move forward with this foreclosure; right, we would have to determine the balance owed under the 2009 agreement. We'd have to determine the interest and the late fees under that agreement. Everything would have to be --

THE COURT: I agree with you.
MR. MILLWARD: What's that?
THE COURT: I agree with you on the point.
MR. MILLWARD: Right. And none of that's been done. So my point is they can't foreclose regardless of the mediation, because the underlying documents are defective.

THE COURT: Okay.
MR. MILLWARD: The argument that my client -- or that my client is complaining about NRS 107.080 or 085, we're complaining about NRS 107.500 -- or excuse me, 107 -- yeah, 107.500.

MR. HERNANDEZ: (Indiscernible).
MR. MILLWARD: About the Exhibit I. If you look at Exhibit I, it still has all the wrong terms. Every term in Exhibit I is still wrong. If Exhibit I is materially defective, it would serve no purpose if you could send somebody a notice that has everything wrong on it.

THE COURT: Okay.
MR. MILLWARD: But as to the idea that -- this is CAPITOL REPORTERS (775) 882-5322
last minute. My clients have done everything without being lawyers and without having bundles of money. They've done everything they can to fix this over the years.

The reason that they've made modification payments is not because they wanted to be estopped from enforcing their original terms. It was because they wanted to make it go away so that they pay on their loan. I mean, you can't claim that's estoppel if you're agreeing to something because you think that you're going to be foreclosed upon out of fear.

THE COURT: Well, but they're not here today asking the Court to enforce the mediation agreement.

MR. MILLWARD: You're right. We're here to stop the foreclosure.

THE COURT: Right.
MR. MILLWARD: And before that, we would probably be asking the Court for -- to enforce the modification and all those other things that we could be asking the Court for, but right now, we've got this attempted foreclosure based on absolutely incorrect information, incorrect balances, everything is incorrect.

THE COURT: Okay.
MR. MILLWARD: And a breach of that agreement.
THE COURT: All right. Let me ask Mr. Hernandez CAPITOL REPORTERS (775) 882-5322
some questions. All right. If the mediation agreement does not modify the underlying and it's merely an accord and satisfaction, and the Court finds that they are under the 2009, then isn't the information in the notices that you sent in, if that's incorrect, I can't allow the foreclosure to go forward.

MR. HERNANDEZ: Well, I would argue, Your Honor,


THE COURT: Do you understand what I'm --
MR. HERNANDEZ: I understand your point and it's been troubling to me, too. Okay. So I would argue, Your Honor, that they can't -- that the order for that agreement, they don't have the right to enforce the terms of that agreement, Your Honor, and that they've attempted to modify those terms.

They have -- I would argue there's an accord of satisfaction that that debt is valid, because if that debt was not valid, they would have never agreed to the 2015 modification. They wouldn't have agreed to the 2016 modification. They wouldn't have agreed to the deed in lieu. They would argue that the debt was invalid in each of those instances.

The minute you say that, yes, you're doing this or they would have challenged the standing of the bank to CAPITOL REPORTERS (775) 882-5322
proceed with the foreclosure at the mediation because that's what you're supposed to do with the mediation is say, hey, you don't have a standing because you didn't produce the proper documentation here. There's no evidence here.

Wherever -- they erased that issue at the mediation, that, hey, you can't foreclose upon us because you didn't breach this loan modification agreement and we both know, Your Honor --

THE COURT: Well, but, see, the thing is would have, could have, should have and I can't get involved in that. All I can deal with is what I have in terms of the deed in lieu and so forth.

And let's just say I -- at the end of the day, I agree with you it's valid and enforceable to Mr. Millward's point, okay, fine, they breached the -- they're in breach of the mediators agreement and now your client is seeking to go forward, I would still have to have something saying --

MR. HERNANDEZ: I understand your point now, Your Honor (indiscernible) waived that right at the mediation (indiscernible) that, Your Honor. That's my point is they waived all their other rights, all their -- any other claim they could make when they agreed.

THE COURT: Right. But I can't allow the
foreclosure to go forward until I have a determination or an CAPITOL REPORTERS (775) 882-5322
order saying that because --
MR. HERNANDEZ: Could you do -- do you want us to go to the -- I'm sorry, were you the mediation judge for this matter or is it the other department?

THE COURT: It would be the other department.
MR. HERNANDEZ: Okay. Do you want us to go to the other department and seek enforcement of the mediation certificate first? Is that what --

THE COURT: Well, that's what I'm thinking might -- what might need to happen, because I -- you're using a nonjudicial process.

MR. HERNANDEZ: Correct, Your Honor.
THE COURT: All right. And if I agree with Mr. Millward in terms of the mediation doesn't affect it, the HAMP, the HARP doesn't affect the underlying, and we're under the 2009 filed in 2011.

And I agree with them that they might have a victory, but at the end of the day, you can come in and, you know -- but in terms of his argument that, fine, even if you're correct in trying to foreclose, you still have to use the right numbers.

MR. HERNANDEZ: That's true. Okay. And let's take this (indiscernible) logical conclusion, Your Honor. If the standard is reasonable by (indiscernible) success of the CAPITOL REPORTERS (775) 882-5322
merits.
THE COURT: Right.
MR. HERNANDEZ: (Indiscernible) stop the
foreclosure from (indiscernible) violation. If I go back to court, I think you have to ask yourself: What's the reasonable likelihood that I'm going to succeed over here, because if I do succeed over there, this all becomes moot.

THE COURT: Right.
MR. HERNANDEZ: Right? So --
THE COURT: Right.
MR. HERNANDEZ: And at this point, Your Honor, I mean, in equity, we've given her multiple opportunities.

THE COURT: I hear you.
MR. HERNANDEZ: (Indiscernible) deed in lieu, so I guess that's my analysis right now.

THE COURT: Okay.
MR. HERNANDEZ: If I wanted you to pull the trigger right now on that argument, my point would be that, Your Honor, they have no chance of winning over there.

THE COURT: Right.
MR. HERNANDEZ: And if they have no chance of winning over there, they have no chance of winning over here either. That's -- that would be my point.

THE COURT: All right. CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Your Honor, I have one missed housekeeping matter --

THE COURT: Right.
MR. HERNANDEZ: -- real quick. The -- and I discussed this with opposing counsel beforehand. The injunction order says that the notice of sale is -- it says that the Court can cancels the notice of sale and I thought that to meant that it cancelled the sale date, but it didn't cancel the entire (indiscernible). That would actually be a rescission of the notice.

THE COURT: Okay.
MR. HERNANDEZ: If you can clarify what that means, I would appreciate that. I mean, (indiscernible) if you granted -- rule in our favor, do we have to record a new notice of sale or -- because what we did in this instance, we just postponed the sale pending an order to the court. As far as (indiscernible) if you want us to (indiscernible) sale, I'm fine with that.

THE COURT: All right. I -- like I said, I'd be afraid to give you what you ask for because then \(I\) get another saying that you violated.

MR. HERNANDEZ: Right. That's why I want -that's why I want clarification on what you meant by that order, Your Honor.

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. Mr. Millward.
MR. MILLWARD: Yes, I've talked about this with other counsel actually.

THE COURT: Right.
MR. MILLWARD: And that's where I got the idea. I had it happen where the stay is lifted and nobody knows the sale date because nobody knew when it was continued to, and so I would much rather have the Court cancel the notice of sales and the new notices recorded if the Court determines that an injunction is improper. I just think that that's appropriate.

MR. HERNANDEZ: And the order -- then the order should say rescission of notice of sale, Your Honor.

THE COURT: Right. I agree with you on that, but --

MR. HERNANDEZ: Then -- so \(I\) would ask that if they order -- if you order -- if the Court ordered on (indiscernible) just to be clear (indiscernible) that is we have it scheduled in.

We did an order (indiscernible) which would allow (indiscernible) under the statute until November 30th. But, of course, if this Court doesn't rule today (indiscernible) we're not going to do anything.

THE COURT: Okay.
MR. HERNANDEZ: But if the Court wants to -CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. Let me just ask you one other question, though. In terms of the bond, what are you requesting for a bond?

MR. HERNANDEZ: Your Honor, I would say the entire amount.

THE COURT: Which is?
MR. HERNANDEZ: The 2000 -- every payment made since 2009.

THE COURT: Okay.
MR. HERNANDEZ: Minus the five payments that they made, we can apply those.

THE COURT: Do you know what was paid?
MR. HERNANDEZ: Yeah, there were two payments made in the 2015 -- there are allegations of two payments that were made in 2015 and there was three payments that were made in 2016. Okay?

THE COURT: So that's it in terms of -- is that all --

MR. HERNANDEZ: That's all I'm aware of. There's only been five payments made since 2000 -- if there was more, I am unaware.

THE COURT: All right. What do you believe was paid?

MR. MILLWARD: Your Honor, there was also the CAPITOL REPORTERS (775) 882-5322
first payment made in the year.
MR. HERNANDEZ: Okay. Six payments.
MR. MILLWARD: September.
MR. HERNANDEZ: Six payments, Your Honor.
THE COURT: So six -- so they paid six payments in nine years?

MR. MILLWARD: Well --
MR. HERNANDEZ: There's slightly -- and there --
I think there are more. We can get the exact numbers.
THE COURT: Okay.
MR. MILLWARD: But those five payments were made on modifications.

THE COURT: Okay. But were there payments made on -- before the modifications?

MR. MILLWARD: Yeah, there was the first payment and then all payments after that were rejected under the loan modification.

THE COURT: Okay. When was the original loan entered?

MR. HERNANDEZ: 2007, Your Honor.
MR. MILLWARD: 2007.
THE COURT: 2007. And they made payments 2007 to 2009.

MR. MILLWARD: They made payments 2007 to 2008 CAPITOL REPORTERS (775) 882-5322
where they fell into hardship.
THE COURT: Okay.
MR. MILLWARD: Which has caused the modification.
THE COURT: All right. And then there were six payments made after 2008.

MR. MILLWARD: Yeah, September of 2009, two in 2015 and then the three in 2016.

THE COURT: Okay. And what is the payment under the 2009?

MR. MILLWARD: At the time as the payment went from (indiscernible) to 14, when the interest rate changed, I believe that is under Exhibit, Your Honor --

MR. HERNANDEZ: It was 197729 from September 1st, 2009. In September through August 31st, 2014, and then from September 1st onwards \$2,105.10.

THE COURT: 2,100.
MR. HERNANDEZ: \$5.10.
THE COURT: Okay.
MR. HERNANDEZ: Plus, Your Honor, there's escrow. The escrow is variant, but here, this document produced shows an escrow of 295.33 , so we -- if Your Honor -- I'm fine with even just using that as an escrow figure, 295 (indiscernible). So it would be those two numbers I gave you, plus the 295.33 as escrow.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Okay. All right.
MR. MILLWARD: I believe that's what comports with the (indiscernible) Your Honor.

THE COURT: Okay. All right. So what I'm going to do -- all right. I'm going to rule in favor of the Plaintiffs' to extend it, the reason being that I -- there is a likelihood of success proving that the 2009 agreement modified the 2007 and that those are the terms.

And I find that I agree with the bank, I think they're likely to prevail in terms of the estoppel. They're likely to in terms of the estoppel that they went through, two modifications and the Supreme Court mediation.

However, the remedy for the estoppel and the -on the modifications and the mediation would be I could grant them specific performance if they ask, but technically the Plaintiff's are correct that if they wish to use a nonjudicial foreclosure, then it has to be based upon the numbers of the 2007, 2009.

THE COURT: All right. And then I'm going to require a bond in the amount, see it was filed in 2011. I'll require an amount of the payments due times 12 , times seven.

So it's 84 payments. And then I'll require the parties to file each month the payment due. Okay, what is the rule require? When does the bond have to be posted? Is it CAPITOL REPORTERS (775) 882-5322

30 days or --
MR. HERNANEZ: I'm fine with 30 days, Your Honor.
THE COURT: 30 days. And we'll start the payment each month December, what's today the 20th, December 20th, by the 20th of each month.

Okay. Now, let me ask if terms of mediation, do you want me to set up a mediator or would you prefer someone private or --

MR. HERNANEZ: Your Honor, just to clarify, I can go back to the other department, I'm not sure.

THE COURT: I don't even if you need -- if you want to file -- well, well, there's two departments so I'm not going to tell you -- again, I'm not going to tell you I'm not going to get involved in possible litigation that the bank's going to file. But there's two departments.

Judge Schlegelmilch is the other Judge. And normally what we do is we mediate each others, but if there is going to be additional filing, what I would suggest is I can get a senior Judge.

And if there's a senior Judge, the two of you are familiar with that you think would help out, I'll gladly do that, or if there's not a senior Judge or if there's a Judge in another district, we all help each other out.

MR. MILLWARD: Judge Gamble, Judge Russell, Judge CAPITOL REPORTERS (775) 882-5322

Young, any of those three would work.
THE COURT: Right.
MR. HERNANEZ: I guess there's no judges in
(indiscernible) Clark County.
THE COURT: Yes.
MR. HERNANEZ: Your Honor, how about this. If
can we be assigned in Reno? I would --
THE COURT: A Judge in what.
MR. HERNANEZ: In Washoe.
THE COURT: No, I don't have a problem with that, that's why I'm asking.

MR. HERNANEZ: The reason is because that kind of splits the baby.

THE COURT: For travel wise.
MR. HERNANEZ: For travel wise.
THE COURT: You're out of Reno too?
MR. HERNANEZ: -- (indiscernible) Washoe Judge --
MR. MILLWARD: What's that?
THE COURT: You're out of Reno too?
MR. MILLWARD: No, I'm in Minden (indiscernible).
THE COURT: You are in Minden, okay. No, I don't
have a problem -- is there a Judge in Washoe that I can ask?
MR. MILLWARD: The chief, there is Judge --
MR. HERNANEZ: Stiglich?
CAPITOL REPORTERS (775) 882-5322

THE COURT: Hardy.
MR. MILLWARD: Yeah.
THE COURT: All right. I know Judge Hardy real well, I'm sure he would be willing to do it.

MR. HERNANEZ: I'll take your word for it. I'll just --

THE COURT: Yeah, like I say, I know Judge Hardy. Let me see, I'll contact Judge Hardy and see if he would be willing to do it. And I'm guessing with the holidays, we probably would be looking at January.

MR. HERNANEZ: That's fine, Your Honor.
THE COURT: All right.
MR. MILLWARD: Your Honor, as to the order, are you going to find --

THE COURT: I'll find that the parties' agreement that there's irreparable injury. What's the rule?

MR. HERNANEZ: I have it here, 65.
THE COURT: In your brief?
MR. HERNANEZ: It's in my brief, Your Honor.
THE COURT: All right. What --
MR. HERNANEZ: It's on page, page 7, Your Honor.
THE COURT: Page 7. All right. So a likelihood of success on the merits that the 2009 applies, and again, 1 don't have a counterclaim or answer, so \(I\) can't, I mean, an CAPITOL REPORTERS (775) 882-5322
answer and counterclaim alleging the Defense -- well, I just say in terms of the remedy, even if I go with the estoppel or I can't find today that the modifications or the Supreme Court mediation would have modified the 2011.

Now, maybe if you supplement the record, there's additional documents out there, that could change my mind. I don't have anything that \(I\) saw today that looked like it satisfied the statute of frauds to modify a deed of trust and note.

MR. HERNANEZ: Again, there's nothing that stops me from going.

THE COURT: Like I'm saying, that's up --
MR. HERNANEZ: Yeah.
THE COURT: -- to you.
MR. HERNANEZ: Okay.
THE COURT: I'm just saying with what I have filed before me today, I don't have any evidence that the 2009 filed in 2011 was modified by a document that would satisfy the statute of frauds.

Then in terms of the arguments as to the estoppel and the mediation, possible accord and satisfaction, I'm agreeing with Mr. Millward, I agree with his argument that even if the bank prevails on that, if they seek to use a judicial, non-judicial foreclosure, it would have to be based CAPITOL REPORTERS (775) 882-5322
off of the 2009, 2011 file document.

Because \(I\), again, maybe \(I\) changed my mind at trial and so forth, but for today's hearing as to your statute of frauds arguments, that they had the burden to enforce the 2011, I don't see that as of today.

Perhaps you know if it's fully briefed in a motion for summary judgment, but as of today, I'm not seeing that.

So, how I see this going, I think Mr. Millward's correct, if they want to use a non-judicial, I can't estop them at this point in time.

MR. HERNANEZ: Your Honor, then --
THE COURT: All right. Is that enough? You're going to be drafting the order.

MR. HERNANEZ: Your Honor, if he doesn't --
THE COURT: Right.
MR. HERNANEZ: -- let's say they don't post the bond, the 84 months.

THE COURT: Right.
MR. HERNANEZ: Then could we have (indiscernible) renotice of sale or just --

THE COURT: Okay. So, when did you renotice the sale that's.

MR. HERNANEZ: We did an oral postponement, Your CAPITOL REPORTERS (775) 882-5322

Honor.
THE COURT: An oral postponement. So then let's clarify, you'll do the order clarifying that I didn't --

MR. HERNANEZ: They can put it in that order.
THE COURT: Okay.
MR. HERNANEZ: That's fine.
THE COURT: All right. That the Court did not intend to rescind.

MR. HERNANEZ: Okay. Okay. Do you need any specific findings, Mr. Millward, or --

MR. MILLWARD: Yeah, one more thing, Your Honor.
THE COURT: Go ahead.
MR. MILLWARD: What about the owner
(indiscernible) rights? Does the Court find that it's been violated?

THE COURT: No. As to the homeowner Bill of Rights, well, I think I would have to go there too.

So based upon the finding that it would have to, I believe that the homeowner Bill of Rights would have to reflect the -- the 2009, '11, and I don't have anything in the record before me today that the numbers reflected in the notices were based upon the 2009, '11 and we'll go back up. Okay.

So I think that there is a likelihood of success CAPITOL REPORTERS (775) 882-5322
on the homeowners' Bill of Rights.
All right. Any other clarification, Mr .
Millward?
MR. MILLWARD: I believe that's all.
THE COURT: Okay.
MR. MILLWARD: Thank you, Your Honor.
THE COURT: All right. So this is how I typically work it. Send Mr. Hernandez a copy, the other attorney a copy. If the two of you can't agree on it, if one or two emails doesn't work it out, simply submit your own and then, otherwise, do a request for submit to Judge to sign the order.

And once I get that request for submit, I'm assuming everybody's agreed. But like I'm saying, if we can't handle it in one or two emails, I don't want to get dragged into a dispute. Simply file your own order and I'll cut and paste.

MR. MILLWARD: Thank you, Your Honor.
THE COURT: Okay.
MR. MILLWARD: Do you have a deadline?
THE COURT: I'd like to get it done in about -well, I'm ordering payments by the 20 th, so could you get me something by the tenth?

MR. MILLWARD: Of December? CAPITOL REPORTERS (775) 882-5322

THE COURT: December.
MR. HERNANEZ: Thank you (indiscernible), Your Honor.

THE COURT: Okay. Any questions, counsel, on the telephone?

MR. LACHMAN: No, Your Honor, I appreciate your time. I'll likely be filing a motion to submit.

THE COURT: All right. I'm terrible with names, that's why I'm calling you counsel on the telephone.

MR. LACHMAN: Yeah, not a problem.
THE COURT: I apologize. All right, thank you, very much. I'm hanging up the telephone. You have a good day. All right.

Have a good day, gentlemen.
MR. MILLWARD: Thank you, Your Honor.
(Proceedings concluded.)

CAPITOL REPORTERS (775) 882-5322

STATE OF NEVADA, ) ) \(s s\). CARSON CITY. )

I, Shellie Loomis, a certified transcriber for the Third Judicial District Court, do hereby certify:

That \(I\) received a CD-ROM containing the above-entitled hearing and transcribed said hearing to the best of my ability.

That the foregoing transcript, consisting of pages 1 through 114, is a full, true and correct transcript of said hearing.

Dated at Carson City, Nevada, this 12 th day of October, 2021.
//Shellie Loomis// SHELLIE LOOMIS, RPR

CAPITOL REPORTERS (775) 882-5322
\begin{tabular}{|c|c|c|c|c|}
\hline & 51:16;60:1 & 33:8 & 5;33:13;34:14,19; & amend (2) \\
\hline \$ & accruing (1) & affecting (1) & 36:5,8,10;37:2,12; & 22:19,24 \\
\hline & & 77:24 & 38:14,23;39:1;40:1,6, & amended (7) \\
\hline \$2,105.10 (1) & accurate (3) & affidavit (16) & 7,8,24;41:19;45:5; & 22:9,14;29:13; \\
\hline \[
105: 15
\] & 49:9,9;79:18 & 10:24;11:3,20,22; & 47:7,10;48:18,21,24; & 30:2;31:2;33:9;34:22 \\
\hline \$2800 (1) & Ackerman (4) & 12:11;16:21;17:12 & 52:3;53:18,21,22,23; & amends (2) \\
\hline 33:2 & 6:14,21;7:13;8:1 & 24;18:13,18,18,22 & 54:6;55:2;56:7,13,14, & 22:21,22 \\
\hline \$42,000 (1) & acknowledged (2) & 27:16;34:4;48:12; & 22,24;57:1,3,6;58:2, & America (58) \\
\hline \(24: 5\)
\(\$ 5.10\) & \[
\begin{aligned}
& \text { 46:24;48:9 } \\
& \text { act (3) }
\end{aligned}
\] & \[
\begin{gathered}
89: 14 \\
\text { afford (3) }
\end{gathered}
\] & \[
\begin{aligned}
& \text { 2,7,7,11,17,22;59:8, } \\
& \text { 23;62:4,20;63:3; }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 6:21;7:13;8:12,21; } \\
& 9: 1,10 ; 12: 20,23 ; 13: 1,
\end{aligned}
\] \\
\hline \[
\begin{array}{r}
\$ 5.10(\mathbf{1}) \\
105: 17
\end{array}
\] & \[
\begin{array}{|l|}
\text { act (3) } \\
71: 2 ; 77: 4 ; 84: 17
\end{array}
\] & \[
\begin{aligned}
& \text { afford (3) } \\
& 33: 3 ; 78: 8 ; 88: 6
\end{aligned}
\] & \[
\begin{aligned}
& \text { 23;62:4,20;63:3; } \\
& \text { 67:11;73:9;74:8,18, }
\end{aligned}
\] & \[
\begin{aligned}
& 9: 1,10 ; 12: 20,23 ; 13: \\
& 2,14 ; 14: 3,11 ; 20: 2
\end{aligned}
\] \\
\hline \$60,000 (1) & action (15) & afforded (1) & 19;77:17,19,20,22; & 22:3;23:14;24:9; \\
\hline 48:17 & 30:4;32:18,20; & 84:16 & 82:16;84:13,17,22; & 26:2,3;27:19,21; \\
\hline A & 21;61:2;77:3; & 101:20 & 86:2;91:5,6;92:21,23, & 24;29:7,21;30:13,17 \\
\hline & &  & 93:22;94:1,4,7; & 18,\(19 ; 32: 14 ; 36: 1\)
\(47 \cdot 9 \cdot 59 \cdot 6,10,10\) \\
\hline \[
\begin{gathered}
\text { Aberasturi (2) } \\
6: 19 ; 8: 10
\end{gathered}
\] & \[
11: 3 ; 16: 19 ; 71: 4
\] & afterwards (1) & 13,14;98:7,16;106:7; & \[
60: 8 ; 61: 9,13,17 ;
\] \\
\hline abide (1) & Actually (11) & 39:20 & 109:15 & 62:11;63:19;65:24; \\
\hline 52:3 & 20:9;30:12;31:8; & again (29) & agreements (11) & 76:16,21;77:1,3,8,9; \\
\hline ability (4) & \[
\begin{aligned}
& 38: 16 ; 41: 1 ; 53: 7 \\
& 60: 11 ; 72: 13 ; 88: 23
\end{aligned}
\] & \[
\begin{aligned}
& 7: 10 ; 8: 10 ; 11: 24 \\
& 22: 5 ; 32: 6 ; 33: 4
\end{aligned}
\] & \[
\begin{aligned}
& 3: 16 ; 4: 2 ; 26: 20 \\
& 33: 6 ; 67: 5 ; 75: 13
\end{aligned}
\] & \[
\begin{aligned}
& 86: 9,10 ; 89: 2,16,18 ; \\
& 93: 1
\end{aligned}
\] \\
\hline \[
82: 24 ; 83: 5 ; 92: 10
\] & \[
\begin{aligned}
& \text { 60:11;72:13;88:23; } \\
& 101: 9 ; 102: 3
\end{aligned}
\] & \[
\begin{aligned}
& \text { 22:5;32:6;33:4; } \\
& 35: 19 ; 50: 19 ; 55: 18 ;
\end{aligned}
\] & \[
\begin{aligned}
& 33: 6 ; 67: 5 ; 75: 13 ; \\
& 77: 23 ; 79: 2,17 ; 81: 11 ;
\end{aligned}
\] & America's (1) \\
\hline able (7) & added (1) & 56:13;62:12;66:11, & 82:13 & 60:15 \\
\hline 14:15;15:10;20:4; & 11:22 & 13,14;74:20;76:15; & agrees (1) & amount (6) \\
\hline 48:17;51:10;57:8; & addendum (1) & 78:22;79:1,6;80:22; & 64:7 & 24:5;47:3;88:11; \\
\hline 84:4 & 21:13 & 81:5;87:15,20,23; & ahead (10) & 103:5;106:20,21 amounts (1) \\
\hline absolutely (2) & \[
\begin{array}{|c}
\text { addition (1) } \\
23: 3
\end{array}
\] & \begin{tabular}{l}
89:24;107:13; \\
109:23;110:10;111:2
\end{tabular} & \[
\begin{aligned}
& 9: 20,23 ; 10: 2 ; \\
& \text { 12:10,11;52:23; }
\end{aligned}
\] & \[
\underset{76: 5}{\text { amounts (1) }}
\] \\
\hline 49:16;96:20
absurd (1) & additional (8) & against (3) & \[
\begin{aligned}
& \text { 12:10,11;52:23; } \\
& \text { 53:12;79:11;81:21; }
\end{aligned}
\] & \[
\begin{gathered}
\text { 76:5 } \\
\text { analysis (1) }
\end{gathered}
\] \\
\hline absurd (1)
93:11 & \[
11: 6,9,22 ; 84: 22
\] & \[
77: 1,3 ; 94: 11
\] & \[
\begin{aligned}
& 3: 12 ; 79: 11 ; 81: 21 ; \\
& 112: 12
\end{aligned}
\] & \[
100: 15
\] \\
\hline academic (1) & 91:17;93:7;107:18; & agree (21) & allegation (2) & and/or (1) \\
\hline 76:6 & 110:6 & 13:12;37:10;39:7 & 60:8;66:8 & 19:4 \\
\hline accept (15) & address (2) & 42:15;48:21;54:7; & allegations (8) & answered (1) \\
\hline 14:10;27:22;28:20; & \(42: 19 ; 49: 23\)
adjudicate (1) & \(76: 23 ; 78: 4 ; 80: 2 ;\)
\(84.23 \cdot 94 \cdot 18 \cdot 19 \cdot 95 \cdot 6\) & 56:17;65:12;66:17; & 76:13 \\
\hline 48:22;51:5,22;55:18; & adjudicate (1) & 84:23;94:18,19;95:6,
\(8 \cdot 98 \cdot 14 \cdot 99 \cdot 13,17\). & 69:19;79:21,22;80:1; & anticipatory (3) \\
\hline 59:14;64:21;65:10, & 30:18 & 8;98:14;99:13,17; & 103:14 & 73:3,5,7 \\
\hline 20;81:21;82:4,15; & adjust & 102:13;106:9;
\(110 \cdot 22 \cdot 113.9\) & alleged (1) & anymore (2) \\
\hline 91:6 & \[
\begin{array}{|c}
7: 7 \\
\text { adjustable (1) }
\end{array}
\] & \[
\begin{aligned}
& \text { 110:22;113:9 } \\
& \text { agreed (32) }
\end{aligned}
\] & \[
\begin{aligned}
& 56: 17 \\
& \text { allegedly (1) }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 39:9;58:4 } \\
& \text { apart (1) }
\end{aligned}
\] \\
\hline \[
\begin{gathered}
\text { acceptance (2) } \\
64: 21 ; 82: 1
\end{gathered}
\] & \[
21: 23
\] & 14:1;15:19;25:8 & allegedly (1) 70:1 & \[
\begin{gathered}
\operatorname{apart}(1) \\
4: 16
\end{gathered}
\] \\
\hline accepted (4) & adjusted (1) & 35:24;36:1,14,15; & alleges (3) & apologize (4) \\
\hline 13:1;14:4;48:16; & 21:7
admits & \[
37: 20 ; 38: 18 ; 41: 10
\] & 56:16,18;61:11 & \[
22: 6 ; 52: 20 ; 62: 8
\] \\
\hline 59:5 & \[
\begin{array}{|c}
\text { admits (1) } \\
30: 24
\end{array}
\] & \[
\begin{aligned}
& 42: 11 ; 46: 24 ; 48: 18 \\
& 54: 24: 56: 11,15,21
\end{aligned}
\] & \[
\begin{gathered}
\text { alleging (1) } \\
110: 1
\end{gathered}
\] & \begin{tabular}{l}
114:11 \\
apparently (2)
\end{tabular} \\
\hline \[
\begin{gathered}
\text { accepting (1) } \\
51: 17
\end{gathered}
\] & admitted (4) & \[
\begin{aligned}
& 54: 24 ; 56: 11,15,21 ; \\
& 57: 10 ; 63: 11 ; 67: 16 ;
\end{aligned}
\] & allow (6) & \[
\begin{array}{|c}
\text { apparently (2) } \\
14: 15 ; 72: 11
\end{array}
\] \\
\hline access (1) & 13:9;28:8;45:16; & 71:16;79:23;89:22; & 9:22;57:5;78:17; & appeal (1) \\
\hline 24:12 & 79:18 & 90:24;91:4,5;94:17; & 97:5;98:23;102:19 & 78:11 \\
\hline accord (7) & adopt (1) & 97:18,19,20;98:22; & allowed (5) & appear (5) \\
\hline 93:16,19,24;94:16; & \[
\begin{gathered}
\text { 27:22 } \\
\text { adonted }
\end{gathered}
\] & 113:14 agreeing (9) & \begin{tabular}{l}
42:7;46:17,18; \\
77:18•95•1
\end{tabular} & \[
8: 24 ; 16: 20 ; 23: 2
\]
\[
30: 19 ; 76: 21
\] \\
\hline 97:2,16;110:21 & adopted (2) & \[
36: 20,24 ; 39:
\] & allowing (1) & appeared (2) \\
\hline \begin{tabular}{l}
according (10) \\
16:20;22:21;25:
\end{tabular} & \(17.4,50.21\)
adopting (2) & 42:20;63:13;78:3 & 19:20 & appeared (2) \\
\hline 27:15;34:4;45:7; & 13:19,20 & 94:14;96:8;110:22 & allows (2) & appearing (1) \\
\hline 46:18,23;87:13; & adults (1) & agreement (132) & 67:18;71:19 & 10:12 \\
\hline 89:14 & 8:18 & 12:19;13:3,10,12, & almost (1) & appears (2) \\
\hline accountable (2) & Advanced & 16,17;14:4,6,14,16 & 72:9 & 64:23;81:1 \\
\hline 14:21;15:10 & 14:23;15:3 & 15:11,14,16,21; & alternatives (3) & appellate (1) \\
\hline accrual (1) & advantage (4)
\(89: 21 ; 90: 5,5,10\) & \[
\begin{aligned}
& 19: 14,20,20 ; 20: 3,5,8 \\
& 14,23 ; 22: 9,14,15,19
\end{aligned}
\] & \[
\begin{aligned}
& \text { 40:11;72:19,20 } \\
& \text { Alvarez (1) }
\end{aligned}
\] & 61:14 applicable (1) \\
\hline \(14: 19\)
accrued (2) & affect (2) & \[
23: 13,18,19,22 ; 24: 2 \text {, }
\] & \[
\begin{gathered}
\text { Alvarez (1) } \\
3: 9
\end{gathered}
\] & applicable (1)
\[
11: 23
\] \\
\hline accrued (2)
16:8,8 & 99:14,15 & 24;25:6,11,13;26:18, & always (4) & application (1) \\
\hline accrues (2) & affected (1) & 19;27:5,12;28:3,4,5, & 4:19,19,21;47:23 & 5:12 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline applied (9) & 57:18;74:24;81:19 & 12:19,23;13:1,2,14; & bench (1) & 16,20 \\
\hline 24:21;25:9;26:9; & attempted (9) & 14:3,7,9,11,12;15:14; & 87: & break (3) \\
\hline 31:22;35:12;36:8; & 27:14,15,17,18 & 17:9;18:7,8,9,9; & benefit (2) & 52:21,22,24 \\
\hline 46:16;57:13;62:12 & 28:1,11;54:13;96:19; & 19:12;20:2,3;22:3 & 91:19,21 & brief (3) \\
\hline applies (1) & 7:14 & 12;23:14;24:9;25:10, & better (2) & 9:22;109:18,19 \\
\hline 109:23 & attempts (4) & 10;26:1,3;27:18,21; & 7:23;8:16 & briefed (1) \\
\hline apply (2) & 48:13;81:8,9,17 & 28:9,11,16,21,22,23, & beyond (4) & 111:6 \\
\hline 31:20;103:11 & attend (1) & 24;29:7,20,21;30:13, & 45:21;60:11;82:12; & briefing (1) \\
\hline appreciate (2) & 6:13 & 17,18,19;32:14; & 84:16 & 72:6 \\
\hline 101:13;114:6 & attention (3) & 36:16;37:17;47:9 & Bill (13) & briefly (2) \\
\hline appreciated (1) & 12:17;58:23;69:3 & 52:13;59:6,9,10;60:8, & 16:1;19:9,10; & 3:18;47:15 \\
\hline 4:24 & attorney (2) & 15;61:9,13,16;62:11; & 36:17;49:6,7;50:1 & bring (6) \\
\hline appropriate (2) & 78:18;113:9 & 63:19;65:23;71:2,2; & 52:11,16;72:18; & 4:21;10:16;57:2; \\
\hline 35:19;102:10 & auction (1) & 76:16,21,24;77:1,3,8, & 112:16,19;113:1 & 58:23;60:20;8 \\
\hline approve (1) & 0:1 & 8;86:9,10;89:2,16,17, & binder (8) & brought (2) \\
\hline 88:5 & August (3) & 21;92:9;93:1;97:24; & 5:9,10,13,15;6:4; & 61:2,4 \\
\hline April (4) & 21:14;28:15 & 106:9;110:23 & 16:15;23:10,11 & bumped (1) \\
\hline 35:18;44:22;45:7 & 105:14 & bankruptcy (29) & binders (1) & 25:23 \\
\hline 53:20 & authority (3) & 30:7,9,10,10,14,16; & 8:17 & bunch (1) \\
\hline argue (18) & 4:9,13;68:9 & 35:6;61:8,10,18,19, & binding (5) & 71:14 \\
\hline 56:3;57:2,23;63:5; & authorization (1) & 20,21;62:16;86:8,8, & 28:6;53:16,18; & bundles (1) \\
\hline 65:19;67:9;70:16; & 24:11 & 13,17,18,24;87:11, & 57:6;58:17 & 96:2 \\
\hline 72:8;73:21;74:19; & automatic (1) & 17,20;88:1,15,17,19, & bit (1) & burden (2) \\
\hline 76:1;78:11,20;94:11; & 61:22 & 22;89:4 & 68:20 & 68:10;111:4 \\
\hline \[
97: 7,11,16,21
\] & \[
\begin{array}{r}
\text { aware (5) } \\
7: 16: 13
\end{array}
\] & \[
\begin{gathered}
\text { banks (2) } \\
82: 19: 86
\end{gathered}
\] & \[
\begin{gathered}
\text { bond (9) } \\
76: 2.4:
\end{gathered}
\] & C \\
\hline \[
49: 10 ; 61: 9
\] & \[
76: 17 ; 103: 19
\] & bank's (3) & \[
103: 2,3 ; 106: 20,
\] & C \\
\hline arguing (7) & away (3) & 15:15;72:17 & 111:18 & California (3) \\
\hline 57:17;63:1,2 & 35:6;37:13;96:7 & 107:14 & book (1) & 49:11;68:1;72:4 \\
\hline 64:11;67:10;70:17; & & Bar (3) & 53:22 & California's (1) \\
\hline 78:23 & B & 3:12;7:13;8:14 & borrower (2) & 68:6 \\
\hline argument (28) & & Based (15) & 54:1;75:15 & call (1) \\
\hline 12:12,14;14:5; & baby (1) & 8:23;11:14;41:9; & both (10) & 10:8 \\
\hline \[
19: 16 ; 42: 14 ; 43: 8,9
\] & 108:13 & 64:12;65:9;66:13; & 26:19;27:16;31:11; & called (1) \\
\hline \[
45: 12 ; 46: 10 ; 50: 5
\] & back (41) & 72:3;76:19,20;77:5; & 54:2,19;76:17;82:19; & 31:23 \\
\hline 51:22;52:14;54:14; & 8:6;14:12,17;22:4; & 96:19;106:17; & 85:20;86:1;98:7 & calling (2) \\
\hline 58:8,10;66:24;67:20; & 24:23;26:23;38:13; & 110:24;112:18,22 & bottom (2) & 12:23;114:9 \\
\hline 76:14;77:7,16,17; & 39:20;46:21,22;48:1; & basically (5) & 44:21,22 & came (2) \\
\hline \[
86: 6 ; 88: 24,24 ; 95: 13
\] & 50:2,21;51:7;52:4; & 39:5;68:7;78:24; & bound (2) & 61:9;78:1 \\
\hline \[
99: 19 ; 100: 18 ; 110: 22
\] & 53:8,11;54:23;55:1; & 83:6;92:20 & \[
37: 20 ; 39: 20
\] & can (49) \\
\hline arguments (7) & 56:4;60:15;63:10; & basis (1) & box (5) & 4:15,19,20;7:10; \\
\hline \[
40: 5,10 ; 67: 3
\] & 73:8;75:7,9,15,21; & 40:17 & 36:9;77:22;78:5 & 8:15;9:16;11:13; \\
\hline 76:17;94:23;110:20; & 79:3;82:4;84:24; & beating (1) & 14;94:8 & 14:17;16:10;29:2; \\
\hline 111:4 & 85:17,24;88:15; & 53:14 & branch (1) & 30:8;32:2;39:7; \\
\hline around (1) & 90:16,19,20,22;91:6; & becomes (2) & 28:23 & 42:19,23;44:7;47:19; \\
\hline 59:19 & 100:4;107:10;112:22 & 35:5;100:7 & brand (1) & 49:13;53:5;54:9; \\
\hline arrearages (1) & backed (1) & beforehand (1) & 58:2 & 55:5,5;57:10;62:15; \\
\hline 89:1 & 56:10 & 101:5 & breach (31) & 64:21;66:21;69:14, \\
\hline assert (1) & backing (2) & began (2) & 13:19;15:7;16:17; & 17;73:23;75:20;76:4; \\
\hline 40:15 & 71:17;72:14 & 33:23;35:1 & 19:13;20:5;35:10; & 77:20;80:17;90:4,18; \\
\hline assigned (2) & bad (1) & begin (1) & 36:16;37:2;46:14,15; & 92:6,19;96:3;98:11; \\
\hline 22:16;108:7 & 90:5 & 34:2 & 48:23;50:6,24;51:23; & 99:18;101:7,12; \\
\hline assume (3) & balance (19) & beginning (2) & 52:2;59:2;60:22; & 103:11;104:9;107:9, \\
\hline 26:1;42:6;55:23 & 16:7;19:2;21:7,19; & 48:23;89:22 & 73:3,6,7,20;77:3,4; & 18;108:7,22;112:4 \\
\hline assumed (2) & 24:1;25:18,24;34:7, & behalf (8) & 83:3,19;84:14;92:6, & cancel (2) \\
\hline 25:24;26:5 & 16;42:9;48:9,10; & 3:9,13;6:21;7:13; & 12;96:23;98:7,15 & 101:9;102:8 \\
\hline assuming (1) & 49:14;51:3,16;63:13; & 8:12,19,21;76:16 & breached (10) & cancelled (1) \\
\hline 113:14 & 80:23;88:10;95:3 & believes (1) & 12:19,20;13:18; & 101:8 \\
\hline attached (4) & balances (2) & 11:11 & 15:16;19:19,20;48:5; & cancels (1) \\
\hline 6:8;16:21;17:12; & 26:6;96:20 & believing (1) & 49:4;93:1;98:15 & 101:7 \\
\hline 34:5 & Bank (87) & 23:10 & breaches (3) & Cane (1) \\
\hline attempt (7) & \[
3: 13 ; 4: 24 ; 6: 21
\] & below (1) & 19:13;47:9;93:2 & \[
14: 22
\] \\
\hline 27:20;31:8,17,19; & 7:13;8:12,21;9:1,10; & 27:2 & breaching (2) & capitalized (2) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 23:24;24:7 & check (4) & 42:2,11,15;46:21; & conform (1) & counties (1) \\
\hline car (1) & 78:5,14;89:18;94:8 & 50:17;52:12;57:2; & 10:23 & 87:21 \\
\hline 28:23 & checked (2) & 75:13;78:3,4,10,13; & confused (2) & County (4) \\
\hline care (1) & 36:9;77:22 & 79:6;82:4,22,24; & 68:16,21 & 10:15;78:22;87:20; \\
\hline 80:23 & chief (1) & 85:19;86:3,14,16; & consider (2) & 108:4 \\
\hline case (32) & 108:23 & 87:10;89:1,5,7,19,21; & 11:3;29:17 & couple (1) \\
\hline 9:4;13:14;14:22; & chime (1) & 90:4;91:4,16;94:24; & consideration (3) & 5:23 \\
\hline 15:5,13,13,13;35:23; & 9:7 & 96:1 & 54:9,10,10 & course (4) \\
\hline 36:4;40:6,11,21,22, & chose (1) & clients' (1) & considering (1) & 11:12;68:2,12 \\
\hline 24;47:24;49:17; & 27:21 & 18:21 & 5:20 & 102:21 \\
\hline 53:16;55:1,24;57:8, & cite (1) & client's (10) & contact (1) & COURT (437) \\
\hline 13,15,23,24;60:3,6,7; & 73:7 & 14:6;17:24;41:10; & 109:8 & 3:4,11,15,21;4:4,8, \\
\hline 61:13;69:11;72:5,21; & cited (7) & 42:19;45:9;46:11; & contacting (1) & 11,14,18;5:4,6,10,17, \\
\hline 92:16 & 39:23;40:4;57:12, & 48:12;51:10;52:1; & 24:9 & 19,20;6:1,7,10,14,17, \\
\hline cases (4) & 14;68:1;72:4;92:16 & 89:14 & contained (1) & 22;7:2,4,7,10,14,19; \\
\hline 54:19;68:1;79:5; & cites (1) & clients's (1) & 12:11 & 8:6,13,15;9:3,6,8,13, \\
\hline 82:14 & 0: & 8:4 & contains (1) & 15,19,21,23;10:2,6,9, \\
\hline catch (2) & citing (1) & close (2) & 6:4 & 13,20;11:2,6,8,12,16, \\
\hline 85:3;86:8 & 40:12 & 9:16;12:17 & contest (1) & 18,18,21;12:5,9,15, \\
\hline cause (10) & claim (15) & closed (2) & 75:3 & 17;13:8,23;14:24; \\
\hline 59:1,12,13,15;60:1, & 30:13,15,17;38:16 & 44:20;45:8 & continually (1) & 15:2,4,9,12;16:12,16, \\
\hline 3,14,21;61:2;91:11 & 42:23;70:15;71:4; & closing (1) & 25:10 & 23;17:8,15,18,23; \\
\hline caused (1) & 86:10;87:8,11;88:5,6, & 45:1 & continue (2) & 18:1,4,6,11,20,23; \\
\hline 105:3 & 9;96:8;98:21 & code (2) & 13:19;75:15 & 19:6,16;20:7,11,14, \\
\hline causes (2) & claimed (2) & 40:8,12 & continued (2) & 17,20,24;21:5,11,15; \\
\hline 58:24;77:3 & 61:8;68:16 & coming (2) & 35:18;102:7 & 22:1,5,9,12,18,23; \\
\hline cease (1) & claiming (3) & 88:20;94:13 & continues (1) & 23:2,5,17;27:24;29:4, \\
\hline 36:4 & 16:24;52:12;71:20 & common (1) & 13:18 & 12,17;30:1,4,9,21; \\
\hline certain (1) & claims (9) & 75:2 & continuing (2) & 31:1,6,10,13,16;32:3, \\
\hline 4:10 & 36:14;44:2;61:16; & Compare (1) & 26:5;29:22 & 6,10,16,18;33:4,5,8, \\
\hline certainly (3) & 68:16;77:1;86:11; & 17:23 & contract (16) & 11,15,18,21,24;34:2, \\
\hline 27:11;36:12;52: & 87:7; \(88: 2,4\) & complaining (3) & 14:21;19:12;20:6; & 12,20,22;35:1,3,6,9, \\
\hline certificate (5) & clarification (2) & 27:3;95:14,15 & 28:6;53:18,18;54:3, & 16;36:6,19,22;37:5,9, \\
\hline 35:15;41:2,9; & 101:23;113:2 & complaint (19) & 10;58:11;59:2;60:17, & 12,16,17;38:1,2,7,11, \\
\hline 56:18;99:8 & clarify (5) & 19:23;56:16,16,17; & 19;77:4;82:1;90:21, & 19,21;39:4,13,17; \\
\hline certified (1) & 12:11;19:8;101:12; & 58:23,23;59:2,3; & \[
23
\] & 40:2,16,20,22;41:3,7, \\
\hline 64:22 & 107:9;112:3 & 60:8;61:11;63:18; & conversion (1) & \[
12,16,21,24 ; 42: 10
\] \\
\hline challenged (1) & clarifying (1) & 64:8,17;66:18;69:20; & 24:3 & 14,21;43:1,7,11,14, \\
\hline 97:24 & 112:3 & 77:2,5,9;91:11 & cooperating (1) & 17,23;44:5,9,16,18; \\
\hline chance (5) & Clark (2) & completely (1) & 72:17 & 45:4,11,15,18,20,24; \\
\hline 56:5;62:14;100:19, & 10:14;108:4 & 29:8 & COPD (1) & 46:5,12;47:11,14; \\
\hline 21,22 & clear (7) & compliance (1) & 65:21 & 48:2,5;49:5,24;50:1, \\
\hline change (7) & 54:2,5;55:9;56:21 & 70:14 & copy (3) & 7,10,18,23;51:6,12, \\
\hline 21:19,19;55:2; & 57:1;62:9;102:17 & complied (2) & 4:23;113:8,9 & 19,22;52:7,10,17,19, \\
\hline 68:2;81:11;94:21; & CLERK (2) & 33:17;39:2 & corrected (4) & 21,23;53:4,6,11; \\
\hline 110:6 & 5:18;7:9 & complies (1) & 49:14;52:8;56:1 & 54:23;55:1,15;58:20; \\
\hline changed (4) & client (45) & 18:5 & 58:8 & 60:5;61:18,20;62:10, \\
\hline 58:3;81:12;105:11; & 4:15;8:19;11:1,4; & comply (1) & correctly (1) & 16;63:15,19;64:15, \\
\hline 111:2 & 12:21,22;14:1,9,20, & 49:20 & 19:4 & 18;65:4,7,10,16;66:1, \\
\hline changes (1) & 20;15:9;16:19;23:14; & comports (1) & counsel (34) & 5,8,15,19,22;67:13, \\
\hline 90:18 & 24:9;27:15,20;28:19, & 106:2 & 3:7;4:5,6;8:2 & 24;68:5,24;71:5,12; \\
\hline changing (1) & 20,22;31:9;37:23; & concede (2) & 11:2;23:10;24:14; & 72:3,22;73:2,10,14, \\
\hline 31:13 & 38:3;42:18,20;44:19; & 47:18,20 & 38:7,13,21;39:19,23; & 17,19;74:1,6,11;75:5, \\
\hline Chapter (5) & 46:17,18;47:2,3,6,17; & concedes (1) & 40:4;41:8,13,15,21; & 17,22;76:8,11,13; \\
\hline 86:22,22;87:5,5,11 & 48:7,12;51:21,23; & 67:17 & 42:3;49:10;54:17,19; & 77:10,12,15,21;78:7, \\
\hline charged (1) & 68:17,19;71:13,13; & concern (1) & 56:23;59:17;67:17; & 10,16;79:11,19,21; \\
\hline 21:9 & 81:18;84:16,19; & 11:24 & 76:24;77:6,20;86:24; & 80:1,5,8,12,15,19,22; \\
\hline charging (1) & 95:13,14;98:16 & concerned (2) & 87:20;89:9;101:5; & 81:9,13,16,19,24; \\
\hline 27:3 & clients (47) & 11:20;30:10 & 102:3;114:4,9 & 82:6,10,21,23;83:4,9, \\
\hline Charles (1) & 11:8;19:8;27:17; & concluded (1) & counsel's (1) & 12,13,21,24;84:2,6,9, \\
\hline 24:12 & 28:10;29:9,11;35:11; & 114:16 & 77:6 & 18,21;85:2,5,8,11,14, \\
\hline charm (1) & 36:9,13,23;37:3,6; & conclusion (1) & counterclaim (2) & 20;86:1,5,16,17,23, \\
\hline 90:15 & 38:14,23;39:2;41:5; & 99:23 & 109:24;110:1 & 24;87:2,12,15,19; \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 88:1,3,14,15,17,18, & day (4) & 6:12;48:6;60:22 & 11:17 & \[
34: 17 ; 106: 21,23
\] \\
\hline 20,20;89:4,4;90:1,3, & 98:13;99:18; & defending (1) & discuss (3) & during (4) \\
\hline 9,12;91:2,4,9,16,23, & 114:13,14 & 54:20 & 3:23;30:8;48:14 & 61:10;70:23;77:7; \\
\hline 24;92:2,4,8,10,14,17, & days (8) & Defense (1) & discussed (3) & 86:11 \\
\hline 18,23;93:4,6,15,18, & 12:2;16:4;22:7; & 110:1 & 4:9;8:16;101:5 & duties (1) \\
\hline 22;94:3,9,22;95:6,8, & 55:19;69:12;107:1,2, & defenses (1) & discussing (1) & 19:24 \\
\hline 12,23;96:11,12,15, & 3 & 58:12 & 29:16 & duty (13) \\
\hline 17,18,22,24;97:3,9; & deadline (1) & deficiencies (1) & discussions (3) & 14:6;15:8,17,23 \\
\hline 98:9,23;99:5,9,13; & 113:20 & 71:22 & 3:16;4:1;37:22 & \[
20: 1,3 ; 47: 2,4 ; 51: 15
\] \\
\hline 100:2,5,8,10,13,16, & deal (3) & defraud (1) & dispute (3) & \[
77: 3 ; 83: 20 ; 85: 6 ; 92: 2
\] \\
\hline 20,24;101:3,7,11,16, & \[
29: 10 ; 71: 17 ; 98: 11
\] & \[
89: 20
\] & \[
13: 4,5 ; 113: 16
\] & \\
\hline \[
\begin{aligned}
& \text { 19;102:1,4,8,9,13,16, } \\
& \text { 21,23,24;103:1,6,9, }
\end{aligned}
\] & \[
\begin{gathered}
\text { dealing (1) } \\
77: 4
\end{gathered}
\] & \[
\underset{84: 15}{\text { degree (1) }}
\] & \[
\begin{gathered}
\text { dissolve (1) } \\
35: 23
\end{gathered}
\] & E \\
\hline 12,17,22;104:5,10, & dealt (2) & delay (1) & district (2) & earlier (2) \\
\hline 13,18,22;105:2,4,8, & 82:16;87:19 & 54:11 & 10:13;107:23 & 23:9;67:17 \\
\hline 16,18;106:1,4,12,19; & debt (7) & demanded (1) & division (1) & easier (1) \\
\hline 107:3,11;108:2,5,8, & 21:4;63:10;67:8 & 56:11 & 65:22 & 4:19 \\
\hline 10,14,16,19,21; & 90:9;97:17,17,21 & department (4) & document (28) & eat (1) \\
\hline 109:1,3,7,12,15,18, & debtor (1) & 99:4,5,7;107:10 & 16:22;17:15;18:6; & 88:10 \\
\hline 20,22;110:3,12,14, & 16:9 & departments (2) & 19:4;20:21;21:1,7; & echo (1) \\
\hline 16;111:13,16,19,22; & December (8) & 107:12,15 & 22:2;23:10;24:19; & 7:6 \\
\hline 112:2,5,7,7,12,14,16; & 24:10;69:4,21; & dependent (1) & 34:21;35:8;36:18,20; & effect (5) \\
\hline 113:5,7,19,21;114:1, & 70:13;107:4,4; & 79:17 & 37:16;43:16,24;45:1; & 39:24;58:7;63:3; \\
\hline 4,8,11 & 113:24;114:1 & depending (1) & 49:20;63:16;64:3,6; & 65:6;67:2 \\
\hline courtroom (2) & decide (2) & 4:20 & 78:19;82:17;84:14; & effective (9) \\
\hline \[
7: 22,23
\] & 10:17;86:17 & deprived (1) & 105:20;110:18;111:1 & 13:5,12,13;19:19; \\
\hline courtrooms (1) & decision (2) & 88:19 & documentary (3) & 25:6,7;35:8;36:11; \\
\hline 8:7 & 40:17;79:7 & derives (2) & 13:23;14:2;48:6 & 92:24 \\
\hline courts (3) & declaration (2) & 79:14,15 & documentation (2) & either (9) \\
\hline 86:18;87:20;91:7 & 12:4;16:21 & designed (1) & 57:18;98:4 & 14:11;27:5;29:12; \\
\hline Court's (6) & declaratory (3) & 32:1 & documents (28) & 36:16;48:7;65:23; \\
\hline 11:17;37:21;43:13; & 19:23;59:16,18 & determination (1) & 5:23,24;6:5,8;8:20; & 74:16;93:17;100:23 \\
\hline 53:9;87:24;94:2 & declined (1) & 98:24 & 12:4,7,8,15;13:23; & elect (1) \\
\hline covered (3) & 35:15 & determine (2) & 31:11;32:7;33:5; & 68:21 \\
\hline 45:19;47:12;71:24 & deed (65) & 95:3,4 & 34:5;35:14,19;45:15; & elected (3) \\
\hline created (2) & 15:15;19:19,21; & determines (1) & 49:3;54:3;56:8; & 68:19,19;72:13 \\
\hline 21:22;68:8 & 20:8,10,12,15,20; & 102:9 & 57:21;64:14;66:4,16; & elephants (1) \\
\hline creditor (4) & 21:3,3;22:13,16; & difference (1) & 74:4,4;95:11;110:6 & 55:3 \\
\hline 30:14;35:8;87:8,9 & 28:5;30:22;33:9; & 51:15 & done (13) & eligibility (1) \\
\hline creditors (4) & 35:7,24;36:5,9,15,20; & differences (1) & 10:11;12:2;42:4; & 55:13 \\
\hline 86:15;88:1,10,12 & 37:1,7,14,18;38:5; & 94:15 & 52:24;58:13;69:10; & else (8) \\
\hline crystal (1) & 42:12;44:20,24;45:2, & different (6) & 72:9;78:11;90:15; & 5:1;7:15;47:11; \\
\hline 56:20 & 4,10;52:1;55:11,18; & 8:18;51:24;57:20; & 95:10;96:1,2;113:21 & 52:17;58:4;76:12; \\
\hline current (6) & 56:1,5,9,11;57:19,21; & 71:14;81:7;90:6 & doubt (1) & 77:10;79:14 \\
\hline 13:13;32:2;34:6,7; & 58:11;65:9;66:14,14; & difficult (2) & 36:8 & emails (2) \\
\hline 75:9;86:5 & 67:6;70:22;71:16; & 47:16;79:9 & down (2) & 113:10,15 \\
\hline cut (2) & 72:14;73:16;74:21; & difficulty (3) & 29:24;94:5 & enclosed (1) \\
\hline 68:7;113:16 & 77:22;78:4,12,14; & 6:23;7:5;90:17 & drafting (1) & 44:24 \\
\hline D & \[
\begin{aligned}
& 79: 23 ; 80: 2 ; 81: 4 ; \\
& 93: 23 ; 94: 8,19 ; 97: 20
\end{aligned}
\] & directly (2) 48:7:77:19 & \begin{tabular}{l}
\[
111: 14
\] \\
dragged (2)
\end{tabular} & encouraged (1)
\[
35: 22
\] \\
\hline & \[
98: 11 ; 100: 14 ; 110: 8
\] & disagrees (1) & \[
70: 5 ; 113: 15
\] & end (7) \\
\hline dallying (1) & default (34) & 4:6 & draw (1) & 37:1;67:6;76:4,4 \\
\hline 89:19 & 13:6;16:3,5,18,18, & discharge (4) & 69:3 & 84:23;98:13;99:18 \\
\hline damaged (1) & 20;17:13,14,16; & 35:5;62:7,10;87:3 & drop (2) & ended (1) \\
\hline 84:14 & 18:10,12;28:8;34:5, & discharged (1) & 94:17,17 & 74:7 \\
\hline date (6) & 10,14;35:10;46:4,8; & 83:19 & drove (1) & enforce (16) \\
\hline \[
\begin{aligned}
& 21: 21 ; 25: 2 ; 42: 21 ; \\
& 70: 16 ; 101: 8 ; 102: 7
\end{aligned}
\] & \[
\begin{aligned}
& 47: 5 ; 51: 2 ; 55: 20 \\
& 62: 2 ; 68: 22 ; 69: 5,10
\end{aligned}
\] & discharges (1) 15:7 & \begin{tabular}{l}
\[
28: 23
\] \\
druthers (1)
\end{tabular} & \[
\begin{aligned}
& 15: 14 ; 19: 20,21 \\
& 20: 4 ; 37: 4 ; 49: 3 ; 71: 2
\end{aligned}
\] \\
\hline dated (5) & 12,16,22;70:8,11; & disclosed (1) & dru:4 & \[
73: 8 ; 75: 22 ; 84: 15
\] \\
\hline 5:14;18:14;21:4; & 72:4;75:3,4;76:6 & 44:4 & dual (1) & 85:18;92:20;96:12, \\
\hline 23:23;69:3 & defective (3) & discovered (2) & \[
70: 7
\] & \[
17 ; 97: 13 ; 111: 4
\] \\
\hline dates (3) & 72:4;95:11,21 & 60:2,2 & due (6) & enforceability (1) \\
\hline 48:13;62:9;77:7 & defendants (3) & discretion (1) & 8:7;23:16;24:5; & 46:13 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline enforceable (8) & 94:24;96:5 & 15,16;26:12,14; & 48:22 & finally (1) \\
\hline 19:12;36:15;53:19; & estoppel (12) & 34:11,23;44:8;53:22; & fair (2) & 90:13 \\
\hline 56:14;60:18;74:19; & 57:14,23;81:5,6; & 54:8;55:5,14,17; & 71:13;77:4 & find (13) \\
\hline 92:24;98:14 & 90:18;94:23;96:8; & 56:10;63:17,19,22, & fairness (1) & 12:24;29:2;48:15; \\
\hline enforced (3) & 106:10,11,13;110:2, & 23;64:1,16,18,19,19; & 49:1 & 51:24;52:2;69:1; \\
\hline 24:21;35:8;82:13 & 20 & 69:4,5;95:18,19,20, & faith (1) & 70:2;79:8;106:9; \\
\hline enforcement (4) & even (26) & 20;105:12 & 39:13 & 109:14,15;110:3; \\
\hline 59:22;67:11;84:15; & 13:24;17:5;18:8; & exhibits (6) & fall (1) & 112:14 \\
\hline 99:7 & 25:8;29:6;30:19,20; & 4:24;5:1,2,4,21; & 35:13 & finding (3) \\
\hline enforcing (1) & 38:13;41:12,14;54:2; & 25:17 & familiar (4) & 17:19;64:16; \\
\hline 96:6 & 67:10;70:1,19;71:1; & exist (1) & 31:23;60:4;61:20; & 112:18 \\
\hline enough (1) & 73:12,20;77:9;79:19, & 58:4 & 107:21 & findings (1) \\
\hline 111:13 & 21;82:12;99:19; & exists (1) & Fantastic (1) & 112:10 \\
\hline enter (2) & 105:22;107:11; & 13:5 & 47:22 & finds (1) \\
\hline 37:12;87:5 & 110:2,23 & expect (1) & far (4) & 97:3 \\
\hline entered (8) & Everybody (9) & 42:15 & 4:16;58:16,16; & fine (16) \\
\hline \[
12: 24 ; 14: 14 ; 33: 6
\] & 30:24;37:16,19; & Explain (2) & 101:16 & 4:18;9:12;11:4,10; \\
\hline \[
35: 5 ; 53: 21 ; 62: 10
\] & 40:22;49:13;60:6; & 19:16;41:20 & favor (3) & 43:1,9;50:2;51:7; \\
\hline 63:6;104:19 & 90:13;94:4,17 & explained (2) & 51:23;101:14; & 90:22;98:15;99:19; \\
\hline entering (1) & everybody's (1) & 38:10;41:19 & 106:5 & 101:18;105:21; \\
\hline 67:4 & 113:14 & explaining (1) & Fay (28) & 107:2;109:11;112:6 \\
\hline enters (1) & evidence (29) & 78:5 & 3:13;13:14;14:3,6, & finish (1) \\
\hline 46:9 & 10:18,20,22,23; & explanation (1) & 12;19:11;20:2;25:12, & 66:21 \\
\hline entire (4) & 11:3;12:16;13:9,24; & 24:17 & 17;27:17;28:9,18,19; & firm (1) \\
\hline 63:10;70:4;101:9; & 14:2;17:3,3;21:17; & Express (1) & 31:18,20;32:13,23; & \[
6: 15
\] \\
\hline 103:5 & 24:9;26:8;29:1,17; & \[
59: 9
\] & 33:19,23;36:16; & first (24) \\
\hline entitled (10) & 43:3,6;48:4,6;57:5; & extend (1) & 47:10;55:12,24; & 4:23;5:11;8:24; \\
\hline \[
37: 3,5 ; 39: 12
\] & 58:10;75:18;77:18; & 106:6 & 56:10,11;65:23; & \[
10: 12 ; 15: 11 ; 18: 6
\] \\
\hline 49:24;50:14,15,19; & 79:7;89:15;93:7; & extended (2) & \[
89: 14,15
\] & \[
21: 20 ; 23: 21 ; 24: 10
\] \\
\hline 52:15;57:10;73:19 & 98:4;110:17 & 13:20;21:22 & fear (1) & 30:2;37:11;44:24; \\
\hline envelope (1) & evidenced (1) & extension (1) & 96:10 & 50:5;52:14;63:3; \\
\hline 59:9 & 25:14 & 21:17 & Federal (2) & 64:22;65:11,12,14; \\
\hline equal (1) & evidentiary (5) & extract (1) & 59:9;71:5 & 68:22;77:18;99:8; \\
\hline 27:13 & 10:5,7,15,16;11:12 & \[
12: 16
\] & fees (1) & 104:1,15 \\
\hline equitable (4) & exact (1) & & 95:4 & five (9) \\
\hline 57:13;91:23,24; & 104:9 & F & fell (2) & 8:2;25:23;53:8; \\
\hline 92:1 & exactly (1) & & 34:9;105:1 & 55:19;89:2,3;103:10, \\
\hline equity (3) & 89:12 & face (1) & felt (2) & 20;104:11 \\
\hline 49:1;92:3;100:12 & example (3) & 66:9 & 29:13;62:16 & five-minute (3) \\
\hline erased (1) & 26:21;29:21;40:10 & fact (21) & few (2) & \[
52: 21,22,24
\] \\
\hline 98:5 & examples (1) & \[
11: 11 ; 13: 6,11,15
\] & 12:15;26:15 & five-year (1) \\
\hline error (7) & 67:7 & 15:15;25:22;28:1,12; & figure (1) & 87:13 \\
\hline 27:21;55:23,24; & exchange (3) & 37:22;38:24;39:23; & 105:22 & fix (7) \\
\hline 70:15,18,19;71:4 & 15:6;54:9;83:18 & 41:9;43:12;45:14; & figured (1) & 14:16;71:4;74:14; \\
\hline escrow (5) & excited (1) & 56:15;58:8;67:19; & 74:8 & 75:11,14;89:11;96:3 \\
\hline \[
105: 19,20,21,22,24
\] & 28:13 & 73:11;74:14,14;84:5 & figures (1) & fixed (2) \\
\hline essence (1) & excuse (7) & facts (8) & 70:19 & 21:23;73:15 \\
\hline 21:22 & 21:21;22:15;25:7; & 11:14,19,22;12:10; & file (12) & fluctuates (1) \\
\hline essentially (7) & 26:22;34:15;61:1; & 60:2;69:20;79:17; & 30:13,15,17;46:7; & 26:15 \\
\hline 16:11;28:6;35:6; & 95:15 & 86:20 & \[
61: 21,23 ; 86: 10
\] & follow (5) \\
\hline \[
36: 4 ; 46: 15 ; 79: 16
\] & excused (1) & factual (1) & 106:23;107:12,15; & 9:11;39:9;40:14; \\
\hline 88:7 & 60:24 & 13:22 & 111:1;113:16 & 42:6;80:8 \\
\hline establish (1) & executed (3) & fail (2) & filed (19) & followed (4) \\
\hline 47:16 & 31:11;34:15;59:5 & 52:3;59:1 & 8:19;20:15,20; & 13:17,18;82:18; \\
\hline establishes (1) & execution (1) & failed (6) & 22:2;31:3;34:10; & 86:3 \\
\hline 48:12 & 59:7 & 40:11,13,14;59:10; & 46:1;61:8,13,24; & following (3) \\
\hline estate (1) & exercise (1) & 60:9;65:18 & 63:2;86:8,13;87:11; & 27:4;29:5;59:7 \\
\hline 71:1 & 76:6 & failing (2) & 91:11;99:16;106:20; & force (4) \\
\hline estop (2) & exhausted (1) & 19:14;51:17 & 110:17,18 & 30:18;37:18;73:8; \\
\hline 49:2;111:10 & 70:10 & fails (1) & filing (3) & 86:9 \\
\hline estopped (10) & Exhibit (38) & 23:21 & 5:11;107:18;114:7 & forced (2) \\
\hline 57:17;63:1,2,4,6; & 16:13,14;21:20,21; & failure (5) & final (1) & 86:7;89:1 \\
\hline 64:11;67:9;70:17; & 23:8,9,12;24:8;25:15, & 20:4;27:19;47:6,9; & 66:12 & forcible (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 74:18 & 62:15 & 108:3 & here's (4) & Homeowner's (4) \\
\hline foreclose (23) & fully (3) & guessing (1) & 57:21;61:6;64:19; & 16:1;19:9,10;36:17 \\
\hline 14:7;17:10;19:21; & 54:15;78:4;111:6 & 109:9 & 81:20 & homes (1) \\
\hline \[
\begin{aligned}
& 34: 8 ; 35: 16 ; 38: 17 \\
& \text { 42:8;50:2,6,20; }
\end{aligned}
\] & \[
\begin{array}{|c|c|}
\hline \text { funny (1) } \\
54: 17
\end{array}
\] & H & hereto (1) & \[
32: 2
\] \\
\hline \[
\begin{aligned}
& 42: 8 ; 50: 2,6,20 ; \\
& 57: 11 ; 79: 13,17 ; 80: 3
\end{aligned}
\] & Furthermore (1) & H & HERNANDEZ (103) & \[
3: 8,14,18 ; 4: 2,9,16
\] \\
\hline 6,11,17;84:12;92:6; & 78:2 & half (2) & 3:12,12,18;4:1,5, & 5:3,7,8,13,24;6:3,11, \\
\hline 93:3;95:10;98:6; & future (2) & 12:22;27:15 & 15;5:8,22;6:9;9:9; & 20,24;8:4,11,22;9:12, \\
\hline 99:20 & 51:2;52:9 & HAMP (4) & 10:4,10;11:10;12:3, & 14,21;10:4,8,22; \\
\hline \[
\begin{gathered}
\text { foreclosed (1) } \\
96: 9
\end{gathered}
\] & G & 31:4,19,23;99:15
handle (1) & 6;43:5,19,21;44:1,4,
7,12;47:18,20,23; & \[
\begin{aligned}
& 11: 10,11 ; 12: 3,7,13, \\
& 18 ; 13: 6 ; 16: 15 ; 17: 2,
\end{aligned}
\] \\
\hline foreclosing (2) & & 113:15 & 52:19,20,22;53:2,5, & 17;20:3;21:17;23:8; \\
\hline 18:7;72:17 & Gamble (1) & hanging (1) & 12,13;55:16;58:21; & 24:8;26:13;29:3; \\
\hline foreclosure (47) & 107:24 & 114:12 & 60:6;63:17,21;64:1,5, & 30:19,23;32:12; \\
\hline 9:2;15:13;18:8; & gave (3) & happen (2) & 17;65:1,5,8,14,17; & 33:20;42:6,24;43:2, \\
\hline 29:23;34:1,3;36:3; & 3:21;60:2;105:23 & 99:10;102:6 & 66:2,7,10,17,20,23; & 5;44:1,8,15;45:13; \\
\hline 37:4,9;40:20;42:1,11, & general (1) & happened (22) & 67:14;68:6;69:1; & 46:19;47:10,15,24; \\
\hline 12,22;46:1;49:22; & 14:21 & 14:18;17:12;24:20; & 72:23;73:5,11,15,18, & 48:4;49:7;52:20; \\
\hline 52:14;54:7,11;55:18; & generally (3) & 25:1,6;31:8;33:21; & 21;74:2,7,12;75:6,18; & 53:3,13,14;54:1,16; \\
\hline 57:9,10,19,22,24; & 10:12,14,15 & 35:10,16;42:8,18; & 76:9,12;83:16;95:17; & 55:4,11,17,21;56:3, \\
\hline 68:3,12;69:9;70:1,2, & gentlemen (1) & 48:20;50:22;58:4,17; & 96:24;97:7,10;98:18; & 13,20;57:1,3,12,15; \\
\hline 24;71:11,21;72:19; & 114:14 & 62:4,14;68:15;70:9; & 99:2,6,12,22;100:3,9, & 58:1,22;59:15,21; \\
\hline 75:4;76:22;79:12; & gets (3) & 73:18;88:21;89:12 & 11,14,17,21;101:1,4, & 60:1,4,7,13,16;61:1, \\
\hline 87:21;95:2;96:14,19; & 61:22;83:13;94:22 & happening (1) & 12,22;102:11,15,24; & 7,11,19;62:3,5,8,13, \\
\hline 97:5;98:1,24;100:4; & Giles (4) & 74:8 & 103:4,7,10,13,19; & 15;63:6,9,12;64:6; \\
\hline 106:17;110:24 & 54:18,18,20,22 & happy (2) & 104:2,4,8,20;105:13, & 65:1,15,19;66:7,10, \\
\hline forget (1) & Giles's (1) & 4:7;38:3 & 17,19;113:8 & 13,17,24;67:6,15,20, \\
\hline 61:7 & 54:21 & hard (2) & HERNANEZ (26) & 21;68:3,16;69:4,7,11, \\
\hline forgiveness (1) & given (5) & 41:22;81:5 & 107:2,9;108:3,6,9, & 17;70:3,6,12,16,20, \\
\hline 63:10 & 15:20;30:6;38:5; & hardship (1) & 12,15,17,24;109:5, & 23,24;71:6,10,10,18, \\
\hline form (1) & 41:17;100:12 & 105:1 & 11,17,19,21;110:10, & 24;72:8,24;73:6,7,11, \\
\hline 54:23 & giving (3) & Hardy (4) & 13,15;111:12,15,17, & 21;74:13,17;75:2,12, \\
\hline forth (12) & 39:3,11;78:6 & 109:1,3,7, & 20,24;112:4,6,9; & 21,24;76:12,15; \\
\hline 69:19;78:21;79:5 & gladly (1) & harm (4) & 114:2 & 77:11,13;80:10; \\
\hline 22;80:24;81:2,3; & 107:21 & 47:16,18,21;48:1 & hey (6) & 81:15;82:20;83:8,15; \\
\hline 84:19;90:6,7;98:12; & glance (1) & HARP (1) & 62:1;68:11;72:16; & 84:7,20;87:16;88:24; \\
\hline 111:3 & 9:1 & 99:15 & 89:9;98:2,6 & 93:9;97:7,12,14;98:8, \\
\hline forward (15) & God (1) & Harrison (1) & history (2) & 19,20;99:12,23; \\
\hline 40:18,19,20;47:3; & 71:3 & 57:14 & 26:8;45:18 & 100:11,19;101:1,24; \\
\hline 48:18;50:22;51:16; & goes (5) & head (1) & hit (1) & 102:12;103:4,24; \\
\hline 75:16;89:7;91:15; & 4:20;9:8;35:6 & 53:15 & 78:23 & 104:4,20;105:12,19, \\
\hline 92:18;95:2;97:6; & \[
42: 4 ; 86: 7
\] & hear (4) & HOA (1) & 21;106:3;107:2,9; \\
\hline 98:17,24 & Good (8) & 8:15;38:3;79:7; & 47:24 & 108:6;109:11,13,19, \\
\hline found (3) & 6:18;8:9;16:10; & 100:13 & Hobar (6) & 21;111:12,15;112:1, \\
\hline 14:22;41:8;89:16 & 39:13;68:6;86:6; & heard (2) & 68:7;71:15;72:3, & 11;113:6,18;114:3,6, \\
\hline fourth (2) & 114:12,14 & 35:18;54:17 & 10,16;73:12 & 15 \\
\hline 59:15;60:21 & gorilla (1) & hearing (20) & hold (6) & honored (3) \\
\hline fraud (2) & 82:23 & 3:17,19;5:23;6:23; & 7:22;8:1;11:12; & 14:4;48:16,22 \\
\hline 58:13;94:10 & grant (5) & 7:5,6;10:5,5,7,15,16, & 15:9;53:7;92:23 & hope (1) \\
\hline frauds (8) & 67:24;72:3;76:1 & 17;12:10;30:2,4; & holidays (1) & 8:8 \\
\hline \[
57: 4 ; 77: 16,23
\] & 92:18;106:14 & 31:2,3;66:6;76:19; & 109:9 & hopped (1) \\
\hline 81:12;82:18;110:8, & granted (2) & 111:3 & Home (4) & 28:22 \\
\hline 19;111:4 & 86:20;101:14 & heavy (1) & 22:4;29:19;32:12; & hour (1) \\
\hline free (5) & granting (1) & 78:23 & 90:10 & 71:11 \\
\hline 15:19;83:22;84:3, & 62:7 & held (1) & homeowner (4) & hours (1) \\
\hline 8;91:19 & Great (4) & 14:21 & 16:10;82:13; & 76:17 \\
\hline frequently (1) & 8:3;28:12,13;74:13 & hell (1) & 112:16,19 & house (5) \\
\hline 54:19 & guess (16) & 38:22 & Homeowners (8) & 15:18;37:13;84:8; \\
\hline front (2) & 11:2,24;12:16; & help (4) & 49:6,7;50:13; & 88:5;91:19 \\
\hline 48:5;89:4 & 16:23;17:18;29:4; & 3:21;24:13;107:21, & 52:11,16;72:18,19; & housekeeping (1) \\
\hline fulfill (1) & 35:19;41:23;43:8; & 23 & 90:9 & 101:2 \\
\hline 93:12 & 44:15;49:19;54:20; & helps (1) & homeowners' (1) & hundred (2) \\
\hline full (1) & 58:18;78:20;100:15; & 4:21 & 113:1 & 83:1;88:13 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline \multirow[t]{4}{*}{\[
\begin{gathered}
\text { hung (1) } \\
43: 8
\end{gathered}
\]} & 53:15,15,17;54:1,2,4, & intended (2) & 111:7 & 39:23;49:2;58:2; \\
\hline & 5,7,11,18,20;55:13, & 9:5;11:19 & judicial (1) & 8:3,4;75:2;78: \\
\hline & 22;57:20,22;58:16, & intending (2) & 110:2 & 9:16;83:3,7,9,10,14, \\
\hline & \[
60: 19,22,23 ; 61: 2,6
\] & intent & July (6) 25:7;26:24;54:11; & (1) \\
\hline idea (8) & 13,14,18,19;62:1,7 & 69:5 & 55:12;59:4;60:22 & 40:3 \\
\hline 41:24;42:3;77:8; & 11,17,19,19,21;63:2, & interest (28) & jump (1) & laws (1) \\
\hline 78:20;79:5;93:10; & 22;65:18,18,22;66:8; & 9:1;13:20;14:19 & 82:23 & 70:7 \\
\hline 95:24;102:5 & 67:5,7,15,19;68:11, & 15:16,22;16:7,9 & juncture (1) & lawsuit (2) \\
\hline immaterial (1) & 14;69:6;70:3,17,21; & 19:1;21:9,13,18; & 84:11 & 40:17,19 \\
\hline 74:14 & 71:22;72:20,24; & 23:16;24:4;25:21 & June (3) & lawyer (1) \\
\hline immediately (2) & 73:22;74:15,16,20, & 26:10,15,21;28:12; & 43:22;44:17;55:12 & 90:14 \\
\hline 41:8;59:8 & 23;75:7;76:19;77:4; & 34:7;48:11;49:3,13; & jurisdiction (1) & lawyers (1) \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { implications (1) } \\
& \text { 39:5 }
\end{aligned}
\]} & 78:9;79:20;86:9; & 51:3;76:22;80:24; & 36:3 & 96:2 \\
\hline & 87:4,17;95:17;98:19, & 93:13;95:4;105:11 & & lead (1) \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { important (3) } \\
& 61: 3 ; 71: 18 ; 72: 1
\end{aligned}
\]} & 20;99:23,24;100:3,4, & interesting (5) & K & 32:14 \\
\hline & 14;101:9,13,17,17; & 26:14;40:5;41:2; & & leading (1) \\
\hline \multirow[t]{2}{*}{improper (1)
102:10} & 102:17,17,19,20,21; & 61:7;77:17 & (1) & 14:5 \\
\hline & 105:11,22;106:3; & into (15) & 50:11;77:14;90:10 & learned (1) \\
\hline \multirow[t]{2}{*}{Inc (1)
\(40: 4\)} & 108:4,17,20;111:20; & 12:24;14:14;17:1 & kick (1) & 78:13 \\
\hline & 112:14;114:2 & 33:6;37:12;47:4; & 10:18 & least (3) \\
\hline \multirow[t]{2}{*}{incapacitated (1)
\(58: 14\)} & individual (1) & 53:21;63:6;67:4; & kind (9) & 18:24;28:9;45:8 \\
\hline & 7:17 & 68:19,21;87:5;94:22; & 18:17;23:7;30:7 & leave (1) \\
\hline \multirow[t]{2}{*}{\[
\begin{array}{r}
\text { include (2) } \\
26: 1 ; 55: 5
\end{array}
\]} & individuals (1) & 105:1;113:16 & 12;41:1;50:16;70:4; & 53:8 \\
\hline & 48:14 & invalid (2) & 79:9;108:12 & left (4) \\
\hline included (4) & ineligibility (1) & 29:18;97:2 & knew (4) & 5:16;79:6;88:10; \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& 12: 3 ; 17: 6 ; 53: 21 ; \\
& 54: 8
\end{aligned}
\]} & 45:2 & involved (3) & 29:21,23;60:14; & 94:4 \\
\hline & inevitable (1) & 46:16;98:10 & 102:7 & legal (5) \\
\hline \multirow[t]{2}{*}{includes (1)
69:8} & 75:1 & 107:14 & knowing (1) & 11:14;12:14;14:5; \\
\hline & infer (1) & involving (1) & 79:6 & 58:10;73:12 \\
\hline including (2) & 69:17 & 79:5 & knowledge (1) & legally (1) \\
\hline 69:9;90:14 & inform (2) & irreparable (5) & 75:2 & 70:16 \\
\hline income (2) & 61:17,18 & 47:16,18,20;48:1 & known (1) & Lemus (1) \\
\hline 32:2;88:11 & information (14) & 109:16 & 26:16 & 60:7 \\
\hline incompetent (1) & 11:9;12:16;16:2,3, & issue (14) & knows (1) & lender (3) \\
\hline \multirow[t]{2}{*}{\begin{tabular}{l}
\[
78: 21
\] \\
incorporated (1)
\end{tabular}} & 6;17:7;23:19;24:12 & 29:10;30:24;31:2 & 102:6 & 38:16;40:11;86:19 \\
\hline & 16,17;68:13;69:8;
96:20;97:4 & \[
\begin{aligned}
& \text { 43:13;51:13;58:18, } \\
& \text { 19;66:24;80:12;81:5; }
\end{aligned}
\] & L & \[
\begin{gathered}
\text { length (1) } \\
13: 21
\end{gathered}
\] \\
\hline incorrect (10) & informed (3) & 86:24;90:20;94:21; & & letter (30) \\
\hline \multirow[t]{3}{*}{\[
\begin{aligned}
& \text { 17:7;26:6,6;49:16, } \\
& 20 ; 84: 18 ; 96: 20,20, \\
& 21 ; 97: 5
\end{aligned}
\]} & \[
44: 19 ; 45: 9 ; 54: 15
\] & 98:5 & Lachman (21) & \[
23: 13 ; 24: 18 ; 43: 19
\] \\
\hline & injunction (14) & issued (2) & \[
6: 20,20,24 ; 7: 1,3,3
\] & 44:11,13,15;54:8; \\
\hline & 11:13;19:9,11; & 41:9;87:3 & 6,12,12;8:3,11,11,14, & 55:4,7,9,12,17;56:10; \\
\hline incorrectly (2) & 50:10,14,15,19;52:5, & issues (5) & 22;9:5,7;76:15,16; & 58:5;64:19;65:22; \\
\hline 25:20;26:9 & 9,15;72:3;76:1; & 9:19;11:11;30:22; & 77:11;114:6,10 & 68:18;69:3,8;70:13, \\
\hline \multirow[t]{2}{*}{indebtedness (2)
69:9;76:10} & 101:6;102:10 & 48:15;75:12 & L-A-C-H-M-A-N (1) & 14;71:1,2;73:3,23,23; \\
\hline & injunctive (2) & & 7:3 & 74:3,15;81:2,20 \\
\hline \multirow[t]{2}{*}{independent (1)
\(71: 21\)} & 67:24;71:19 & J & large (1) & letters (3) \\
\hline & injury (1) & & 25:16 & 56:2;65:22;74:9 \\
\hline indicated (1) & 109:16 & James (1) & last (14) & lien (1) \\
\hline 18:7 & installments (1) & 25:3 & 26:13,15;27:6,8; & 62:17 \\
\hline indicates (1) & 34:17 & January (1) & 43:11;44:23;45:24; & lieu (39) \\
\hline 21:17 & instance (2) & 109:10 & 67:14;71:9,9,10; & 35:24;36:5,10,20; \\
\hline indicating (3) & 53:20;101:15 & Jones (2) & 78:24;87:22;96:1 & 37:1,9,14,18;38:6; \\
\hline 18:24;24:19;55:13 & instances (2) & 40:3;53:15 & last-minute (1) & 42:12;44:20,24;45:3, \\
\hline indication (1) & 67:7;97:22 & Judge (22) & 74:24 & 4,10;52:2;55:11; \\
\hline \multirow[t]{2}{*}{\begin{tabular}{l}
\[
17: 11
\] \\
indiscernible (124)
\end{tabular}} & instead (3) & 6:18;7:8;8:10; & late (1) & 56:1,5,9,11;57:21; \\
\hline & 25:21;56:9;86:14 & 88:21;99:3;107:16, & 95:4 & 67:6;70:22;71:16; \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& 3: 9 ; 4: 2,17 ; 5: 3,15 \\
& 18,22 ; 6: 4 ; 10: 3,6,17
\end{aligned}
\]} & institution (1) & 16,19,20,22,22,24,24, & later (6) & 72:14;73:16;74:21; \\
\hline & 46:16 & 24;108:8,17,22,23; & 31:3;42:21;55:6; & 77:22;78:4,12,14; \\
\hline 12:4,7;21:4;25:15; & instrument (1) & 109:3,7,8;113:11 & 73:15;85:9;92:6 & 79:23;80:2;81:4; \\
\hline 33:23;43:4,19,21; & 34:15 & judges (2) & law (24) & 94:8;97:20;98:12; \\
\hline \multirow[t]{2}{*}{44:2,14;47:23,24;
48:5,23;49:4;51:20;} & intend (1) & 82:14;108:3 & 6:14;14:21;15:12, & 100:14 \\
\hline & 112:8 & judgment (1) & 23;24:11;29:12; & life (3) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 69:1;88:8,12 & 13,20;89:11,13; & material (21) & 94:4,13;95:11;96:12; & 14,20;52:6,8,11,18; \\
\hline lifted (1) & 93:11;96:7;98:7; & 15:7;16:9;20:5; & 97:1;98:1,2,6,19; & 54:13;63:23;64:3; \\
\hline 102:6 & 104:16,18 & 48:23;49:11,18; & 99:3,7,14;106:12,14; & 77:12,13,16;78:8,13; \\
\hline likelihood (5) & loans (1) & 50:14;51:24;52:2; & 107:6;110:4,21 & 79:10,20,24;80:4,7, \\
\hline 48:3;100:6;106:7; & 89:23 & 60:22;67:15,20,23; & mediations (2) & 10,13,16,20;81:8,10, \\
\hline 109:22;112:24 & local (1) & 68:1,4;83:3,19; & 69:9;70:21 & 14,17,23;82:3,8,12, \\
\hline likely (3) & 28:23 & 84:12;92:7,12;93:14 & Mediation's (1) & 22;83:2,7,11,14,17, \\
\hline 106:10,11;114:7 & logical (1) & materially (1) & 47:5 & 23;84:1,5,7,10,20; \\
\hline limitation (5) & 99:23 & 95:20 & mediator (14) & 85:1,4,6,10,13,17,23; \\
\hline 59:20,22,23;60:12; & long (1) & matter (17) & 4:21;35:14,20,22; & 86:4,6,21;87:1,3,13, \\
\hline 67:4 & 69:15 & 3:22;6:12;12:18; & 36:2,9,18;39:17,21; & 16,23;88:4,16,23; \\
\hline limitations (2) & longer (5) & 29:12;35:23;46:21; & 41:20;42:2;43:18; & 90:2,8,11;91:1,3,9, \\
\hline 67:10;76:24 & 20:4;36:2;53:2 & 48:7;49:1,2,23; & 79:4;107:7 & 22;92:1,12,15,22; \\
\hline limits (1) & 55:7;60:17 & 73:12;74:15;76:6 & mediators (3) & 93:5,8,17,19;94:1,6, \\
\hline 69:12 & look (15) & 79:12;92:3;99:4; & 79:3;94:4;98:16 & 20;95:1,7,9,13,18,24; \\
\hline Lincicome (2) & 11:19;17:21;25:1; & 101:2 & mediator's (1) & 96:13,16,23;99:14; \\
\hline 3:9,10 & 26:24;29:6,19;38:14; & maturity (1) & 40:17 & 102:1,2,5;103:24; \\
\hline Lincicomes (13) & 56:15;65:21;69:19; & 21:21 & meet (2) & 104:3,7,11,15,21,24; \\
\hline 15:17,18,19;20:1; & 74:13;77:19;88:2; & maximum (1) & 16:24;78:14 & 105:3,6,10;106:2; \\
\hline 34:6;36:1;56:19; & 94:3;95:18 & 59:23 & mentioned (1) & 107:24;108:18,20,23; \\
\hline 59:5;62:12;64:20; & looked (3) & May (18) & 77:6 & 109:2,13;110:22; \\
\hline 69:22;75:8,19 & 35:20;36:7;110:7 & 5:14;9:14;21:4; & merely (1) & 112:10,11,13;113:3, \\
\hline Lincicomes' (1) & looking (7) & 25:1,1,2;27:8;43:21; & 97:2 & 4,6,18,20,24;114:15 \\
\hline 16:15 & 18:13;24:13;29:2; & 44:11,12;45:1,7,10; & merits (5) & Millward's (2) \\
\hline Lincicome's (1) & 38:15;77:2;94:1; & 55:4,7;56:9;58:5,5 & 10:6;11:14;57: & 98:14;111:9 \\
\hline 59:7 & 109:10 & maybe (5) & 100:1;109:23 & mind (2) \\
\hline line (1) & looks (4) & 19:7;45:18;86:14; & met (2) & 110:6;111:2 \\
\hline 42:6 & 25:3;27:6;77:2; & 110:5;111:2 & 17:20;48:14 & Minden (2) \\
\hline list (1) & 88:1 & mean (20) & Michael (1) & 108:20,21 \\
\hline 25:14 & \(\boldsymbol{\operatorname { l o t }}\) (4) & 30:14;33:16;38:17; & 3:8 & Minus (1) \\
\hline listen (1) & 8:15;39:10;54:18; & 47:4,8;48:8;49:15, & microphone (1) & 103:10 \\
\hline 9:5 & \[
59: 18
\] & 19;51:1;62:22;74:18, & 9:16 & minute (5) \\
\hline listened (1) & Lotson (1) & 18;75:7,7;81:15,18; & might (8) & 64:7;65:2;71:9; \\
\hline \[
76: 16
\] & 7:2 & 96:7;100:12;101:13; & 5:15;44:6;91:9,14; & 96:1;97:23 \\
\hline listing (1) & love (1) & 109:24 & 94:2;99:10,10,17 & minutes (5) \\
\hline 31:6 & 82:3 & meaningless (1) & Millward (273) & 3:23;4:6;8:2;53:2,9 \\
\hline litigation (2) & low (1) & 49:18 & 3:8,8;4:9,12,22; & missed (4) \\
\hline 69:3;107:14 & 13:20 & means (10) & 5:2,5,7,10,13,22;6:2, & 15:10;16:8;51:4; \\
\hline little (2) & lower (1) & 39:1,13;60:17; & 3,11,16;7:16;9:9,12, & \[
101: 1
\] \\
\hline 68:16,20 & 13:20 & 62:22;78:5;84:15; & 14,18,21,24;10:3,22; & missing (1) \\
\hline living (2) & Lyon (2) & 87:17;88:6;93:20; & 11:7;12:13;15:1,3,5; & \[
87: 24
\] \\
\hline 57:14;91:19 & \[
78: 22 ; 87: 20
\] & 101:13 & 16:14,17;17:1,11,17, & misstate (2) \\
\hline LLC (1) & & meant (2) & 22,24;18:2,5,9,12,21, & 49:11,23 \\
\hline 7:18 & M & 101:8,23 & 24;19:7,18;20:9,12, & mistake (1) \\
\hline loan (92) & & mechanics (1) & 16,18,22;21:2,6,12, & 54:14 \\
\hline 12:19,24;13:2,7,11, & mailed (1) & 87:5 & 16;22:3,8,11,13,21, & mistaken (1) \\
\hline 17;15:11,14,21;16:8, & 45:1 & mechanism (1) & 24;23:3,6,18;28:2; & 23:9 \\
\hline 11;17:4;19:1,14; & makes (2) & 72:2 & 29:8,15;30:3,6,12,23; & misunderstand (1) \\
\hline 20:22,24;21:12,23, & 15:20;21:18 & mediate (1) & 31:5,7,12,15,18;32:4, & 91:10 \\
\hline 24;22:4,14,15,18; & making (11) & 107:17 & 9,11,17,20;33:7,10, & misunderstanding (3) \\
\hline 23:13,15,22,24;24:1, & 29:16;33:2;36:13, & mediation (73) & 12,16,20,22;34:1,4, & 86:20,21;87:4 \\
\hline 2,3,6,12,20,22,24; & 14;37:23;46:11; & 35:12,12,13,13,17, & 13,21,24;35:2,4,11, & mitigation (1) \\
\hline 25:10,13,18;26:4,8, & 60:13;64:7,8;86:15; & 23;36:2,4;37:1,19; & 17;36:7,21,23;37:8, & 67:18 \\
\hline 18;27:2,12,13,22; & 94:23 & 38:14;39:6,7,15;40:1, & 10,15,21;38:2,9,12, & mixing (1) \\
\hline 28:4,17,18;30:18; & man (1) & 9,13,13,14;41:2,11; & 20,24;39:10,16,22; & 73:12 \\
\hline 31:19;34:18;43:17; & 21:3 & 42:1,4,8;43:11;45:6; & 40:3,19,21;41:1,4,8, & mix-up (1) \\
\hline 46:14;47:7;51:2; & many (2) & 46:9;47:4,4;53:17,18, & 14,17,23;42:5,13,17, & 14:15 \\
\hline 54:3;55:8;56:12; & 12:2;51:3 & 21,22,23;54:15;55:1; & 24;43:2,10,12,15,20, & \(\boldsymbol{m o d}(3)\) \\
\hline 58:22;60:9;62:3,3,12, & March (4) & 56:19;58:2;68:20,21; & 22;44:3,6,10,14,17, & 27:13;63:24;89:13 \\
\hline 18,18,19;63:7,8,9,11, & 24:15;25:4;54:8; & 70:2,3;71:8;72:10, & 19;45:6,13,17,21; & modification (86) \\
\hline 14,23;64:2,10,12; & 81:2 & 11;73:3;77:17;78:24; & 46:2,6,13;47:12,15, & 12:19,24;13:3,7,11, \\
\hline 65:8;66:11;67:1,5; & Marshall (1) & 79:6,14,22;80:9,23; & 19,22;48:3;49:6; & 17,15:11,14,21;17:5; \\
\hline 69:23,24;70:21;75:9, & 24:12 & 81:1;90:13;93:10; & 50:4,9,12,21,24;51:9, & 19:14;20:23;21:1,13, \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 18;22:14,15,19; & 89:8;111:7;114:7 & nobody (5) & Number (11) & 66:11;67:3,22;72:13; \\
\hline 23:13,22;24:20,24; & move (4) & 32:7;41:19;80:23; & 3:12;7:13;8:14; & 78:22;82:11,16;83:2, \\
\hline 25:11,13,19;26:19; & 23:7;48:18;81:15; & 102:6,7 & 14:24;20:23,24; & 18;84:20;87:21; \\
\hline 27:12,15,17,18;28:3, & 95:2 & NOD (3) & 23:22;29:3;44:15; & 90:22;101:1;103:1; \\
\hline 3,4,21;29:5,18;30:18; & moved (1) & 34:10;71:22,24 & 67:3,4 & 112:11;113:9,15 \\
\hline 31:19;32:22;33:1,22; & 50:22 & non-breaching (2) & numbers (10) & ones (1) \\
\hline 34:9,18;38:5;39:14; & moving (2) & 15:8;83:20 & 49:13;64:10,10,12; & 65:6 \\
\hline 46:17,23;47:7;48:15; & 4:22;91:15 & none (3) & 71:23;99:21;104:9; & only (15) \\
\hline 51:3;54:24;55:8; & much (3) & 31:7;36:17;95:9 & 105:23;106:17; & 3:22;11:20;13:16; \\
\hline 58:11,22;60:9;62:4, & 76:9;102:8;114:12 & nonjudicial (2) & 112:21 & 19:8;35:8;37:10; \\
\hline 12;63:7,8,9,11;64:2, & multiple (3) & 99:11;106:16 & & 46:3;49:19;52:24; \\
\hline 20;65:8;66:11;67:1, & 72:12;82:14 & non-judicial (2) & 0 & 54:2;64:21;71:19; \\
\hline 5;69:23;71:7;75:13; & 100:12 & 110:24;111:10 & & 77:7;84:20;103:20 \\
\hline 81:7;82:5,15,18; & must (3) & non-payment (1) & object (6) & onwards (1) \\
\hline 89:10;93:11,13; & 17:9;67:22;84:3 & 14:19 & \[
5: 24 ; 43: 5 ; 56: 6
\] & 105:15 \\
\hline 94:11,18;96:4,17; & & non-payments (1) & 62:14;89:8,9 & oOo- (1) \\
\hline 97:19,20;98:7; & N & 15:22 & objection (5) & 3:2 \\
\hline 104:17;105:3 & & nor (1) & 5:20;6:6;61:23; & open (1) \\
\hline modifications (11) & named (2) & 93:13 & 62:1,23 & 53:8 \\
\hline 27:14;28:10;31:7; & 54:3;77:9 & normally (1) & objections (1) & opening (1) \\
\hline 69:24;70:21;81:11; & names (4) & 107:17 & 12:10 & 9:22 \\
\hline 104:12,14;106:12,14; & 3:7;48:14;49:22 & notarized (1) & obviously (2) & operating (1) \\
\hline 110:3 & 114:8 & 77:24 & 11:17;55:22 & 28:7 \\
\hline modified (10) & Nation (1) & notary (2) & occurred (6) & Opinion (3) \\
\hline 20:9,12,15,20; & 72:6 & 25:8;78:1 & 19:13;27:21;31:8; & 14:23;15:3;53:17 \\
\hline 28:2;60:23;66:14; & nature (1) & notch (1) & 35:13;45:6;46:14 & opportunities (1) \\
\hline 106:8;110:4,18 & 3:17 & 79:4 & occurring (1) & 100:12 \\
\hline modify (11) & necessarily (1) & note (10) & 72:19 & opportunity (5) \\
\hline 27:19;28:1,1,11, & 63:21 & 20:10;21:6,8;35:1, & occurs (2) & 22:6;45:8;74:10; \\
\hline 14;40:14;89:23; & necessary (4) & 2,5,6;52:4;60:23; & 47:8;72:16 & 84:17;85:19 \\
\hline 94:12;97:2,15;110:8 & 9:7;55:10;86:15; & 110:9 & October (14) & opposing (12) \\
\hline modifying (1) & 88:11 & notes (1) & 18:14,16;23:23 & \[
4: 5,6 ; 11: 2 ; 39: 23
\] \\
\hline 23:15 & necessity (1) & 21:13 & 24:17;26:2,13,23; & 49:10;54:19;56:23; \\
\hline money (4) & 88:7 & notice (52) & 41:4,5;45:21;46:3; & 59:17;66:2;67:17; \\
\hline 47:3;75:8;84:3; & need (13) & 13:6;16:3,4,17,19, & 55:17;59:15;80:18 & \[
68: 10 ; 101: 5
\] \\
\hline 96:2 & 4:16;10:7,18; & 20;17:5,12,14,16; & off (9) & option (4) \\
\hline month (6) & 12:11;17:18;34:8; & 18:10,12;28:8;34:5, & 26:8,10;36:9; & 41:19;44:20;45:10; \\
\hline 33:2;46:15;74:3; & 45:13,21;64:12; & 10,13;35:10;45:22, & 39:19;42:16;43:24; & \[
70: 22
\] \\
\hline 106:23;107:4,5 & 66:20;99:10;107:11; & 22,24;46:2,3,4,7,8, & 44:21;90:14;111:1 & options (9) \\
\hline monthly (1) & 112:9 & 10;47:5;49:22;50:2; & offer (8) & 38:5;41:18,18 \\
\hline 34:17 & needed (2) & 51:2,13;55:19;68:18, & 40:11;59:5;64:23; & 64:21;69:9;70:22; \\
\hline months (4) & 19:8;69:10 & 22;69:5,10,12,16,22; & 65:2,11;74:9;81:20, & 71:14;72:12,13 \\
\hline 46:7;86:12,14; & neither (1) & 70:7;71:21,22,24,24; & 24 & oral (2) \\
\hline 111:18 & 16:19 & 72:4;95:22;101:6,7, & offered (4) & 111:24;112:2 \\
\hline \(\operatorname{moot}(1)\) & NEVADA (10) & 10,15;102:8,12 & 32:22;65:24;72:12; & order (25) \\
\hline 100:7 & 3:1;14:22,23;15:3; & notices (4) & 73:16 & 3:6;17:9,19;52:1; \\
\hline more (11) & 53:16;65:22;68:3,8; & 49:9;97:4;102:9; & office (3) & 62:11;67:23;79:2; \\
\hline 3:22,23;4:8;6:22; & 75:2;82:2 & 112:22 & 5:9;32:21,22 & 92:17;94:12;97:12; \\
\hline 10:18;64:21;67:22; & new (9) & notify (1) & officer (1) & 99:1;101:6,16,24; \\
\hline 94:8;103:20;104:9; & 22:11,12,12;58:2, & 45:2 & 89:9 & 102:11,11,16,16,19; \\
\hline 112:11 & 7;63:13;82:1;101:14; & novation (1) & offices (1) & 109:13;111:14; \\
\hline mortgage (12) & 102:9 & 93:16 & 24:11 & 112:3,4;113:12,16 \\
\hline 16:10;21:3;29:23; & news (1) & NOVEMBER (5) & official (1) & ordered (2) \\
\hline 40:4;49:17;53:16; & 68:6 & 3:1;26:22;61:12; & 64:14 & 50:1;102:16 \\
\hline 83:10,13;85:12; & next (9) & 69:22;102:20 & old (1) & ordering (1) \\
\hline 87:10;91:18;92:5 & 9:9;14:5;21:12; & NRS (17) & 68:23 & 113:22 \\
\hline most (2) & 23:6;31:17;32:18,20; & 16:2;18:14;19:3; & once (3) & original (15) \\
\hline 48:4;78:22 & 58:21;85:16 & 49:12;59:21;67:16, & 41:9;87:5;113:1 & 13:10;15:15;22:13, \\
\hline motion (17) & nine (6) & 18,21,22,23;68:18; & One (31) & 20;24:2;26:17;33:13; \\
\hline 9:9;10:5,17,24; & 39:12;46:7;85:9; & 69:8;70:14;71:13; & \[
6: 22 ; 15: 6 ; 19: 22
\] & 34:14,15;65:5,9; \\
\hline 11:13;29:2;30:7; & 89:1;91:17;104:6 & 72:1;95:14,15 & 26:9;40:10;43:23; & 66:13;67:8;96:6; \\
\hline 38:2;61:14,16,22; & nine-month (1) & nullify (1) & \[
47: 21 ; 54: 2 ; 55: 3,16
\] & 104:18 \\
\hline 62:11;63:1;86:13; & 46:6 & 84:10 & 59:1;64:21;65:17,18; & others (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 107:17 & parole (1) & 82:15;84:19;85:3,15; & 78:23 & presented (11) \\
\hline Otherwise (4) & 77:18 & 86:3;89:13;91:5; & Plus (2) & 5:21;10:23;11:15, \\
\hline 33:12;49:18,21; & paroled (1) & 96:5;103:10,13,14, & 105:19,23 & 20;43:6;56:8;60:8; \\
\hline 113:11 & 57:5 & 15,20;104:2,4,5,11, & point (53) & 66:3;69:20;71:14; \\
\hline out (28) & part (6) & 13,16,22,24;105:5; & 12:14;18:8;19:7; & 72:21 \\
\hline 10:18;12:14,24; & 19:22;28:5;37:23; & 106:21,22;113:22 & 24:6,23;25:23;27:7; & pretences (1) \\
\hline 24:13;39:6,8;41:4; & 55:23,24;62:5 & payoff (1) & 29:8,15,16;30:16; & 58:13 \\
\hline 42:4;47:8;48:15; & participate (4) & 49:14 & 32:13;35:19;37:22 & prevail (5) \\
\hline 54:16,20;55:11; & 7:15;39:14;45:2,8 & pays (1) & 38:13;39:22;42:5; & 11:13;42:23;79:8; \\
\hline 56:11;70:5;71:17; & parties (33) & 75:15 & 49:12;55:11;56:6; & 80:5;106:10 \\
\hline 72:14;74:8;81:24; & 3:6;8:18;13:4,12, & pejorative (1) & 58:9;60:13;61:24; & prevails (1) \\
\hline 83:6;89:17;96:9; & 19;15:6;19:24;28:7, & 90:6 & 62:13,23,24;63:13; & 110:23 \\
\hline 107:21,23;108:16,19; & 8;31:11;35:22,24; & penalties (1) & 64:6,9,10;67:10,11, & prevent (2) \\
\hline 110:6;113:10 & 39:6;42:1,4;43:24; & 15:22 & 14,17;71:16;72:8,9; & 36:3;61:2 \\
\hline outside (1) & 47:1;48:22;53:19,20; & pending (1) & 75:1,21;79:8;91:22; & previously (3) \\
\hline 89:11 & 54:6;56:14;58:3,17; & 101:16 & 92:19;94:20;95:8,10; & 5:21;8:17;31:14 \\
\hline outstanding & 74:17;76:18;83:18, & people (3) & 97:10;98:15,18,20; & Price (1) \\
\hline 25:18 & 18;85:20;86:1;90:23; & 32:1;39:14;88:13 & 100:11,18,23;111:11 & 14:23 \\
\hline over (22) & 94:13;106:23 & percent (9) & pointed (1) & primarily (2) \\
\hline 15:22;26:15;27:9; & parties' (1) & 21:10,14;26:23; & 54:16 & 10:24;93:12 \\
\hline 30:8;36:2,3;37:7; & 109:15 & 27:1,11;49:16,20; & pointing (1) & principle (10) \\
\hline 53:15;81:6;84:19; & party (9) & 86:15;88:13 & 80:22 & 16:7;19:2;21:7,19; \\
\hline 86:13;88:11;89:23, & 4:22;15:8;51:16; & perform (9) & portion (1) & 24:1;25:18;34:16; \\
\hline 23,23;91:5;96:3; & 53:24;57:15,16;60:2; & 15:6,8,17;83:18 & 88:7 & 48:10;51:3;63:10 \\
\hline 100:6,7,19,22,22 & 61:22;92:7 & 20;85:7,7;92:11,20 & position (7) & principles (1) \\
\hline overcome (1) & party's (2) & performance (7) & 12:6;65:21,23; & 14:22 \\
\hline 94:24 & 15:7;83:20 & 14:6;37:6,18;91:3, & 70:12;85:21;86:2; & prior (7) \\
\hline overtime (1) & past (4) & 12;92:13;106:15 & 90:23 & 16:4;18:16;55:19; \\
\hline 53:1 & 24:5;29:20;40:12 & Perhaps (1) & positive (1) & 62:6,10;69:12;72:19 \\
\hline owe (2) & 76:17 & 111:6 & 72:20 & private (1) \\
\hline 34:7;75:15 & paste (1) & period (1) & possible (5) & 107:8 \\
\hline owed (4) & 113:17 & 86:11 & 3:16;4:3;92:22; & probably (3) \\
\hline 26:2;49:17;83:2; & pasted (1) & person (3) & 107:14;110:21 & 8:2;96:16;109:10 \\
\hline 95:3 & 68:7 & 7:16;18:17;54:4 & possibly (1) & problem (15) \\
\hline owes (1) & Patty (1) & persuasive (1) & 33:8 & 3:24;14:13;17:1; \\
\hline 48:17 & 79:4 & 68:8 & post (4) & 46:9;51:10,12;54:21; \\
\hline own (9) & pay (8) & pertains (2) & 76:2,4,5;111:17 & 78:21;81:18;84:13; \\
\hline 10:8,16;58:18; & 12:17;47:2;51:15; & 12:18;16:7 & posted (1) & 89:12;90:3;108:10, \\
\hline 65:12;79:21;82:7 & 88:1,12;91:20;92:3; & phone (4) & 106:24 & 22;114:10 \\
\hline 89:4;113:10,16 & 96:7 & 4:16;6:13;28:20; & postponed (1) & problems (1) \\
\hline owner (1) & paying (1) & 53:8 & 101:16 & 8:7 \\
\hline 112:13 & 86:14 & pick (1) & postponement (2) & procedures (1) \\
\hline & payment (35) & 8:2 & 111:24;112:2 & 71:2 \\
\hline & 21:19;28:16,24,24 & 13:22;29:1;43:2 & \[
15: 16 ; 22: 4 ; 80: 20
\] & \[
62: 20 ; 74: 20 ; 98: 1
\] \\
\hline page (10) & 33:2;34:8;64:22; & place (5) & predecessors (1) & proceeding (2) \\
\hline \[
21: 12,20,21 ; 24: 10
\]
\[
44: 24 \cdot 24: 59 \cdot 2
\] & \[
\begin{aligned}
& 65: 11,13,20,24 ; 66: 3 \\
& 12 ; 81: 21,22 ; 82: 6
\end{aligned}
\] & \[
15: 11 ; 26: 16 ; 27: 9
\]
37:11:85:22 & \[
49: 3
\] & \[
11: 4 ; 48: 4
\] \\
\hline \[
\begin{aligned}
& 44: 24,24 ; 59: 2 \\
& 109: 21,21,22
\end{aligned}
\] & \[
\begin{aligned}
& 12 ; 81: 21,22 ; 82: 6 \\
& 84: 20 ; 87: 6,9,10
\end{aligned}
\] & \[
\begin{aligned}
& \text { 37:11;85:22 } \\
& \text { places (1) }
\end{aligned}
\] & \[
\begin{array}{|c}
\text { prefaced (1) } \\
94: 6
\end{array}
\] & \[
\begin{aligned}
& \text { Proceedings (1) } \\
& 114: 16
\end{aligned}
\] \\
\hline pages (4) & 88:7;89:15,17;92:5, & 59:21 & prefer (2) & process (14) \\
\hline 17:13;26:14,24; & 9;103:7;104:1,15; & Plaintiff (3) & \[
42: 18 ; 107: 7
\] & 33:23,24;34:1,3; \\
\hline 30:11 & 105:8,10;106:23; & 53:24;59:5;77:6 & preforeclosure (2) & 39:14;46:1;59:11; \\
\hline paid (5) & 107:3 & Plaintiffs' (1) & 68:17,17 & 60:9;70:5,6;71:7,8; \\
\hline 29:23;30:20; & payments (62) & 106:6 & prejudiced (1) & 87:11;99:11 \\
\hline 103:12,23;104:5 & 12:20,23;14:4,8,8, & Plaintiff's (3) & 14:20 & produce (5) \\
\hline papers (1) & 16,17;15:10,20;16:8; & 66:2;77:5;106:16 & preliminary (3) & 55:6;69:2;73:23; \\
\hline 70:17 & 23:15;25:11;27:23; & plan (2) & 11:13;12:1;19:9 & 74:3;98:3 \\
\hline paperwork (1) & 28:12,15,21;29:6; & 87:6,14 & prepare (1) & produced (5) \\
\hline 55:10 & 32:24;46:18,18,23; & pleaded (1) & 10:16 & 12:8;17:2;66:3 \\
\hline paragraph (11) & 48:13;51:4,10,17; & 58:1 & prepared (1) & 74:5;105:20 \\
\hline \[
44: 22,23 ; 56: 18
\] & 59:14;64:7,8;65:2, & pleadings (1) & 10:4 & program (10) \\
\hline \[
59: 4,13,14 ; 60: 21
\] & 15;66:12;75:9;76:3, & \[
73: 1
\] & present (3) & \[
31: 4,22 ; 32: 1
\] \\
\hline 61:12,12,17;62:6 & 5;80:17,21;81:3; & plenty (1) & 9:24;10:23;69:7 & 35:12;39:6;44:14; \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 45:1,3;46:9;68:23 & 53:17 & 22:6;43:8;44:23; & re-construe (1) & 92:5 \\
\hline programs (1) & pull (2) & 84:21 & 83:13 & relate (3) \\
\hline 90:7 & 9:16;100:17 & readily (1) & record (20 & 26:17,18;40:6 \\
\hline promise (1) & purpose (2) & 12:8 & 3:5,7;8:6,24;53:12; & relates (1) \\
\hline 15:7 & 72:18;95:21 & reading (1) & 57:22;62:5,15;64:13, & 88:5 \\
\hline promised (1) & purposes (2) & 94:2 & 13;66:21,21;69:18; & relating (1) \\
\hline 37:19 & 5:23;66:5 & readjust (1) & 70:2,7;74:23;76:20; & 57:3 \\
\hline promises (4) & pursuant (1) & 52:4 & 101:14;110:5;112:21 & relationship (1) \\
\hline 15:6;57:15;83:18, & 54:7 & ready (1) & recorded (24) & 58:3 \\
\hline 19 & pursue (1) & 17:10 & 13:3,4,24;16:3,18; & relief (27) \\
\hline promissory (2) & 52:13 & real (9) & 20:17,18,19;25:2,9; & 19:22,22,23;30:7; \\
\hline 5:14;60:23 & pushing (1) & 23:8;35:7;41:22; & 34:15,19;45:22;46:2, & 50:1,16;54:23;59:10, \\
\hline proof (1) & 59:18 & 57:3,4;71:1;93:9; & 3,24;60:11;68:22; & 16,18;61:14,22; \\
\hline 66:3 & put (13) & 101:4;109:3 & 69:2,11,13,16;70:11; & 62:11,20;67:24; \\
\hline proper (1) & 7:21;8:1;11:8; & realistic (1) & 102:9 & 71:19;76:2;86:13,19, \\
\hline 98:3 & 38:3;42:18;53:7; & 4:17 & recording (4) & 24;87:3;88:15,16; \\
\hline properly (1) & 82:24;84:4;85:20; & realized (1) & 16:4;25:2;55:19; & 89:3,5,8;92:18 \\
\hline 75:14 & 86:1;90:23;92:9; & 33:1 & 69:21 & relies (1) \\
\hline property (15) & 112:4 & really (4) & redraft (3) & 57:15 \\
\hline 9:1;14:7,19:19; & Putting (2) & 12:16;55:4;78:1; & 84:21;91:6,7 & relieved (4) \\
\hline 35:7;50:20;56:15,20, & 11:6;85:23 & 86:6 & Reed's (3) & 15:21,23,24;20:2 \\
\hline 21;57:3,4,7,11;76:21; & & reason (16) & 32:21,22;33:19 & relieving (1) \\
\hline 77:24;93:13 & Q & 22:17;26:16;27:10, & refer (1) & 15:16 \\
\hline proposals (1) & & 22;42:17;59:17; & 63:23 & relinquish (2) \\
\hline 69:23 & qualified (2) & 60:20;69:16;71:18, & references (1) & 56:15,20 \\
\hline propose (2) & 55:7;71:3 & 21;72:1;74:2;94:6; & 34:18 & relinquishment (2) \\
\hline 87:6,6 & qualify (1) & 96:4;106:6;108:12 & referred (1) & 56:21;57:6 \\
\hline proposed (1) & 31:20 & reasonable (2) & 34:10 & remain (1) \\
\hline 64:20 & quick (3) & 99:24;100:6 & referring (1) & 9:4 \\
\hline proposition (1) & 23:8;93:9;101:4 & reasoning (1) & 39:24 & remedies (1) \\
\hline 72:5 & quickly (1) & 42:7 & refers (2) & 70:10 \\
\hline protective (1) & & recalculate (1) & 13:6;64:1 & remedy (3) \\
\hline 59:1
proved (1) & & 51:8 & reflect (4) & 92:23;106:13;
\(110 \cdot 2\) \\
\hline \[
\begin{gathered}
\text { proved (1) } \\
30: 12
\end{gathered}
\] & R & \[
\begin{aligned}
& \text { recapitalize (1) } \\
& 63: 9
\end{aligned}
\] & \[
\begin{aligned}
& 13: 15,16 ; 33: 13 ; \\
& 112: 20
\end{aligned}
\] & \[
\begin{gathered}
110: 2 \\
\text { renegotiate (1) }
\end{gathered}
\] \\
\hline proves (2) & raise (1) & recapitalized (3) & reflected (1) & 56:12 \\
\hline 27:4;48:4 & 62:23 & 24:1,7;63:14 & 112:21 & Reno (3) \\
\hline provide (6) & Ramir (1) & receive (10) & reflection (1) & 108:7,16,19 \\
\hline 47:6;49:19;62:17; & 3:12 & 4:23;16:23;17:8, & 49:16 & renotice (2) \\
\hline 70:20;75:24;89:5 & ran (2) & 19,21;18:3;24:18,19; & reflects (1) & 111:21,22 \\
\hline provided (43) & 28:22;89:16 & 64:20;87:9 & 13:9 & repay (1) \\
\hline 5:14;6:4,5;11:21; & rate (23) & received (6) & refused (6) & \[
89: 1
\] \\
\hline 12:15;13:8;16:2,4,6, & 13:20;16:7;19:1; & 16:13;17:9;18:7 & 12:20;28:24;65:19, & report (1) \\
\hline 22;18:14;19:4,5; & 21:9,13,18,23,23; & 22;24:11;59:4 & 20;71:15;89:18 & 39:24 \\
\hline 21:16;23:9,14,19; & 23:16;24:4;25:21; & receiving (3) & refusing (1) & reported (1) \\
\hline \[
24: 22 ; 26: 12 ; 29: 1
\] & \[
26: 10,15,21 ; 27: 3,7,9
\] & 32:13,14;48:16 & \[
57: 22
\] & \[
18: 10
\] \\
\hline \[
33: 1 ; 35: 15,20 ; 36: 18
\] & 28:12,13;34:7;48:11; & recent (1) & regarding (2) & representations (2) \\
\hline 43:3,16;48:6,7;57:7, & 51:3;105:11 & 14:22 & 76:24;77:7 & 29:16;37:23 \\
\hline 18;58:12,12,14;59:6, & rates (4) & recently (2) & regardless (1) & represented (5) \\
\hline 9;62:17,18,19;66:15; & 27:9,13;49:13; & 24:11;82:16 & 95:10 & 39:19;41:12,14; \\
\hline 68:12;70:13;78:3; & 80:24 & Recess (3) & regards (4) & 42:3;54:17 \\
\hline 89:18 & rather (6) & 8:5;53:9,10 & 5:7;27:14;48:3 & representing (2) \\
\hline provides (8) & 21:22,23;24:4,6; & recognition (1) & 93:10 & 7:17;33:5 \\
\hline 6:5;18:2,22;19:10; & 64:23;102:8 & 27:12 & regularly (1) & request (7) \\
\hline 21:20;23:12;56:19; & ratifying (1) & recognize (4) & 12:23 & 6:13;7:18;24:16, \\
\hline 77:20 & 64:9 & 14:13;19:14;23:21; & reinstate (2) & 17;71:3;113:11,13 \\
\hline providing (2) & \(\boldsymbol{R e}(1)\) & 51:17 & 16:11;75:20 & requested (3) \\
\hline \[
49: 16 ; 92: 22
\] & 57:14 & recognized (3) & rejected (6) & 68:13;74:4;92:18 \\
\hline proving (1) & reached (1) & 26:3;48:21;50:24 & 25:10;80:20;82:9; & requesting (2) \\
\hline 106:7 & 24:13 & recommended (1) & 89:14,15;104:16 & 17:20;103:3 \\
\hline public (2) & reacted (1) & 33:19 & rejection (1) & requests (2) \\
\hline 8:24;76:20 & \[
41: 5
\] & reconstructing (1) & \[
89: 17
\] & 7:20;24:11 \\
\hline published (1) & read (4) & 83:6 & rejects (1) & require (7) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 51:4,5;92:13; & 23;10:20;11:9,18; & 15:12;51:23; & 76:15 & 12;19:11; \(20: 2 ; 22: 4\) \\
\hline 106:20,21,22,24 & 12:5,9,13;15:20; & 01:14;102:21; & second (4) & 25:12,17;27:17;28:9, \\
\hline required (4) & 16:12;17:11,11,15, & 106:5,24;109:16 & 21:21;42:24;63:5; & 18,20;31:18,20; \\
\hline 12:1;19:3;68:18; & 22;18:1;19:16;20:7, & rules (1) & 68:14 & 36:16;47:10;89:14, \\
\hline 79:16 & 21,24;22:5,18;23:5; & 11:2 & secure (1) & 15 \\
\hline requirement (4) & 27:24;29:4,9;30:1, & run (1) & 21:4 & set (6) \\
\hline 46:6,8;59:20;75:10 & 23;31:16,18;32:3,11, & 67:4 & secured (2) & 12:1,1;38:15; \\
\hline requirements (1) & 18;33:18;34:20;35:3, & Russell (1) & 35:7;86:18 & 69:19;90:6;107:7 \\
\hline 93:12 & 9,17;36:22;37:3,21; & 107:24 & seeing (1) & sets (1) \\
\hline \[
\begin{aligned}
& \text { requires (4) } \\
& 16: 2,3 ; 17: 23 ; 77: 23
\end{aligned}
\] & \(38: 1,11 ; 39: 16,22 ;\)
\(40: 1,9,13,15 ; 41: 3,21 ;\) & S & \(111: 7\)
seek (8) & \(81: 2\)
settle (3) \\
\hline rescind (1) & 42:7,8,13,13;43:14; & & 19:21; & 4:10;39:18;71:12 \\
\hline 112:8 & 44:5,16,17;45:11,20; & Sables (1) & 16;89:3,10;99:7; & settlement (1) \\
\hline rescission (2) & 47:11,14;49:21;50:3, & 7:17 & 110:23 & 71:1 \\
\hline 101:10;102:12 & 4,12,23;51:6,19,22; & sale (18) & seeking (7) & seven (2) \\
\hline resolution (5) & 52:10,11,17,19,23; & 38:5;45:22,22; & 19:8,11;46:21; & 22:7;106:21 \\
\hline 3:20;4:3,20;46:20; & 53:6,11;57:8,12; & 46:2,3,7,10;70:22; & 49:3;84:8;87:10; & several (3) \\
\hline 94:8 & 59:16;62:23;63:15, & 101:6,7,8,15,16,17; & 98:16 & 26:24;83:1;90:12 \\
\hline resolve (4) & 24;64:1,15;65:4,7,10; & 102:7,12;111:21,23 & seem (1) & Shipman (1) \\
\hline 30:21;35:23,24 & 66:10,19,23;68:5,24; & sales (1) & 70:3 & 79:4 \\
\hline 94:14 & 71:11;73:10,14,17, & 102:8 & seemed (1) & short (2) \\
\hline resolves (1) & 19;74:1,24;75:5,17, & same (3) & 80:23 & 38:5;70:22 \\
\hline 43:13 & 21;76:3,8,11,14,21; & 47:24;72:5;81:20 & seems (3) & show (7) \\
\hline resort (2) & 77:12;79:12,13,15, & sat (2) & 11:21;39:10;69:15 & 27:20;36:12;83:5; \\
\hline 71:9,10 & 16,19,24;80:4,6,19, & 60:16;75:22 & Senator (3) & 86:10,12;92:10,19 \\
\hline RESPA (1) & 22;81:23;82:23; & satisfaction (7) & 32:21,22;33:18 & showing (3) \\
\hline 71:1 & 83:20;84:12;85:1,10, & 93:16,19,24;94:15; & send (6) & 13:24;14:3;26:8 \\
\hline respond (1) & 13,14,23;86:4,17,19; & 97:3,17;110:21 & 29:22;56:10;74:9; & shown (1) \\
\hline 71:3 & 87:9,12;88:2,2,3,5,8, & satisfied (2) & 81:21;95:21;113:8 & 89:15 \\
\hline response (10) & 19;89:3,16;90:1,8,11, & 45:18;110:8 & sends (1) & shows (6) \\
\hline 5:11;6:5,8;24:16; & 21;91:1,2,10,21,23; & satisfies (1) & 49:21 & 24:5;48:8,9,10; \\
\hline 40:5;44:1;47:5,6; & 92:8,11,14,17;93:3,4, & 40:7 & senior (3) & 70:14;105:20 \\
\hline 48:7;65:21 & 7;94:11,13,15;95:2,9; & satisfy (1) & 107:19,20,22 & sic (1) \\
\hline responses (1) & 96:13,15,19,24;97:1, & 110:18 & sense (1) & 21:3 \\
\hline 93:8 & 13;98:19,23;99:13, & save (3) & 27:11 & side (3) \\
\hline rest (1) & 21;100:2,8,9,10,15, & 29:19;32:2,11 & sent (15) & 37:3;68:11;93:1 \\
\hline 88:9 & 18,20,24;101:3,19, & saved (1) & 5:9;13:14;18:17, & sign (3) \\
\hline restate (1) & 22;102:1,4,13;103:1, & 75:8 & 19;55:12;58:5;59:8; & 39:18;56:5;113:11 \\
\hline 91:14 & 22;105:4;106:1,4,5, & saving (1) & 64:19;71:1;73:22; & signature (2) \\
\hline restraining (1) & 19;108:2;109:3,12, & 84:3 & 74:2,15;82:6,8;97:4 & 81:12;82:17 \\
\hline 3:6 & 20,22;111:13,16,19; & saw (1) & Senta (5) & signatures (1) \\
\hline resulted (1) & 112:7;113:2,7;114:8, & 110:7 & 55:7,12;56:8;59:5, & 78:18 \\
\hline 93:11 & 11,13 & saying (40) & 7 & signed (19) \\
\hline results (1) & Rights (30) & 17:10;18:13;23:14; & sentence (1) & 13:2,4,24;23:20; \\
\hline 47:9 & 16:1;19:9,10,23; & 26:2;29:22;31:11; & 44:23 & 25:3,8;28:5;32:7; \\
\hline retained (1) & 36:13,17;37:4,11; & 34:6;39:6;48:17; & separate (5) & 33:5;36:9;42:16; \\
\hline 8:22 & 38:16,16,22;39:2; & 50:18;51:6;62:1; & 20:8;22:17;66:18; & 43:24;46:24;56:22, \\
\hline return (1) & 40:7;49:7,7;50:13; & 63:21;74:15;77:22; & 80:12;94:21 & 24;57:1;63:11;64:3,6 \\
\hline 46:21 & 52:12,13,16;72:18; & 81:20;83:5,21;84:1, & September (10) & signing (1) \\
\hline review (3) & 75:23;77:24;78:6; & 5;85:17,24;87:24; & 14:2;25:7,21,22; & 18:17 \\
\hline 8:24;11:23;76:20 & 93:20,21;98:21; & 88:18,18;90:5,14; & 34:18;104:3;105:6, & signs (2) \\
\hline revised (1) & 112:14,17,19;113:1 & 91:11,14;92:3;94:3,4, & 13,14,15 & 37:16;90:14 \\
\hline 44:12 & rise (1) & 8,12;98:17;99:1; & series (1) & similar (1) \\
\hline rewrite (1) & 60:3 & 101:21;110:12,16; & 69:23 & 59:13 \\
\hline 90:21 & road (1) & 113:14 & serious (1) & simply (7) \\
\hline rhyme (1) & 29:24 & scenario (1) & 46:19 & 15:6;22:19;36:24; \\
\hline 27:10 & room (2) & 55:24 & serve (1) & 48:20;49:8;113:10, \\
\hline right (236) & 55:4;82:24 & scheduled (1) & 95:21 & 16 \\
\hline 3:4,11,15,21;4:18, & route (1) & 102:18 & servicer (5) & sitting (1) \\
\hline 22;5:5,19,19;6:1,7, & 51:7 & Schlegelmilch (2) & 22:1,3,12;49:2 & 38:13 \\
\hline 10,11,14,18,22;7:4, & routine (1) & 7:8;107:16 & 52:13 & \(\boldsymbol{\operatorname { s i x }}\) (8) \\
\hline 10,14,14,19,24;8:9, & 9:10 & Scott (6) & Servicing (20) & \[
27: 7 ; 86: 12,14
\] \\
\hline 13,15,16;9:3,8,11,20, & rule (7) & 6:20;7:1,2,12;8:11; & 3:13;13:14;14:3,6, & 104:2,4,5,5;105:4 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline six-year (3) & 25:16 & step (2) & 16:6;85:15;92:9; & 73:2;78:2;79:2;81:2, \\
\hline 59:19,22;60:11 & stand (2) & 21:14;90:16 & 98:2 & 3,11;82:7;83:6,10; \\
\hline skipped (1) & 42:18;47:17 & steps (2) & Supreme (2) & 91:15;93:14,15; \\
\hline 30:8 & standard (1) & 79:11,15 & 106:12;110:3 & 94:13;95:19;96:6; \\
\hline slightly (1) & 99:24 & step-up (1) & sure (12) & 97:13,15;98:11; \\
\hline 104:8 & standards (1) & 21:12 & 5:8;6:3,13;9:18; & 99:14,19;103:2,17; \\
\hline Smith (1) & 73:12 & Stiglich (1) & 22:8;31:5;38:22; & 106:8,10,11;107:6; \\
\hline 25:4 & standing (3) & 108:24 & 47:12;60:3;93:22; & 110:2,20 \\
\hline solution (1) & 61:4;97:24;98:3 & still (17) & 107:10;109:4 & terrible (1) \\
\hline 91:14 & stands (1) & 11:11;24:1,3,4,5; & surrounds (1) & 114:8 \\
\hline solve (2) & 72:5 & 25:20;26:2,6;52:12; & 40:9 & testimony (9) \\
\hline 51:12;81:18 & start (3) & 58:9;60:11;83:4; & survival (1) & 9:24;11:4;18:21; \\
\hline solves (1) & 3:17;85:9;107:3 & 87:7;95:19,20;98:17; & 88:12 & 28:19;37:22;38:3; \\
\hline 51:9 & started (7) & 99:20 & suspect (1) & 41:10;42:19;45:14 \\
\hline somebody (8) & 18:8;32:21;35:12; & stop (7) & 73:18 & testing (1) \\
\hline 31:24;39:11;49:21; & 52:14;64:7,8;94:7 & 30:1;58:6;70:24; & switched (1) & 87:17 \\
\hline 69:14;89:20;92:5,6; & starting (5) & 71:21;74:24;96:13; & \[
8: 7
\] & theories (1) \\
\hline \[
95: 22
\] & 46:1;85:18,23,24; & 100:3 & system (1) & 90:23 \\
\hline somehow (1) & 91:15 & stopped (1) & 7:23 & theory (5) \\
\hline 54:14 & starts (1) & 40:22 & T & \[
\begin{aligned}
& 57: 13 ; 82: 2 ; 84: 23 ; \\
& 85: 8: 92: 8
\end{aligned}
\] \\
\hline someone (4) & & \begin{tabular}{l}
stops (1) \\
110:10
\end{tabular} & I &  \\
\hline sometime (1) & 3:6;26:9;39:17; & subject (1) & talk (5) & 13:2;19:15;27:9 \\
\hline 18:16 & 78:5;83:12;88:20,20; & 57:4 & 4:6;28:4;54:22; & therefore (4) \\
\hline soon (1) & 89:8 & submit (4) & 55:3;58:21 & 32:1;35:15;40:24; \\
\hline 89:16 & stated (8) & 113:10,11,13; & talked (2) & 80:2 \\
\hline sorry (12) & 28:7;36:18,19; & 114:7 & 3:18;102:2 & thereto (1) \\
\hline 6:24;10:10;17:17; & 40:15;49:8;55:7; & submitted (2) & talks (3) & 16:21 \\
\hline 28:17;31:20;53:24; & 75:14;93:20 & 34:5;55:10 & 34:14,16,17 & thinking (2) \\
\hline 61:12;62:8;67:21; & statement (26) & subsequently (1) & technically (2) & 94:10;99:9 \\
\hline 72:7;81:15;99:3 & 13:8;17:5,6;18:14, & \[
56: 1
\] & \[
58: 6 ; 106: 15
\] & third (7) \\
\hline sort (1) & 17,18;21:16;23:21, & substitute (2) & telephone (8) & 28:16;59:12,13; \\
\hline 71:6 & 23,24;25:12;26:10, & 35:1,2 & 6:19;8:8,10;53:7; & 65:24;66:3;82:8; \\
\hline sought (2) & 22,23,24;27:7;38:17; & succeed (4) & 76:14;114:5,9,12 & 90:15 \\
\hline 19:23;89:13 & 39:1;44:21;45:7; & 57:9;90:4;100:6,7 & telling (2) & though (14) \\
\hline sound (1) & 48:8,9,10;50:16; & success (4) & 33:4;91:24 & 9:15;13:24;17:5; \\
\hline 7:23 & 69:20;81:1 & 99:24;106:7; & temporary (4) & 40:16;41:12,14; \\
\hline sounds (3) & statements (16) & 109:23;112:24 & \[
63: 11 ; 67: 5 ; 69: 23
\] & 43:16;48:22;50:18; \\
\hline 9:12;93:24;94:15 & \[
10: 24 ; 13: 13 ; 23: 7
\] & successive (2) & \[
82: 13
\] & \[
54: 2 ; 79: 10 ; 84: 18
\] \\
\hline speak (1) & \[
20 ; 25: 14 ; 26: 4,12,15
\] & 19:13;46:15 & \[
\operatorname{ten}(1)
\] & \[
92: 10 ; 103: 2
\] \\
\hline \[
7: 10
\] & 29:22;30:6;33:12,16; & successors (1) & 78:24 & thought (3) \\
\hline specific (7) & 48:17;63:20;76:23; & 93:2 & tenth (1) & 44:3;65:3;101:7 \\
\hline 37:6,17;78:2;91:3, & 93:14 & sudden (1) & 113:23 & thousand (1) \\
\hline 11;106:15;112:10 & states (6) & 17:4 & term (5) & 83:1 \\
\hline specifically (2) & 21:2;37:13;53:24; & sue (2) & 13:21;16:7;19:2; & threats (2) \\
\hline \[
53: 23 ; 56: 16
\] & 54:6;67:22;77:6 & 73:8;91:3 & 21:18;95:19 & 29:23;32:12 \\
\hline specifics (1) & stating (3) & sufficient (4) & terminated (1) & three (12) \\
\hline 44:8 & 32:7;55:17;65:11 & 62:16,20;93:14,15 & 45:3 & 17:13;32:24;38:5; \\
\hline speculation (1) & statute (25) & suggest (1) & terms (87) & 41:18,18;60:14; \\
\hline 25:5 & 49:18,20;50:15; & 107:18 & 4:10;11:19,21,23; & 66:12;67:7;81:7; \\
\hline speed (1) & 57:4;59:19,22,23; & summary (1) & 13:9,13,15,16;16:9, & 103:15;105:7;108:1 \\
\hline 8:23 & 60:12,17;67:3,10,21; & 111:7 & 13,20;17:5;19:1; & throw (4) \\
\hline spinning (1) & 68:7,8;69:11;72:3; & Suntrust (2) & 20:5;22:22;23:4,12; & 39:6,8;53:5;81:24 \\
\hline 93:6 & 76:24;77:16,23; & 40:4;53:16 & 24:21;25:9,12;26:4, & times (4) \\
\hline splits (1) & 81:12;82:18;102:20; & supplant (3) & 5;27:5,22;28:13,14; & 84:22;90:13; \\
\hline 108:13 & 110:8,19;111:3 & 22:19;23:1,2 & 33:1;34:22;36:7,10; & 106:21,21 \\
\hline spoke (1) & statutes (1) & supplement (8) & 39:13;40:14;42:2,10; & timing (1) \\
\hline 48:14 & 94:10 & \[
23: 1 ; 55: 6 ; 62: 15
\] & 43:7;46:1,17,19; & 46:10 \\
\hline spreadsheet (1) & stay (6) & \[
64: 13,13 ; 66: 20,21
\] & 47:6;48:8;49:8,11; & title (1) \\
\hline 26:7 & 30:7;61:14,22; & 110:5 & 50:1,22;51:5,17,18; & 21:1 \\
\hline stabs (1) & 62:12;86:13;102:6 & supplements (1) & 54:8;55:2,9;56:1,6; & today (17) \\
\hline 50:5 & stayed (1) & 21:3 & 58:6;63:13;64:20; & 7:15;10:5;29:10; \\
\hline stack (1) & 46:8 & supposed (4) & 65:5,5,10;66:13; & 32:15;63:16;79:7; \\
\hline
\end{tabular}

\section*{85:18,24;96:11;} 102:21;107:4;110:3, 7,17;111:5,7;112:21
today's (2) 66:5;111:3
together (2)
42:1;94:13
told (1) 28:20
ton (2) 70:20,21
took (1) 69:17
top (4) 50:9,12;79:4;87:21
tracking (1) 70:7
transaction (1) 37:18
transferred (3) 22:10,11;28:17
travel (2) 108:14,15
Travis (1) 72:6
trial (10) 32:24;63:7;64:22; 65:11,12,14;78:21; 82:15,15;111:3
tried (10) 29:14;32:10;70:24; 71:10,12;77:13; 89:13,17,23;90:4
trigger (1) 100:18
trouble (3) 29:5;53:1;64:15
troubling (1) 97:11
true (4) 56:17;65:1;76:3; 99:22
Trust (22) 3:13;15:15;19:19, 21;20:8,10,12,15,20; 21:3;22:14,16;28:6; 30:22;35:7;36:15; 57:15;60:23;65:9; 66:14,14;110:8
trustee (1) 88:6
trustor (1) 54:4
try (6)
7:7;54:14;57:2; 78:11;90:9,10
trying (13) 12:22,23;15:14; 50:19;55:1;56:23; 67:12;84:10,11; 88:23;89:20,21; 99:20
TUESDAY (1)

3:1
turn (1)
37:6
twice (2)
72:11;73:16
two (32)
8:17;17:13;26:14;
28:11,15;50:5;56:2;
58:23;60:14;64:8;
65:14;67:3,4;69:14, 17;70:9,21;76:17;
77:3;78:18;82:8;
103:13,14;105:6,23;
106:11;107:12,15,20;
113:9,10,15
type (6)
26:7;50:1;57:5,9;
76:1,2
typical (2)
79:1,2
typically (1)
113:8
\begin{tabular}{|c|}
\hline \(\mathbf{U}\) \\
\hline
\end{tabular}
ultimate (1)
46:20
ultimately (2)
27:19;67:6
Um-hum (2)
44:18;60:5
unaware (1)
103:21
under (46)
4:10;11:23;14:21;
15:7,11,12,23;19:9;
23:22;24:8;25:16;
27:13;28:7,21;30:11;
31:22;48:18;50:7,22;
51:18;52:3,16;55:21;
58:13;68:18,23;
71:15;72:1,2,2;
73:12;79:16;83:3;
84:17;85:8,15;88:19;
91:5;95:3,4;97:3;
99:15;102:20;
104:16;105:8,12
underemployed (1) 31:23
underlying (5)
30:22;94:19;95:11; 97:2;99:15
understood (1) 45:10
undo (1) 78:24
unemployed (3) 31:23,24,24
unless (4) 4:5;63:10;68:22; 72:23
unpaid (1) 25:24
```

unsatisfied (1) 35:14
up (42)
4:20;5:9;7:10;8:2,
23;21:14;25:23;39:3; 43:8;49:13,13,14; 51:5;54:13;56:23; 57:2;60:20;61:9; 68:11;69:21;70:24; 71:8;74:7;75:8; 77:14;78:6;82:24; 84:3,4;85:3;86:3,9, 10,12,15;88:10,21; 91:17;107:7;110:12; 112:22;114:12
upon (6)
36:4;96:9;98:6;
106:17;112:18,22
use (5)
7:23;99:20;106:16;
110:23;111:10
used (3) 27:6,8;82:19
using (2) 99:10;105:22
usually (1) 68:21

```
\begin{tabular}{|c|}
\hline \(\mathbf{V}\) \\
\hline
\end{tabular}
valid (7)
60:19;64:9,10,12; 97:17,18;98:14
value (1) 66:9
variant (1) 105:20
verifications (1) 27:16
versus (3) 14:23;53:16;72:6
via (1) 59:8
victory (1) 99:18
violated (4) 49:8;58:6;101:21; 112:15
violation (13) 49:12,18;50:15; 60:15;62:2;67:21,23; 68:2,2,4;72:9,16; 100:4
violations (3)
67:15,18;71:20
void (1) 58:11
voluntarily (1) 56:19
\begin{tabular}{|r|}
\hline \\
\hline Wait (4) \\
\hline
\end{tabular}

86:16,16,16,23
waited (1)
74:3
waive (1) 36:16
waived (3) 36:13;98:19,21
waiver (3) 40:7;93:20,21
waiving (4) 38:15,22,23;62:24
walk (1) 37:13
wants (6) 4:6;11:16;38:2; 57:2;74:21;102:24
Washoe (4) 10:14;108:9,17,22
way (13) 10:11;14:3;26:9; 42:17;59:19;60:15; 61:21;63:8,14;75:14; 86:22;90:5,6
ways (1) 82:19
weren't (4) 14:15;15:10;39:11; 75:14
whatnot (1) 51:4
What's (13) 11:7;26:14;31:13, 17;36:24;48:20;58:1; 75:1;95:7;100:5; 107:4;108:18;109:16
whatsoever (1) 17:3
wheels (1) 93:7
Wherever (1) 98:5
whole (9) 30:16;41:24;42:3; 70:5;71:14;82:1; 83:13;89:11,20
willing (9) 14:16;29:19;37:13; 39:18;52:1;75:20; 89:5;109:4,9
window (1) 39:8
winning (3) 100:19,22,22
wipes (1) 83:6
wise (2) 108:14,15
wish (2) 9:3;106:16
wishes (2) 10:6;11:12
within (5) 12:2;28:8;46:7;

49:8;85:16
without (11)
11:5,8,14;54:10;
62:17,18,19;78:4;
82:17;96:1,2
witness (2)
9:24;10:16
witnesses (1) 10:8
word (1) 109:5
work (8) 29:20;42:3;54:21; 78:1;90:2;108:1; 113:8,10
worked (1) 12:22
working (3) 32:21,21;89:23
works (5) 8:8;61:21;63:8; 86:22;87:18
worse (1) 39:11
worst (1) 55:23
written (4) 32:7;59:23;71:3; 85:18
wrong (15) 25:24;26:19;27:3; 48:10,11;49:22,22; 50:14;71:23;77:21, 21;86:20;95:19,20,22
\begin{tabular}{|c}
\(\mathbf{Y}\) \\
\hline year (4)
\end{tabular}
year (4)
12:22;33:19;61:7; 104:1
years (18)
15:22;39:12;69:15, 18;70:9;78:24;84:4, 19;85:9,16;87:22; 89:1,2,3;91:5,17; 96:3;104:6
YERINGTON (1) 3:1
yesterday (1) 8:23
Young (1) 108:1
\begin{tabular}{|c|c|}
\hline \multicolumn{2}{|r|}{Z} \\
\hline \multicolumn{2}{|l|}{zero (1)} \\
\hline \multicolumn{2}{|l|}{24:6} \\
\hline & 0 \\
\hline \multicolumn{2}{|l|}{085 (1)} \\
\hline 95:14 & \\
\hline
\end{tabular}

ALBERT ELLIS LINVICOME,JR.AND VICENTE LINCICOME vs SABLES,LLC,

November 18, 2020
\begin{tabular}{|c|c|c|c|c|}
\hline & 16th (8) & 2015 (19) & \multirow[t]{3}{*}{\[
\begin{aligned}
& \text { 25:7;59:4;105:14 } \\
& \mathbf{3 6 ( 1 )}
\end{aligned}
\]} & 58 (1) \\
\hline 1 & 44:11,12;45:1,7, & \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { 25:21,22;28:10,16; } \\
& 30: 5 ; 31: 6,8,17 ; 61: 5 ;
\end{aligned}
\]} & & 21:8 \\
\hline & 10;55:4,7;58:5 & & & 59 (1) \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& 1 \text { (2) } \\
& 34: 18 ; 90: 16
\end{aligned}
\]} & \multirow[t]{2}{*}{\[
\begin{gathered}
\text { 18-CV-01332 (2) } \\
3: 5 ; 8: 7
\end{gathered}
\]} & \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { 63:6,12;69:4,21;82:4, } \\
& 4 ; 97: 18 ; 103: 14,15
\end{aligned}
\]} & \multirow[t]{2}{*}{\[
\begin{array}{r}
362(1) \\
61: 15
\end{array}
\]} & 91:18 \\
\hline & & & & 5th (2) \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& 100(2) \\
& 49: 16,20
\end{aligned}
\]} & \[
\begin{array}{|c}
\text { 18-CV-03112 (1) } \\
53: 12
\end{array}
\] & \multirow[t]{2}{*}{\[
\begin{gathered}
105: 7 \\
2016(15)
\end{gathered}
\]} & \[
37 \text { (2) }
\] & 18:14,16 \\
\hline & \multirow[b]{2}{*}{\[
\begin{gathered}
19 \text { (1) } \\
24: 17
\end{gathered}
\]} & & \multirow[b]{2}{*}{\[
\begin{array}{|l|}
\mathbf{3 8 1 , 1 5 0}(\mathbf{3}) \\
24: 2 ; 25: 20 ; 34: 17
\end{array}
\]} & \\
\hline \[
\begin{array}{r}
101(1) \\
60: 21
\end{array}
\] & & \[
\begin{aligned}
& 18: 15,16 ; 32: 4,5,6 ; \\
& 33: 20,21 ; 34: 6 ; 66: 11,
\end{aligned}
\] & & 6 \\
\hline \multirow[t]{2}{*}{\[
\begin{gathered}
105.563(1) \\
67: 18
\end{gathered}
\]} & \multirow[t]{2}{*}{\[
\begin{gathered}
\mathbf{1 9 7 7 2 9 ( 1 )} \\
105: 13
\end{gathered}
\]} & \multirow[t]{2}{*}{\[
\begin{aligned}
& 16 ; 68: 20 ; 69: 2 ; 97: 19 \\
& 103: 16 ; 105: 7
\end{aligned}
\]} & 39 (1) & 6 (1) \\
\hline & & & 62:6 & \\
\hline 107 (2) & \[
\begin{aligned}
& 105: 13 \\
& \text { 1st (9) }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 103:16;105:7 } \\
& 2017(\mathbf{6})
\end{aligned}
\] & \multirow[t]{2}{*}{53:20} & \[
6.875(4)
\] \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { 67:16;95:15 } \\
& \mathbf{1 0 7 . 0 8 0 ( 1 )}
\end{aligned}
\]} & \multirow[t]{2}{*}{\[
\begin{aligned}
& 14: 2 ; 25: 7,21 ; \\
& 26: 22 ; 28: 15 ; 59: 15 ; \\
& 80: 18 ; 105: 13,15
\end{aligned}
\]} & \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { 26:24;27:8;35:14; } \\
& 44: 22 ; 69: 11,22 \\
& \mathbf{2 0 1 8}(\mathbf{1 7})
\end{aligned}
\]} & & \[
\begin{aligned}
& 24: 4 ; 25: 21 ; 27: 7,8 \\
& \mathbf{6 5}(\mathbf{2})
\end{aligned}
\] \\
\hline & & & 4 & \[
\begin{aligned}
& 65(2) \\
& 56: 18 ; 109: 17
\end{aligned}
\] \\
\hline \[
\begin{gathered}
107.085(\mathbf{1}) \\
72: 1
\end{gathered}
\] & 2 & 3:1;15:5;26:13,22, & 4 (7) & 54:8;81:2 \\
\hline 107.400 (1) & 2,100 (1) & 44:11,12,17;45:1,22; & \[
\begin{aligned}
& 23: 8,9,12 ; 27: 1,10 \\
& 64: 18 ; 79: 11
\end{aligned}
\] & 7 \\
\hline 107.500 (7) & 105:16 & 56:9 & 4.285 (2) & \\
\hline 16:24;17:20,23; & 20 (3) & 2037 (1) & 24:5;27:2 & \[
7 \text { (2) }
\] \\
\hline 18:5,14;95:15,16 & 3:1,23;44:17
\(\mathbf{2 0 0 0}\) (5) & 21:22 & 4.825 (1) & 7th (1) \\
\hline 107.5001 (3) & \[
\begin{aligned}
& 43: 21 ; 65: 18 ; 69: 21 \text {; } \\
& 103: 7,20
\end{aligned}
\] & 2049
\(21: 22\) & 4.875 (1) & 55:17 \\
\hline & \multirow[t]{2}{*}{\[
\begin{array}{|l}
\text { 103:7,20 } \\
\mathbf{2 0 0 7}(\mathbf{1 3})
\end{array}
\]} & 20th (5) & 21:10 & \multirow[t]{2}{*}{8} \\
\hline 16:2;19:4;49:12 & & \multirow[b]{2}{*}{113:22} & \multirow[t]{2}{*}{\[
48: 17
\]} & \\
\hline 107.560 (1) & \multirow[t]{3}{*}{\[
\begin{aligned}
& 5: 14 ; 13: 10,16 ; \\
& 21: 4 ; 26: 18 ; 33: 14 ; \\
& 104: 20,21,22,22,24 ; \\
& 106: 8,18
\end{aligned}
\]} & & & 82 (1) \\
\hline \multirow[t]{2}{*}{107.5601 (1)} & & 56:9 & 71:20;72:2 & 59:4 \\
\hline & & 22nd (1) & 40-year (3) & 84 (2) \\
\hline \multirow[t]{2}{*}{\[
\begin{gathered}
107.561(1) \\
67: 22
\end{gathered}
\]} & \multirow[t]{2}{*}{2008 (4)} & \multirow[t]{2}{*}{\(25: 4\)
23rd (2)} & 21:23;85:12,16 & 106:22;111:18 \\
\hline & & & \multirow[t]{2}{*}{\[
\begin{gathered}
417(\mathbf{1}) \\
25: 18
\end{gathered}
\]} & \multirow[t]{2}{*}{9} \\
\hline 10th (4) & \[
\begin{aligned}
& 34: 18 ; 61: 18 ; \\
& 104: 24 ; 105: 5
\end{aligned}
\] & 5:14;21:4 & & \\
\hline 26:13,23,24;27:8
\(\mathbf{1 1}(\mathbf{4})\) & \multirow[t]{3}{*}{\[
\begin{aligned}
& 2009 \text { (66) } \\
& 12: 19 ; 13: 1,18 ; \\
& 14: 2,15 ; 19: 13 ; 20: 14 ; \\
& 21: 9 ; 23: 23 ; 24: 10
\end{aligned}
\]} & 26 (3) & 417,196.50 (1) & \multirow[t]{3}{*}{\[
\begin{aligned}
& 9 \text { (8) } \\
& 63: 17,19,22,23 ; \\
& 64: 1,16,19,19
\end{aligned}
\]} \\
\hline 60:22;87:22; & & 27 (1) & 42,000 (1) & \\
\hline 112:20,22 & & 34:10 & 26:1 & \\
\hline 11.1901b (1) & \multirow[t]{2}{*}{\[
\begin{aligned}
& 25: 7 ; 26: 2 ; 27: 21 ; \\
& 28: 3 ; 30: 2 ; 31: 2 ; 33: 9
\end{aligned}
\]} & 295 (1) & 49 (1) & \multirow[t]{2}{*}{\[
\begin{aligned}
& 90 \text { (1) } \\
& 59: 14
\end{aligned}
\]} \\
\hline 59:21 & & 105:22 & 91:18 & \\
\hline 11th (2) & 46:14,21;50:22;51:7, & 295.33 (2) & 4th (2) & \multirow[t]{2}{*}{\[
\begin{aligned}
& 97 \text { (1) } \\
& 59: 14
\end{aligned}
\]} \\
\hline 46:3;71:11 & 16;52:3;58:22;59:4, & 105:21,23 & 25:2;41:5 & \\
\hline \multirow[t]{2}{*}{\[
\begin{aligned}
& 12 \text { (3) } \\
& 29: 3 ; 59: 2 ; 106: 21
\end{aligned}
\]} & \[
\begin{aligned}
& 15 ; 60: 9,15 ; 62: 3,19 ; \\
& \text { 63:3;65:6;67:1,11; }
\end{aligned}
\] & \[
\begin{array}{|r|}
\hline \text { 29th (1) } \\
23: 23 \\
\hline
\end{array}
\] & 5 & \\
\hline & \multirow[b]{2}{*}{\[
\begin{aligned}
& 75: 7,9,22 ; 77: 8 ; \\
& 80: 18 ; 83: 3 ; 84: 13,16,
\end{aligned}
\]} & & & \\
\hline 12016 (2)
\(7: 13 ; 8: 14\) & & 3 & 5 (4) & \\
\hline 12th (2) & 24;85:9,11;90:19,21, & & 23:22;26:23;27:11; & \\
\hline 24:15;55:12 & 22;91:7;92:21,24; & 3 (5) & 79:11 & \\
\hline 13 (9) & 95:3;97:4;99:16; & 20:23,24;21:20,21; & 5.375 (2) & \\
\hline 25:15,16;26:12,14; & 103:8;104:23;105:6, & 34:23 & 21:14;25:23 & \\
\hline 86:22,22;87:5,5,11 & 9,14;106:7,18; & 30 (6) & 5/10/17 (1) & \\
\hline 13146 (1) & 109:23;110:17; & 53:2;69:12;86:15; & \(27: 7\)
\(5 / 25 / 2007\) & \\
\hline 3:13 & 111:1;112:20,22 & 107:1,2,3 & 5/25/2007 (1) & \\
\hline 134 (2) & 2010 (2) & 30-day (1) & 34:16 & \\
\hline 14:23;15:1 & 24:15;54:12 & 68:17 & 5/4/2011 (1) & \\
\hline 14 (1) & 2011 (16) & 30-plus (1) & 34:19 & \\
\hline 105:11 & 20:19;24:17;25:2, & 16:4 & 5:00 (1) & \\
\hline 15 (5) & 4;60:10,22;61:7,18; & 30th (1) & 53:1 & \\
\hline 3:23;4:6;24:10; & 67:1;77:8;99:16; & 102:20 & 50 (1) & \\
\hline 30:6;54:11 & 106:20;110:4,18; & 30-year (2) & 48:17 & \\
\hline \[
\begin{aligned}
& \text { 15th (2) } \\
& 69: 4: 70: 13
\end{aligned}
\] & \[
\begin{aligned}
& \text { 111:1,5 } \\
& \mathbf{2 0 1 4 ( 5 )}
\end{aligned}
\] & 21:23;24:3
31 (1) & \[
\begin{array}{|c|}
\text { 50-year (1) } \\
91: 18
\end{array}
\] & \\
\hline 69:4;70:13
\(\mathbf{1 6 ( 4 )}\) & 2014 \(21: 9,14 ; 61: 12 ;\) & \(31(1)\)
\(85: 16\) & 560 (3) & \\
\hline 16:13,14;34:11,12 & 63:1;105:14 & 31st (3) & 67:23;71:20;72:2 & \\
\hline
\end{tabular}

\section*{Do Not Copy}

\section*{In The Matter Of: \\ ALBERT ELLIS LINCICOME,JR.AND VICENTE LINCICOME vs SABLES LL,}
\[
\text { April 15, } 2019
\]

\title{
Capitol Reporters \\ 628 E. John St \# 3 \\ Carson City, Nevada 89706 \\ 775 882-5322
}

Original File 4-15-19lincicomehrg.txt

Case No. 18-CV-01332
Department II

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA
BEFORE THE HONORABLE LEON ABERASTURI
DISTRICT JUDGE, PRESIDING
ALBERT ELLIS LINCICOME,
JR.; AND VICENTA LINCICOME, Petitioners,
vs.
THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF LYON; AND THE
HONORABLE LEON ABERASTURI, DISTRICT JUDGE,

Respondents,
and
SABLES, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY
COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC;
PROF-2013-M4 LEGAL TITLE
TRUST BY U.S. BANK, N.A.,
AS LEGAL TITLE TRUSTEE; AND BAND OF AMERICA, N.A.,
Real Parties in Interest

ELECTRONIC-RECORDED TRANSCRIPT OF PROCEEDINGS
MONDAY, APRIL 15, 2019 YERINGTON, NEVADA

Transcribed by:
Shellie Loomis, RPR
CAPITOL REPORTERS (775) 882-5322

APPEARANCES:

For the Lincicomes:

For Sables:

For Bank of America:

For U.S. Trust \& Fay:

Millward Law, Ltd.
By: Michael Millward, Esq.
Minden, NV
Zieve, Brodnax \& Steele, LLP
By: Shadd Wade, Esq.
Las Vegas, Nevada -Telephonically-

Ackerman Law Firm
By: Darren Brenner, Esq.
Las Vegas, NV
-Telephonically-

Ramir Hernandez, Esq.

CAPITOL REPORTERS (775) 882-5322

YERINGTON, NEVADA, MONDAY, APRIL 15, 2019, P.M. SESSION --000-

THE COURT: All right. Good afternoon. This is Judge Aberasturi, who do I have on the telephone?

MR. BRENNER: Hi, this is --
THE COURT: Who?
MR. BRENNER: Sorry. Darren Brenner with the Ackerman Law Firm for Bank of America.

THE COURT: All right. Hold on one second. I'm going to try to conference in one more party.

All right. This is Judge Aberasturi, do I have both parties on the line?

MR. BRENNER: You still have Darren Brenner here from Bank of America.

THE COURT: And do I have someone from the Zieve Law Firm?

MR. WADE: Shadd Wade on behalf of Sables, LLC. THE COURT: Okay. I need you to speak up, sir. Say your name again.

MR. WADE: Yes, Your Honor, Shadd Wade is here on behalf of Sables, LLC.

THE COURT: Okay. All right. And in the courtroom I have Mr. Millward? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Yeah, Michael Millward on behalf of Lincicomes.

MR. HERNANDEZ: Ramir Hernandez, Your Honor, on behalf of the U.S. Bank Trust and Fay.

THE COURT: Okay. Today was set for a motion hearing. Now, on the phone, are you hearing me all right?

MR. BRENNER: Yes, Your Honor.
THE COURT: Okay.
MR. WADE: Yes, Your Honor.
THE COURT: I have I believe five matters to hear today. I have the declaration of nonmonetary status. I have a motion to dismiss filed by Bank of America. I have a motion for Rule 11 sanctions. I have a motion for leave to file amended complaint. And then I have a motion to set aside the default.

Let's start with the motion to set aside the default first.

MR. MILLWARD: Your Honor, I believe there was also an application for the default judgment.

THE COURT: Okay.
MR. MILLWARD: That pertains to the other motions.

THE COURT: Okay.
MR. MILLWARD: So we probably might want to hear CAPITOL REPORTERS (775) 882-5322
all three of those at the same time.
THE COURT: All right. And the application, when was that filed?

MR. MILLWARD: That's a good question. The application was filed --

MR. HERNANDEZ: I have it, Your Honor, it was filed on December 19th was the application for entry of default and December 18th -- January 18th this was the filing application for entry of default judgment.

MR. MILLWARD: Yeah, it should be, the file stamped copy reflects (indiscernible) court January 22nd.

THE COURT: January 20th -- all right. I don't have anything January -- okay, you're right. I have it.

Do you -- I have it down as January 21st application for entry of default against Bank of America application for entry of default versus Sables.

MR. MILLWARD: You must mean December.
THE COURT: December.
MR. MILLWARD: So on December 21st the clerk -the court clerk took a default of Sables and Bank of America upon application. Then we have an application for default judgment filed a month later on January 22nd.

THE COURT: January 22nd. Okay. Wasn't there a stipulation to set aside?

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: So there's a stipulation to set aside the default taken against Bank of America. There was not a stipulation as to Sables, LLC.

THE COURT: Okay. All right. So let's hear from Sables first, why should I set aside the default?

MR. WADE: Yes, Your Honor, as set forth in the moving papers and the declaration to the court, (indiscernible) office, three-day notice of intent to take default.

We reached out to Plaintiffs' counsel on December 18th and we spoke with the paralegal in his office and we also emailed her and we indicated we would be filing a response. That we were just waiting on a check from our corporate office so that we could send it in with the response to the court due to the lack of electronic filing service.

Despite that indication on December 18th, Plaintiffs' counsel proceeded to move forward and enter a default against Sables.

We believe that is a violation of RPC3.5A because she knew that represented Sables and that we intended to appear in the case, but he proceeded to --
(Telephonic feedback.)
MR. WADE: -- filing and proceeded to enter a default against Sables essentially just taking advantage of CAPITOL REPORTERS (775) 882-5322
the (indiscernible).
So, for that purpose as well as the arguments and the reasoning in the motion, we think that the default should be set aside. There's no prejudice alleged. There's no prejudice on the record and we have filed a responsive pleading and we filed it as quickly as we could once we received the three-day notice.

So we'd ask for the default to be set aside and for the declaration of nonmonetary status to be considered by the court.

THE COURT: Okay. All right. Your argument, Mr. Millward?

MR. HERNANDEZ: Your Honor, I did file a joinder I believe to that motion (indiscernible) arguments.

THE COURT: Well, I thought there was a
stipulation to let your client off?
MR. HERNANDEZ: I represent (indiscernible).
THE COURT: U.S. Bank.
MR. HERNANDEZ: Trust, Your Honor.
THE COURT: All right. Go ahead.
MR. HERNANDEZ: What I'd like to put on the record, the Fay listing, and correct me if I'm wrong, Shadd, but I believe I did file a joinder to this motion to set aside the default judgment. And I'm not going to repeat the CAPITOL REPORTERS (775) 882-5322
arguments that Mr . Wade made, but I do want to point out, Your Honor, that -- and I can wait until I file for my motion against -- my motion for sanction when that's heard, that when that 50 -- the mis -- there's been a lot of miscommunication here going on between the parties, not between the Defendants, but with the Plaintiffs' side in particular regarding the filing of notices.

And I'm only making one point, Your Honor, whenever one of our sides file something, we send a courtesy copy emailed to everybody the day we're going to file something, but Mr. Millward has not been doing that and he's been using the filing process by surprise. And I just want to point out here I think that something happened here with the entry of default of judgment.

THE COURT: Okay. All right. Anything else? All right. Your opposition, Mr. Millward?

MR. MILLWARD: Yes, Your Honor. So, on -- on I believe December 14th of 2018, I provided Sables, LLC and Bank of America notice of intention to take default. RBC3.5 requires that if \(I\) know of an attorney representing a party in a matter, that \(I\) should give them adequate notice and time before taking default.

Even though Sables at that point in time had not made any entry into the case nor had I spoken with Mr. Wade, I CAPITOL REPORTERS (775) 882-5322
still gave notice of default which is not required by the NRCP, I think it's NRCP 60 or 55, I think it's 55 now that I think about it.

But regardless, I gave adequate notice. I understand from my paralegal that on the 18 th she received a phone call requesting that Sables be given through the 21st to file a responsive pleading.

I told my paralegal okay, well, we will submit our filing for application for default on the 20th. And so on the 20 th, it was mailed out and it was received by the clerk on the 21st. And she took default on the 21st.

I had no understanding that Sables wouldn't have had their adequate time and opportunity to file something by then. They knew that they were going to seek their default. We filed a notice of intention to seek their default. I wasn't violating any rule in seeking their default as to whether or not the default should be set aside.

So the rules require that set aside of a default occur upon good cause where if there was neglect, that it be excusable. On that point, Mr. Wade's argument is that they communicated with me, asked for an extension and then I took default.

Those facts don't establish in any which way why they hadn't responded within the \(20-\) day time frame, which was CAPITOL REPORTERS (775) 882-5322
by December 9th. They had until December 9th to file a pleading. I gave them notice of intent to take -- to apply for default, to have the clerk take their default with plenty of time. They didn't get a filing made in time. Their default was taken by the clerk. The default shouldn't be set aside.

THE COURT: Can you cite to me any case in Nevada where the Supreme Court would uphold a judge for not setting aside a default?

MR. MILLWARD: Well --
THE COURT: In this type of situation?
MR. MILLWARD: In fact, it's a discretionary decision of the court. And so the court wouldn't be overturned on appeal because the court has discretion, but the cases cited in the -- my filing opposing are all cases in which the State Supreme Court has upheld a District Court finding that a default shouldn't be set aside.

THE COURT: Where the attorneys were communicating before and --

MR. MILLWARD: The attorneys weren't communicating before, but the rule requires that where a party has made an appearance that you have to give notice of intent to take default. And that's what I did, even though they hadn't made an appearance at that point in time. So I've CAPITOL REPORTERS (775) 882-5322
satisfied that part of the rule.
THE COURT: All right. Anything additional from Sables?

MR. WADE: Yes, Your Honor, there's ample Supreme Court case law to support the policy, the good public policy tradition that a case be adjudicated on their merits.

Given that policy and the fact that we notified counsel prior to his seeking entry of default against Sables that we were appearing and that we did appear within the time frame, we said we did, but he proceeded to obtain a default against Sables anyway and then his conduct following entry of that default in seeking to obtain a default judgment nunc pro tunc for an injunction.

This had already been litigated with other party, it demonstrated to Plaintiffs that hey, a proceeding to default Sables for an improper purpose, given the decorations that I have in the file and the case law cited I will submit to the court on the motion to set aside default.

MR. HERNANDEZ: If I may add one more thing, Your Honor?

THE COURT: Go ahead.
MR. HERNANDEZ: All cases that he cites to about setting aside a default, setting aside a default judgment.

THE COURT: Right.
CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Not the default.
THE COURT: Right.
MR. HERNANDEZ: And the standard for defense of default judgment is different than (indiscernible) default. So there is -- I've looked, Your Honor. I don't know any Nevada case where the judge has overturned (indiscernible) a default and I just want to make that clear.

MR. MILLWARD: Your Honor, actually I believe the standards are the exact same standard. If you look at NRCP60, that's where the standard for default judgment and default are discussed. I know of no other standard but the standard for default judgment that also applies to a default.

THE COURT: Okay. All right. I'm going to grant the motion to set aside the default. Nevada case law is quite clear that the court is supposed to hear matters on the motion.

We're talking about days, not weeks, months, years. I'll find that there was communication, that the Defendant Sables had attempted to work out a reasonable time period. Okay. And that from public policy favors decisions on the merits. Okay.

All right. Then as to the motion for Rule 11 sanctions, let's go to that one next.

MR. HERNANDEZ: Your Honor, this case I think has CAPITOL REPORTERS (775) 882-5322
had a tortured history more than it really should have at this point. We -- what began was what began as a TRO to stop a foreclosure has blown up to try to be something else.

And I think, Your Honor, that what's happened here is that opposing counsel is trying to manip -- has been trying to manipulate the system to retroactively annul an order that this court entered.

And, Your Honor, I'll be honest with you, this is the first time in my five years of practice that I have filed a Rule 11 motion against an opposing counsel.

And I think that in this case, it rises to a level of egregiousness where \(I\) think this motion of sanctions should be awarded simply to deter future behavior from this counsel, especially in this case, because opposing counsel is not being reasonable with anything in regarding the filings with the deadlines and he is trying to -- to play got you (indiscernible) and trying to get retroactive relief where there's other avenues for him to get the relief.

If I go back to November, Your Honor, when we met here I think we had to go to the next courtroom because I think the telephone was broken that day.

THE COURT: Yes.
MR. HERNANDEZ: You granted their motion for preliminary injunction. It was conditioned on them posting CAPITOL REPORTERS (775) 882-5322
the bond within 30 days of 84 monthly payments. They failed to post that bond.

Now, opposing counsel argues that the order that was submitted -- I want to give you -- by the way, before we talk about the order, Your Honor, I want to tell you what happened with the order. Opposing counsel submitted an order to me and told me by email I'm filing this.

And I put the brakes on, I said wait a minute, give me a chance to actually review what this order says. And I made several substantial changes, for example, opposing counsel tried to put in the original draft of this order that he was trying to seek a permanent injunction.

And then ultimately we ended up changing that to preliminary injunction. And that's just part and parcel of the story I'm trying to tell, Your Honor, with what's developed so far.

Then, open opposing counsel puts language in the order on paragraph 1 that says Sables is hereby enjoined from selling the public auction, the real property located at 70 Riverside Drive, Dayton, Lyon County, Nevada.

And I identified the notice of trustee sale recorded with the office of the Lyon County recorder as document number 587470 until further order of the court.

But if you jump to two paragraphs later it says CAPITOL REPORTERS (775) 882-5322
that the injunction shall be effective against Defendants so long as bond is posted and Plaintiffs post additional security in the sum of \(\$ 2,105.10\) on January \(20 t h, 2019\), and on the \(20 t h\) day of each month thereafter with the Third Judicial District Court clerk's office.

Then go down to paragraph 5. That failure of Plaintiff to timely post a bond and provide notice of bond by December 20th, 2018 shall relieve Defendants of their duty to comply with this injunction in joining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada until finally a notice of bond -- notice of compliance of Plaintiffs' satisfaction of requirement to post additional security with the Third Judicial District Court in this matter are therefore served upon Defendants.

And, Your Honor, the reason I put that all together is because opposing counsel says -- has basically two arguments.

The first argument is that he's entitled to a nunc pro tunc default judgment back to December 20th because that was the first day that he could seek a default judgment.

However, Your Honor, number one, there's no mechanism for a nunc pro tunc de -- retroactive default judgment in this -- in that matter. There's nothing.

In fact, the case law is specific, it CAPITOL REPORTERS (775) 882-5322
specifically says that a nunc pro tunc -- a nunc pro tunc order in Findley versus Findley is a case from 1948 and all the cases I cite are well-established laws in Nevada that have been around for decades that a (indiscernible) order cannot be modified -- sorry, that the object -- I'm sorry, I was quoting the wrong case, I was (indiscernible) in 1917. The object of the nunc pro tunc is to make records speak true to an act already done.

And I also want to cite, and the reason I cite that case, Your Honor, is because I want to make a point very clear that the purpose of a nunc pro tunc order is okay, there was an error made in the drafting of the order and we're here to fix that drafting of the order.

The nunc pro tunc has never ever been used in a method that opposing counsel has supplied. In fact, it would be contrary to everything that Nevada law says.

So there is no mechanism, nothing that would allow him to do that.

Now, if he wanted to get a default judgment against Sables for monetary damages, I wouldn't be here talking to you today. In fact, I wouldn't have pulled up here today. I have no stake in this game.

But the fact that he came here and is trying to seek a nunc pro tunc judgment in a manner which is CAPITOL REPORTERS (775) 882-5322
substantially going to affect the rights of my clients, the beneficiary and the loan servicer is why I'm arguing here today that the motion for entry of default judgment no pro tunc was done for improper purpose. Because, Your Honor, the foreclosure sale, this is undisputed, took place on January 4, 2019.

It took place on that date because the injunction had dissolved. Now, opposing counsel files a default judgment and then tries an entry -- files an entry of default judgment to enjoin Sables all the way back to December 21st from participating and going forward with the foreclosure sale, which means retroactively it would have made our January 4th foreclosure sale invalid. Okay.

This court has already stated that the foreclosure sale could take place if the bond was not posted.

Opposing counsel's interpretation of the order is just nonsensical. There's nothing in the order. We were all here, Your Honor, we knew what their intent was.

Your intent that day if they did not post the 84 months of bonds, 84 monthly payments as bond within 30 days that you were going to allow the foreclosure sale to take place.

There is a third party called Breckenridge that came to the foreclosure sale based on all this and in good CAPITOL REPORTERS (775) 882-5322
faith as a bona fide purchaser purchased the property.
Now, I called opposing counsel in January and I said look, if you want to seek a monetary default against Sables that's your prerogative. But don't seek a default against Sables that's going to affect the record, my party, the party that has appeared and participated in this case.

And I'm sorry if I'm being indignant, Your Honor, but this is part and parcel of what's been going on with this case with opposing counsel. As I alluded to earlier, opposing counsel has frequently made filings as frequently -- has frequently made filings in other actions in this case without informing all parties together.

Our side, the defense side has always sent emails out saying this has been filed. Instead of respecting what's been going on, opposing counsel has been taking advantage of the fact that this district does not have electronic filing.

And so he's using -- and by the way, Your Honor, all the other counsel are in Las Vegas, so we have to mail everything up here, get it filed, your clerk staff is great, things are filed very quickly, they get up here. But that's just not fair to us that opposing counsel is able to take advantage of this non-filing system to play the gotcha here. Okay.

And I'm afraid that if we continue through this CAPITOL REPORTERS (775) 882-5322
litigation we're just going to have more of this. Especially now that he's probably -- he's going -- he's going to make a complaint that's going to be filed.

THE COURT: Stay away from that. We'll
address --
MR. HERNANDEZ: But that's the point, I know you're trying to stay away from that, Your Honor, but the point I'm making is that, you know, at some point he needs -he needs to be sanctioned by the court for this type of behavior.

I'm not asking -- you know, I'm not asking for a million dollar sanction, Your Honor. At the very least \(I\) have to file here -- I had to file an opposition to his application for default judgment and I had to file my -- my -- my Rule 11 motion. And I gave him the safe harbor, I tried to talk him out of it, I did everything I could and he just kept insisting on going forward.

And what's even egregious to me, Your Honor, is he's willing to set aside the default of Bank of America because that gave him notice of damage, but he wasn't going to set aside the default of Sables and I know (indiscernible) a lot because if he set aside the default of Sables, he would have no mechanism to do this nunc pro tunc nonsense that he's trying to do.

CAPITOL REPORTERS (775) 882-5322

Your Honor, if he didn't like your injunction order he had an opportunity to file a writ with the Supreme Court of the Court of Appeals, it would have gone to the Supreme Court, it probably would have been shuttled down. He had an opportunity to file a writ with the Supreme Court to stop the foreclosure sale.

He didn't do that. Okay. He allowed the foreclosure sale to happen and then after the foreclosure sale happened then he filed his application for default judgment, and that's when he tried to do it nunc pro tunc.

You know, I -- I'll be honest with you, Your Honor, I've never seen anybody in my years of litigation, I've never seen opposing counsel try to do this with a preliminary injunction before.

So I know that Rule 11 sanctions are harsh, I know they can be punitive, but \(I\) think this is an opportunity here, Your Honor, to -- to really get this case off the rails and back on track. And unless you have any questions, I think everything else is in my pleadings.

THE COURT: No. Mr. Millward?
MR. MILLWARD: Thank you, Your Honor. This order for sanctions against me personally and against my client is about three words, nunc pro tunc. The Defendants U.S. Bank believe that -- that the request for entry of judgment nunc CAPITOL REPORTERS (775) 882-5322
pro tunc is a sanctionable offense.
I have seen attorneys ask for nunc pro tunc relief and had it granted and had it denied for various reasons.

The reason it was sought in this matter, Your Honor, was because Sables at the point, at the point that the default has been taken had not appeared in this matter, had not shown up at the last hearing that this court had, had not been involved otherwise and had defaulted. And the clerk had taken their default.

It was my argument that because they hadn't shown up, they didn't care about the injunction. They didn't care to follow the court's order. The court on December 31st entered its order and its order said that until further order of the court Sables should not foreclose. Shall not foreclose.

When \(I\) sought nunc pro tunc application of a judgment, it was --

THE COURT: You submitted that order?
MR. MILLWARD: I did.
THE COURT: Right.
MR. MILLWARD: And counsel signed off on it.

THE COURT: And counsel signed off on it.
MR. MILLWARD: They agreed to it. CAPITOL REPORTERS (775) 882-5322

THE COURT: And so in that order I had specific language and at the last hearing I gave specific language that if your client didn't post the bond and start making payments the sale could go through.

MR. MILLWARD: That's exactly right. And the reason I wrote the order the way I did, Your Honor, was so that they did not need to seek another hearing or any other type of relief to get that order entered by the court.

I thought it made sense that we not be wishy washy about when they could and when they couldn't move forward. Because when the order was submitted the preliminary injunction still was in place. So we had to have some order of the court turning it off, shutting it down.

THE COURT: All right. But your nunc pro tunc request is to grant the requested relief injunctive relief.

MR. MILLWARD: The nunc pro tunc.
THE COURT: Wait. If I sign that and I enter a default judgment against Sables saying they're enjoined then what does that do?

MR. MILLWARD: Well, all that it would do is that Sables would probably not be the trustee any longer, that they would probably seek to have another trustee appointed and move forward.

But regardless, it would require the case be CAPITOL REPORTERS (775) 882-5322
heard on the merits rather than running as quickly as we can to a foreclosure settlement in this matter. I mean, the court already found in this case that my client's likely to prevail on the merits.

THE COURT: No. I found it likely to prevail on the merits that there was an issue with how the deficiency judgment was calculated and on that basis they would be able to stop the sale if they posted the bond, because your client's going to pay something at the end of the day.

MR. MILLWARD: Your Honor --
THE COURT: Do you understand that?
MR. MILLWARD: I'm not saying that my client's not going to. I'm saying that my client's entitled to her day in court.

THE COURT: And she had her day in court as to the preliminary injunction.

MR. MILLWARD: Right.
THE COURT: And I gave her the opportunity to put up the bond.

MR. MILLWARD: Right.
THE COURT: And then you filed this and you are clearly seeking to undo what I did.

MR. MILLWARD: Your Honor, I promise when I filed this nunc pro tunc, I thought not only have they violated the CAPITOL REPORTERS (775) 882-5322
court's order, the current order that this court signed, but the order that counsel had already approved, but they failed to otherwise plead in this case.

I sought to make the judgment effective as of the date that I first could have applied to it because I could have applied for it on that day.

Had I filed an application for judgment as of that date to make the injunction permanent, there would be no argument or dispute here and my understanding at the time of getting a default then entitled the party to the relief sought to the court's order.

THE COURT: This is how it appears to the court. If there was a duty of candor to the court when you filed the preliminary injunction you would have filed for the default at that point in time.

I could have done everything at the same time. I could have heard arguments from opposing counsel as to look, you can't issue an injunction against one party when you have a default that's already established the injunction against the other party.

MR. MILLWARD: I'm on the date of the last hearing, nobody was in default, Your Honor. So, the default occurred about a month after the last hearing. So, the default was taken on December 21st. Our hearing was CAPITOL REPORTERS (775) 882-5322

November 20th. And so I wouldn't be arguing for default or default judgment at the last hearing.

The last hearing was whether or not a preliminary injunction should enter. And so on the 18th of December, I submitted the order to the court. The court signed it on the 31st. Opposing counsel signed off on it. Opposing counsel's rendition of how things went isn't exactly accurate.

I submitted to them the order that I planned to present. He submitted his response back. I looked at it and I said wow, wow, wow, this is way off base, this is not what the judge said. I disagree. I'm going to submit my order just like the judge had ordered because if you look at the clerk's minutes --

THE COURT: Let me ask, did you discuss whether or not it should just be for the monetary or did you discuss whether or not the inclusion of the injunctive relief would cause problems not only for the party that appeared and got a ruling, but for a potential third-party purchaser?

MR. MILLWARD: Well, as to the default judgment and default, none of that had occurred yet. We were just submitting the order on December 18th. The default by Sables hadn't occurred yet because I didn't know whether or not they were going to be filing an answer timely or not. I didn't know.

CAPITOL REPORTERS (775) 882-5322

And so when we were discussing it we weren't talking about any of those issues, because they weren't -they weren't in front of us.

But as to the rendition, I didn't just force him to sign anything. He said no, no, no, no, wait, I don't want the judge to have to make a decision between competing orders. Send me what you've got.

THE COURT: Right. And that's typically how it works.

MR. MILLWARD: Right. I know it is. And I thought that's how it worked because, Your Honor --

THE COURT: And that's my problem, in the order you submitted it is clear that if your client didn't make the payment and didn't bother to make the payments thereafter the sale could go through.

MR. MILLWARD: And it was also about notice; right? About filing notice with the clerk; right? That's what entitled the sale to go through.

And so \(I\) wrote it in such a way that if no notice had been filed an ex parte order could easily be issued so that the sale can go through. It wasn't --

THE COURT: But why do they now have to ask for an order to go through when my previous order said it goes through if they don't put up the bond?

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Because somehow you have to -- you have to say that the preliminary injunction is no longer in force. There has to be some finding at least.

THE COURT: So now you're challenging the order that you submitted and --

MR. MILLWARD: Absolutely not, no. In fact, I wrote the order specifically so that it would follow that purpose. I mean, that might have been a disagreement of counsel, but it wasn't resolved in his signing off and the court signed it. The court looked at the order obviously and signed off saying that Sables had to file essentially another order in order to foreclose.

THE COURT: No, the order states that your client had to issue and file everything -- do we need to go word by word?

MR. MILLWARD: I'm fine if we do that, Your Honor. I thought that the first sentence of that order made it absolutely clear what had to happen. They're entitled to disregard the preliminary injunction but not until they've got another order of the court.

THE COURT: Look at paragraph 5. The failure of the Plaintiffs to timely post a bond to provide notice of bond, that's Plaintiffs providing notice by December 20th, shall relieve Defendants of their duty to comply with the CAPITOL REPORTERS (775) 882-5322
injunction.
So the condition precedent for the injunction to continue was that the Plaintiffs were to file and post a bond and provide notice.

MR. MILLWARD: Right. And I'm not --
THE COURT: Okay. Until a filing of notice of bond and notice of compliance of Plaintiffs' satisfaction they're required to post additional security.

MR. MILLWARD: Because there was an ongoing requirement for essentially bond or payment to be made to the clerk in this matter. I thought it made sense that we have one order whenever they're going to move forward with the foreclosure, have one order specifically say yes, they can foreclose.

THE COURT: Okay.
MR. MILLWARD: The clerk does not have a notice from the Plaintiff showing that they posted a bond.

THE COURT: All right. So explain to me other than trying to mess up the foreclosure sale, what benefit did your client get from a nunc pro tunc application?

MR. MILLWARD: None.
THE COURT: Then why did you request it?
MR. MILLWARD: Because they had already violated the order. They had already acted in violation of the order CAPITOL REPORTERS (775) 882-5322
and they were presently in default.
THE COURT: So, again, I'm going to ask you one more time. What benefit other than trying to mess up the foreclosure sale does your client get by having a nunc pro tunc default judgment --

MR. MILLWARD: None.
THE COURT: -- ordered against Sables?
MR. MILLWARD: None, but I didn't believe at the time that the request was inappropriate. It's not a frivolous lawsuit. It's not a claim that is frivolous. It is a remedy that I've never seen anyone in the history of my practice sanctioned for.

THE COURT: When was the last time you personally requested as an attorney a nunc pro tunc default judgment?

MR. MILLWARD: I don't think I've ever done it exactly like that, but \(I\) have sought nunc pro tunc relief before.

THE COURT: Okay. 12 years on the bench I've never seen a request for a nunc pro tunc default judgment.

MR. MILLWARD: Well, I asked -- I asked other counsel around me if it was improper relief to be sought. And the advice I was given by the other attorneys is no, you're entitled to the relief as of the date of the default.

THE COURT: Okay.
CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: If the court finds that the default is valid and not to be set aside.

THE COURT: All right. Mr. Millward --
MR. MILLWARD: Then obviously --
THE COURT: -- you need to stop digging, you're basically now telling the court this did absolutely nothing for my client, but I wanted it anyway.

MR. MILLWARD: Your Honor --
THE COURT: How am I supposed to -- how am I supposed to understand that?

MR. MILLWARD: No, the reason I included it because as of the date you're entitled to that relief.

THE COURT: The injunctive relief. So you were seeking to try to reinstate the injunction relief?

MR. MILLWARD: No. The injunctive relief existed according to the court's order as of the date of the foreclosure already.

THE COURT: No. Because your client hadn't filed by -- did your client file the bond by what was it, December 20th?

MR. MILLWARD: No, Your Honor.
THE COURT: And had your client made payments as your client was supposed to pursuant to my order?

MR. MILLWARD: Well, January 20th was after the CAPITOL REPORTERS (775) 882-5322
foreclosure, I wouldn't have my client be making payments when the foreclosure --

THE COURT: Okay. Because they hadn't put up the bond, it would make no sense.

MR. MILLWARD: They couldn't file, first of all, they couldn't file by December 20th because they didn't know what the court order would state, other than the one I was submitting. The court would taken issue with the way I wrote the order.

So filing it by December 20th when the order was ordered December 21st isn't really fair to my client. But --

THE COURT: So now we're challenging again the order?

MR. MILLWARD: I haven't been, no, Your Honor, I'm just saying that my client can't follow the terms of a written order at -- before the order's been entered by the court.

I mean, Your Honor, you signed the order December 31st.

THE COURT: What was the date of the hearing in which I announced what I wanted in the order?

MR. MILLWARD: November 20th, Your Honor.
THE COURT: Okay.
MR. MILLWARD: And so 1 wrote the order, CAPITOL REPORTERS (775) 882-5322
counsel -- counsel signed off on it.
THE COURT: Right.
MR. MILLWARD: They saw it, they reviewed it, they decided to sign off on it. They knew another order was required from the court to foreclose.

Ex parte, no hearing needed, all that the court would have to do is verify that notice of bond had been filed.

THE COURT: All right. Anything else?
MR. MILLWARD: Not on that motion, Your Honor.
THE COURT: Okay. Did you want to add anything?
MR. HERNANDEZ: I don't want to add anything, Your Honor.

THE COURT: All right. I'm going to grant the Rule 11 sanctions. Award the costs of bringing the motion. I'm not going to award travel time since we have the other motions.

So file a statement of your fees. And just in terms of the -- again, I -- I think you got a little too cute, Mr. Millward, you tried to undo the court's order. Your client was given a fair opportunity to come, she was given an opportunity and in terms of what went down, counsel tried to talk you out of it and you were trying to get an unfair advantage.

MR. HERNANDEZ: Your Honor, I'm sorry -CAPITOL REPORTERS (775) 882-5322

THE COURT: And you violated --
MR. HERNANDEZ: -- (indiscernible) you want application pursuant to what's that case again? The fees case?

THE COURT: Brunzell.
MR. HERNANDEZ: Brunzell.
THE COURT: Yeah.
MR. HERNANDEZ: You want a Brunzell application?
THE COURT: Yeah.
MR. HERNANDEZ: Thank you, Your Honor.
THE COURT: And again, if your client was unhappy with the written order, you had an opportunity to file a motion for clarification. You had an opportunity to appeal it to the Supreme Court, but again, a nunc pro tunc application for default judgment to get around a court's ruling on a temporary restraining order, it's improper.

MR. HERNANDEZ: One more housekeeping, Your Honor, ten days to respond to the Brunzell?

THE COURT: Yes, ten days.
MR. HERNANDEZ: And can I file a reply afterward?
THE COURT: Yes. Ten days to file the reply.
MR. HERNANDEZ: And submit an order in blank, Your Honor?

THE COURT: Yes.
CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Thank you.
THE COURT: All right. Now, let's go into the motion to dismiss.

MR. BRENNER: Very good, Your Honor, this is Darren Brenner for Bank of America, I'm ready to present brief argument when the court is ready.

THE COURT: Go ahead.
MR. BRENNER: Your Honor, it's essentially in the pleadings it will give a brief Reader's Digest summary -(Telephonic interference.)

THE COURT: One second. All right. Go ahead.
MR. BRENNER: Thank you, Your Honor. We moved on two grounds, \(I\) don't have really anything additional to add, it's in the brief so I'm going to summarize. We've moved on the statute of limitations.

The complaint alleges essentially there are two loan modification agreements. All of the allegations against my client Bank of America relate to a 2009 loan modification agreement of course what we don't necessarily ultimately agree with the merits, we're accepting these allegations as true for the purpose of this motion.

There was a loan modification in 2009. According to the complaint, a Bank of America teller at a local branch accepted the first payment and then after that, Bank of CAPITOL REPORTERS (775) 882-5322

America would accept no further payments. And again, according to the complaint in 2011, the Plaintiffs gave up trying to make payments based on that loan modification.

Then there's other allegations in the complaint about what happened next, a bankruptcy and then subsequently a second loan modification.

There are two causes of action in the complaint relating to this loan modification and largely they're the same, at least for the purpose of this motion.

Breach of contract and breach of the covenant of good faith and fair dealing. Both have an outermost limit of six years for statute of limitation. The briefs of this loan modification allegedly occurred back in 2009 when Bank of America allegedly refused to stop making payment.

So, Your Honor, based on the express allegations of the complaint six years would have been 2015. Even if we give Plaintiffs two more years because they allege that they kept trying to make payments until 2011, that was the statute of limitation at 2017.

Although there's allegation of equitable totalling and delayed discovery, which \(I\) will address in reply, what I will point is, Your Honor, is that clearly based on Plaintiffs' own allegations, they knew Bank of America was not accepting payments. You know, again, going back 2009. CAPITOL REPORTERS (775) 882-5322

So, on that basis, we think that the express allegations of complaint if accepted as true for what they knew and when they knew precludes recovery against my client based on the statute of limitation.

The second ground we moved on is declaratory relief. Again, simply stated, Your Honor, as pled in Plaintiffs' complaint, Bank of America no longer has any role in this loan. It is routine for these loans to change hands.

The court doesn't have to take my word for it, the deed of trust which is attached to the complaint includes paragraph 20, which is the standard language that every deed of trust I've seen contained, which says that these loans can be sold at any time and the servicer can change.

Plaintiff acknowledges that happened back in 2015. And to sum it up, Your Honor, given that my client Bank of America no longer has a role with the loan, it has no role with foreclosure or anything related to the foreclosure.

So there's no right controversy on declaratory relief against my client. And I'll submit it on that, Your Honor.

THE COURT: Okay. Mr. Millward?
MR. MILLWARD: Thank you, Your Honor. The primary argument that my client makes in regard to the motion to dismiss filed by Bank of America pertains to primarily CAPITOL REPORTERS (775) 882-5322
first discovery.
So Bank of America had informed my client after they submitted the 2009 modification agreement that they didn't know where it was. That they couldn't find it. That it wasn't in their system.

At the time that my client was attempting to make payment, Bank of America was acting as if it didn't exist. My client is now being asked to do something unreasonable at the time, which would have been to file a lawsuit to serve her rights and make a claim for breach of contract on a contract that she believes was never released at the time, relief was never received.

The Lincicomes had no idea that the modification had been signed or it had been recorded in 2011 when it was later maybe found, or I don't know, processed.

But there's no notification from 2009 until 2017 to my client, that that modification had ever been found, that had it had ever been received that my clients had a viable claim for breach of contract.

They at no time during the course of the loan over the last nine years, they had at no time known that the modification had been received and accepted by Bank of America until 2017. So, the statute of limitations should start running once my client discovered the existence of her claim. CAPITOL REPORTERS (775) 882-5322

As to the statute of limitations, if -- if my client is deemed to have received notice because it was recorded in (indiscernible), NRS 11190 says that if the party claiming the statute of limitations has run receives a payment on a claim, that the statute tolls (indiscernible).

Well, in 2015, my client was again trying to make a modification. She'd entered into a temporary modification agreement to change the terms of the loan and unfortunately by the time that the last payment was to be made she was informed that the loan had been --

MS. LINCICOME: (Indiscernible).
MR. MILLWARD: -- changed to Fay Servicing and Bank of America wouldn't receive her payment.

So the prior two payments made by Bank of America were applied to the loan, applied to the deed of trust that was modified and signed in 2011 and recorded in 2011 by Bank of America unbeknownst to my client.

So I see a couple ways in which the statute of limitations is tolled. I1, the first one is discovery, it couldn't have been discovered until my client was actually informed.

My client was first informed in 2017 when the notice of default said that the modification had been reported. That was the first time my client knew that. And CAPITOL REPORTERS (775) 882-5322
if you look at the public record, that's really the first recording that is sent to my client, notifying my client that modified deed of trust or that the deed of trust was modified by the 2009 loan modification agreement.

THE COURT: When was that filed with the county?
MR. MILLWARD: The modification?
THE COURT: Yeah.
MR. MILLWARD: That was recorded in 2011, I
believe it was April or March. I can tell you real quick. I thought I had it written down in my notes.

MR. BRENNER: If you're looking for the record, if you're looking for the recording date according to the complaint it is May 4th, 2011.

THE COURT: May 4, 2011.
MR. BRENNER: Section 3 of the complaint.
THE COURT: And we're all talking about the same document that says that the modification was accepted; is that correct, Mr. Millward?

MR. MILLWARD: That's right.
THE COURT: Okay.
MR. MILLWARD: So that's when the public recording of it occurred.

The recording was not given to my client. My client wasn't given notice of it. And, in fact, in the 20 -CAPITOL REPORTERS (775) 882-5322

I believe it's in 2015.
MS. LINCICOME: '15.
MR. MILLWARD: The bankruptcy filing by Bank of America on their motion to stay included all of the recordings as exhibits to the motion for relief from stay except for the modification. They didn't inform my client then that the modification (indiscernible) was made nor did they notify the bankruptcy court that modification had been accepted.

And so it appears that Bank of America was trying to kind of sweep it under the rug and not letting my client know about it.

Their outward acts of informing my client that it hadn't been received (indiscernible) accept payment that we don't know where it's at, led my client to believe it was never received timely. I mean, my client had no idea of knowing to file a lawsuit against Bank of America for breach of contract.

Bank of America was saying --
THE COURT: What about their argument though if they're in breach for something, that's when she should have filed and then she can't just wait until 2017?

MR. MILLWARD: I agree, but usually, you know, you've got a contract before you've -- you hold that over a party.

CAPITOL REPORTERS (775) 882-5322

THE COURT: So your client thought she was in the house without a contract?

MR. MILLWARD: No, no. The deed of trust in 2007 was modified in 2009. So my client believed that the 2009 modification wasn't effective because either it wasn't timely received or it had been destroyed by FedEx. For whatever reason, Bank of America didn't have it.

She did not know that they had signed it. They never sent her a signed copy. They never told her it was accepted. They never updated the terms of the agreement.

THE COURT: Okay.
MR. MILLWARD: There is nothing in the record that would have tipped my client off until the notice of default that she received.

THE COURT: And so how has she been damaged -what cause of action does this fall under?

MR. MILLWARD: Well, if she had been given the right to enforce the agreement by having discovered it earlier right between 2009 and 2015 or 2011 and 2017, right, she could have sought to enforce that agreement retroactively taking everything back to Bank of America's breach. I mean, in retrospect, it would have made sense for when Bank of America would have found --

THE COURT: But again, your client wasn't paying CAPITOL REPORTERS (775) 882-5322
during that time, so what would the damage have been?
MR. MILLWARD: Well, so they would still -- they wouldn't be in default. They wouldn't be subject to this monstrous --

THE COURT: So she would be subject to a different deficiency judgment, not the deficiency judgment that was claimed?

MR. MILLWARD: There is no deficiency judgment sought at this point, Your Honor. She would be -- she would be entitled to if --

THE COURT: She would have been entitled under the bill of rights to a correct amount of the deficiency that they were seeking.

MR. MILLWARD: Right.
THE COURT: What other damage -- what else would she have been able to --

MR. MILLWARD: But the breach -- the breach under contract law stopped the clerk as to her ability to pay.

I mean, how do you -- if your mortgage -- if your mortgage company told you sorry, we're not going to accept payments and I know your contract says that you would (indiscernible); right? You'd throw a fit and you would probably file a lawsuit; right? She didn't get that opportunity.

CAPITOL REPORTERS (775) 882-5322

They told her not what I'm telling you that your mortgage company is refusing your loan payment (indiscernible), they told her that the agreement wasn't there, that she couldn't make payments.

THE COURT: So isn't that when they breached it?
MR. MILLWARD: That's --
THE COURT: When they told her the agreement wasn't there?

MR. MILLWARD: That's when the breach occurred, but the tolling statute --

THE COURT: Right.
MR. MILLWARD: -- the discovery rule said she shouldn't be held liable or responsible for having to file a claim within a period of time where she doesn't even know she has a cause of action.

And the manipulation or fraud of a party tolls that time frame.

So I'm not suggesting that Bank of America committed a fraud here. I'm suggesting that probably it was lost, processed, not updated.

THE COURT: All right. What about as to the argument that they're not subject to the injunctive relief? That they no longer own the contract, it's been assigned, that they're no longer participating in the sale of the property? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: So I think -- I think that relates more to the argument that they're a necessary party.

So Bank of America is a necessary party because depending on the briefing that occurs in this case and the way in which the State case is resolved, this contract may have been assignable or may not have been assignable from either Bank of America to its successors in interest or not.

And if it wasn't, then Bank of America's liable not only to my client for breach of contract but to the other parties in this matter.

THE COURT: And what about the intervening modifications, how does that address?

MR. MILLWARD: Those intervening modifications were never finalized, my client wanted modifications attempted to modify, was acting in good faith they keep her loan, you know, to originate her loan and to get a modification that would work.

The modifications that have occurred, there's really only two since or at least two attempted modifications that occurred.

The first was in 2015 with Bank of America where the third payment was rejected by the servicer.

The next was with the new servicer, Fay Servicing, where they went all the way through the process, CAPITOL REPORTERS (775) 882-5322
was presented with the final terms of the modification and declined to accept it because it was so far out of what they could afford that it was impossible for them to modify under those terms. They were hoping for better terms. It would not have made sense financially to sign something that they couldn't have followed through with.

THE COURT: Okay.
MR. MILLWARD: So I don't see that those -- those attempted -- those attempts to modify the deed of trust has anything to do with the actual modified deed of trust where Bank of America accepted and failed to notify my client with any reasonable time frame that she had the right to enforce the terms of the agreement.

THE COURT: All right. Anything else?
MR. MILLWARD: That's it. Thank you.
THE COURT: Reply?
MR. BRENNER: Thank you, Your Honor. Looking directly at the allegations of the complaint. If we look at paragraph 22, there's an allegation that they attempted to make the loan modification payment back in September 1st of 2009 and it wasn't accepted.

Allegation 23, attempt to make it October 1 of 2009 and was it accepted. Same thing with October 29th, 2009 in paragraph --

CAPITOL REPORTERS (775) 882-5322
(Telephonic feedback.)
THE COURT: Hold on, feedback or not.
MR. BRENNER: -- (indiscernible) Bank of America to continue until 2011 when they tried.

The argument which I am respectfully going to present to the court I believe is circular, but the argument from Plaintiffs' counsel is well, nobody would have known that there was an issue with Bank of America and the loan modification until 2017.

Well, respectfully, Your Honor, when they plead that they believe there was a loan modification and they plead that there's two years of Bank of America (indiscernible) anything to effectuate the loan modification, that hidden notice of an issue. Directly they should have known and it's what they did commencing after September of 2009.

The payment that counsel is talking about were related to completely different loan modification in 2015. And we heard two separate arguments from Plaintiff which were contradictory on the one hand, the argument is well, you (indiscernible) because payments were accepted under this 2015 trilevel modification program.

And then on the other hand, you heard Plaintiffs' counsel towards the end saying --
(Telephonic feedback.)
CAPITOL REPORTERS (775) 882-5322

THE COURT: Hold on, sir, I'm getting too much feedback.

MR. BRENNER: Okay.
THE COURT: All right. Go ahead and repeat the last argument.

MR. BRENNER: I think I was saying, Your Honor, that counsel is arguing the 2015 modification is a red herring, but at the same time counsel in the briefing (indiscernible) payments in 2015 that (indiscernible) supposedly tolled the breach of contract -- discovery of the breach of contract allegations.

And again, Plaintiffs especially plead when they knew Bank of America wouldn't accept payments on the loan modification. And that was back on September 1st.

THE COURT: All right. Can you step back and point to the paragraphs in the complaint that you're discussing that you believe are contradictory?

MR. BRENNER: Sure. I think it really starts at -- if you look at 21 through 25.

THE COURT: Okay.
MR. BRENNER: 26 maybe.
THE COURT: All right. Page 4 of 19?
MR. BRENNER: Yes, that's where it begins, Your Honor.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Okay.
MR. BRENNER: And I'll pause until you tell me that you're ready.

THE COURT: Yeah, go ahead. All right.
MR. BRENNER: Okay.
THE COURT: In that paragraph it states that the Lincicomes traveled to the Bank of America branch to make the first payment under the LMA.

MR. BRENNER: Correct. And it guess on to explain how the teller didn't know about the loan modification agreement, but it kept it as a payment.

But after that, starting on paragraph 22 and going forward, the Plaintiffs explain how Bank of America --
(Telephonic feedback.)
MR. BRENNER: -- payment under the alleged loan modification agreement.

THE COURT: Okay.
MR. BRENNER: And it's our position that that is when -- certainly during that year period, that is when it would have triggered discovery that there was an issue with the loan modification agreement. And that's when it would have started the clock rolling on a statute of limitations for breach of contract.

Now, obviously somebody can sue or they can CAPITOL REPORTERS (775) 882-5322
decide not to sue, but let's assume that there was a valid loan modification agreement, certainly when a party remediates that, as Bank of America is alleged to do, that is going to be noted that that is an issue and that notice starts in 2009. Based on the allegations of the complaint, the Plaintiffs should have then pursued that, they pursued other avenues, they declared bankruptcy, they attempted a second loan modification into '15. Those are the remedies they elected, not a breach of contract.

And then the one other thing, Your Honor, that I want to point out to you, this allegation that we didn't discover Bank of America had recorded an intended honor of the loan modification agreement in 20 (indiscernible) is a complete red herring.

The allegations of the complaint are not Bank of America accepted a loan modification because of course that would not give rise to a breach of contract claim. People don't sue for honoring the terms of a contract.

The allegations of the complaint, the express allegations of the complaint, and we can look at those paragraphs too, are Bank of America refused to honor the 2009 loan modification agreement. They aren't about any type of subsequent conduct.

And unless Your Honor has any questions, I think CAPITOL REPORTERS (775) 882-5322
everything else has been addressed in the briefs.
THE COURT: Okay. Your response, Mr. Millward?
MR. MILLWARD: Yeah, Your Honor, I did my best to hear everything he said.

THE COURT: Yeah, sure.
MR. MILLWARD: In trying to understand
everything. But with regard to this 2015 statement as to the modification in 2015, first of all, the law, 11190 says we can make a payment on the contract that the statute of limitations is (indiscernible). Well, this deed of trust is what the payment was applied to, the deed of trust that was modified in 2011 by signed agreement by Bank of America.

So for Bank of America to say that the 2015 payment applies to a modification, that's something else, well, sure I get that it was a modification that my client was trying to make.

But the law just says that it's tolled until the last payment. And the last payment that was applied to this loan was in 2015.

THE COURT: Okay.
MR. MILLWARD: So under their -- you know, under the law and under the facts that have been set forth in the documents that have been submitted to the court, 2015's the date that we would be looking at according to 11190.

CAPITOL REPORTERS (775) 882-5322

There is no argument against that, other than your argument well, that -- that applied to an attempted modification and wasn't a legitimate payment.

With regards to the idea that the -- that the complaint says things that do not comport with the idea that my client didn't know or didn't discover, well, the allegations are quite simple. I mean, you look at 21, paragraph 21 on page 4 that you're citing.

It says after searching -- on the third sentence in paragraph 21st, after searching for information concerning Lincicomes' loan, Crystal could not find any record of the (indiscernible) in their system.

Crystal accepted payment under the understanding that it would -- that if -- that it was to be credited against Lincicomes' home as modified by the LMA once the LMA had been entered into their system.

So, my client at that time or at the very beginning in making that first payment are told we don't have it, but we'll process this payment.

And then the following month in October, they're told again their payment -- they were refused payment or the payment was refused and the person taking money indicated to them that there was no record of the existence of an LMA in the Bank of America's peer systems.

CAPITOL REPORTERS (775) 882-5322

My client would be willing to testify today, Your Honor, as to what she believed.

THE COURT: Well, I'm not going to go there.
MR. MILLWARD: I know.
THE COURT: I'm just --
MR. MILLWARD: I'm just saying --
THE COURT: -- but what about their argument though once she goes for the second she gave up any -- she waived in terms of the 2009 agreement, if she didn't know it was out there and then she went to get a second one.

MR. MILLWARD: A second modification.
THE COURT: A second modification, then doesn't that trigger something?

MR. MILLWARD: Well, by the time the second one is discussed, we're talking about I think 2016 or 2017. And so if the statute was tolled until then, then there is no statute of limitations issued.

THE COURT: Okay. Let me ask Bank of America, as to the payments received, how can the court discern at this point with no discovery as to whether or not those payments were put towards the first agreement or the second or the -- I guess it would be the first or the second?

MR. BRENNER: I think we just have to look at the allegations of the complaint. The allegations of the CAPITOL REPORTERS (775) 882-5322
complaint were expressed that those payments were made as part of a second trial loan modification.

So there was a completely separate negotiation for a completely separate contract with completely separate consideration. And Plaintiffs, I can find the exact allegations if you need it, when Plaintiffs allege that in their complaint it looks like it starts around paragraph 40.

Your Honor is correct, I'm reading it now, it -the complaint answers your question. Bank of America -- on or about April 24th, 2015, Bank of America accepted the loan modification application and required the Lincicomes, and I apologize if I'm misstating their names, to complete the trial modification payments or they could move forward with modifying their mortgage loan, and then it goes on to talk about the payment.

Paragraph 42 says it made their, quote, first trial payment of \(\$ 2,013.78\).

Your Honor, I hate to suggest that there should be a different complaint or the Plaintiffs should be given leave to plead what's been argued is not what is alleged --

THE COURT: Right.
MR. BRENNER: -- in the complaint. Because if we again go directly to the breach of contract allegations --

THE COURT: All right. CAPITOL REPORTERS (775) 882-5322

MR. BRENNER: -- as directly related to the 2009 loan modification.

THE COURT: All right. So hold on one second. So, Mr. Millward, pull up paragraph 40.

MR. MILLWARD: If you give me just a second.
THE COURT: Yeah.
MR. MILLWARD: Is it on or about April 12th?
THE COURT: Yeah, accepted the loan modification having required. So, why are we still arguing about what happened prior to April 24, 2015?

MR. MILLWARD: No, they accepted the application. That doesn't mean there's an actual modification. So, when any party wants to modify their loan they submit an application saying hey, would you give me this relief?

And so Bank of America accepted that application for the opportunity to extend my client relief. And then my client began to perform under the terms of that application that didn't result in an actual modification.

THE COURT: Is that an accord and satisfaction?
MR. MILLWARD: No, it's an accord and satisfaction as to let's attempt to resolve these issues concerning missed payment or payment history. But they don't resolve them because the contract isn't complete and it doesn't modify the deed of trust. CAPITOL REPORTERS (775) 882-5322

So had it, we wouldn't be here, Your Honor, I completely agree.

THE COURT: Is there anything in the loan modification as to what was owed and wasn't that part of the application? We owe this amount of money, we promise to pay it off at this rate and --

MR. MILLWARD: In the modification that they signed and they accepted in 2009, the modification agreement --

THE COURT: Well, I'm talking about the one in 2015? Because you allege that they accepted a loan modification, so your client applied, they accepted, that sounds like an agreement.

MR. MILLWARD: But it's not an agreement to modify the loan. It's an agreement to work towards working out a modification.

So right now there is no modification in 2015 that affects the deed of trust that's being -- that -- that is the subject matter of this case. It's just a history of something that --

THE COURT: All right.
MR. MILLWARD: -- may have -- may have affected.
THE COURT: Let me ask Bank of America in terms of the 2015 loan modification application and acceptance, CAPITOL REPORTERS (775) 882-5322
would that have listed what was owed?
MR. BRENNER: I don't want to speak out of turn, Your Honor.

THE COURT: All right.
MR. BRENNER: I'm almost positive it would, I don't want to speak out of turn on that without directly knowing.

THE COURT: Okay.
MR. BRENNER: If I do make one different point,
Your Honor.
THE COURT: Yeah.
MR. BRENNER: It would be this, that it really shouldn't ultimately matter where the payments were applied to because it goes back to the point that I was trying to make at the end of my opening statement, that if Plaintiff is arguing that the payments were applied to the 2011 loan -- or the 2009 loan modification, then where is the breach? But really my point is this, I guess, we have two options.

Either Bank of America honor the loan modification and recorded it and applied payments to it, in which case there can be no breach because we effectuated the terms of the agreement or Bank of America breached it.

If Bank of America breached it, discovery of the breach as they put in the complaint is 2009, it's the latter CAPITOL REPORTERS (775) 882-5322
point that's pled in the complaint. I submit that trying to plead the former would be futile, but it's not what's alleged in the complaint.

THE COURT: Okay. All right. Now, the problem I'm having though with where we're at is originally the complaint and how the court was construing the complaint was based upon the inability to figure out which loan application was in place led to an issue when foreclosure was filed as to how much of a deficiency judgment would be owed by the Plaintiffs.

That if you went by the 2009, then that would accrue at one rate. If you went by the 2015 , that would accrue as a different rate and that would affect the requirements in the -- the bill of rights that you inform the property owner as to what is needed in order to pay off the mortgage and what they'll owe if the sale goes through.

So, that's the issue I'm having. If -- so I think what I'm going to do is I'm going to deny the motion to dismiss at that point in time.

Now, Mr. Millward, I think you're heading down a rabbit hole.

MR. MILLWARD: Well, Your Honor.
THE COURT: I really do.
MR. MILLWARD: I understand the court's opinion CAPITOL REPORTERS (775) 882-5322
there. I'm not trying to undo what's been done. I'm trying to get relief for my client that -- that pertains to what's happened in the past.

THE COURT: I appreciate that, but you're seeking monetary damages.

MR. MILLWARD: Right.
THE COURT: All right. From someone who wasn't paying on the mortgage.

MR. MILLWARD: But because they couldn't.
THE COURT: No.
MR. MILLWARD: There was -- there was no -- there was no ability -- all that they could pay in 2011, in 2009, in 2010 was the complete amount owed. The Bank of America had accelerated -- had accelerated --

THE COURT: And they entered into three loan modifications, two and plus with the last one --

MR. MILLWARD: Right.
THE COURT: -- last year in which they agreed to do a deed in lieu of foreclosure; isn't that correct?

MR. MILLWARD: No, Your Honor. So -- so that's different. That was something else. So let's just back up, because I think I want you (indiscernible).

THE COURT: I'm just saying, Mr. Millward, all right --
```

                        CAPITOL REPORTERS (775) 882-5322
    ```

MR. MILLWARD: I understand where the court's confused. So there is no deficiency judgment at issue here. THE COURT: No, because they haven't sought it yet.

MR. MILLWARD: Right. So I'm not talking about one -- and they haven't talked about one yet, they might talk about one down the road, and that's okay.

THE COURT: Right.
MR. MILLWARD: We can deal with that. But as to what my client is seeking, my client is seeking relief for breach of contract, my client is seeking relief for a wrongful foreclosure for quite a few things.

It all pertains to the documents that are in play, that everybody admits are in play, which is the 2007 deed of trust and the 2009 modification of that deed of trust.

THE COURT: And the 2015 loan modification.
MR. MILLWARD: That, Your Honor, was nothing different than an opportunity to modify. My -- see, between 2009 and 2015 --

THE COURT: Mr. Millward, I've -- you -- I've heard -- if I'm just warning you you're heading down a rabbit hole on this. And again, I would strongly suggest -- now, I'm going to give the opportunity, are you going to stop filing things long enough to -- where the court can have one more CAPITOL REPORTERS (775) 882-5322
chance at settling this?
MR. MILLWARD: I would have loved to have gone to settlement.

THE COURT: Because Judge McGee was not happy that I set up a thing, I had him there and everything and then he finds out no, we're still litigating this.

MR. MILLWARD: Right.
THE COURT: We're still going to be filing things, the parties aren't really interested in settling this.

MR. MILLWARD: Your Honor, my client absolutely was. And I was excited to go. We were excited, I was working on the application and then we found out that the foreclosure already happened.

THE COURT: Okay.
MR. HERNANDEZ: I want to --
MR. MILLWARD: Thank you.
MR. HERNANDEZ: For the record, I was more than ready to go to settlement conference.

THE COURT: Right.
MR. HERNANDEZ: It was not on our part (indiscernible).

THE COURT: Like I say, I appreciate --
MR. MILLWARD: Your Honor, we looked at it and we said okay, now we've got whether or not this is a wrongful CAPITOL REPORTERS (775) 882-5322
foreclosure, whether or not there's a bona fide buyer here, I've got all these parties I've got to bring in plus prior to the sale on the foreclosure, the loan changed hands twice. So I don't even know that we have the right parties involved anymore to settle the matter.

So I'm looking at all that, there's no way we can have a settlement when all of these things changed between the hearing and the settlement. The house was foreclosed upon, the loan was sold twice.

THE COURT: All right. Like I say, I'm not going to grant the motion to dismiss. I'm going to give you a little opportunity for discovery.

MR. MILLWARD: Okay.
THE COURT: But like I say, as to the motion for leave, I haven't had an opposition filed on that yet.

MR. MILLWARD: That's right.
THE COURT: So, how much time do we need to oppose the motion for leave?

MR. HERNANDEZ: I'm not opposing the motion for leave, Your Honor.

THE COURT: All right. How about Sable -- I mean, the Bank of America? You still there?

MR. BRENNER: (Indiscernible) I'm still here.
I'm sorry, Your Honor, if you asked a question I missed it. CAPITOL REPORTERS (775) 882-5322

THE COURT: Are you going to oppose the motion to amend?

MR. BRENNER: Your Honor, I honestly haven't looked at it and I don't even know if it changes things for my client. If my time has run, then I will officially say no, we're not opposing it. If my time hasn't off run, then -then I need an opportunity to look at it.

THE COURT: For purposes of the motion to dismiss, \(I\) 'm just going to deny it to the argument of payments. If Bank of America accepted payments as of 2015 that would extend the -- the statute.

So go ahead and submit an order on that, Mr. Millward. All right?

Then what I'll do is --
MR. BRENNER: And then, Your Honor, may I ask you a question, and do I understand for the purposes of proceeding forward your specific concern is the -- for the purposes of calculating the deficiency, if any?

THE COURT: Well, like I say, I haven't seen that from either Sable or Bank of America. And then the other issue we have hanging out there is the effect of the last settlement conference. There appears to be another accord and satisfaction there and I haven't seen that.

So, like I'm saying here, I have a party that CAPITOL REPORTERS (775) 882-5322
hasn't paid on a -- on a mortgage for over ten years seeking damages. It's another case where the banks couldn't get their paperwork together for the last ten years. And again, I'm just curious as to the end of the day what the damage theories are and so forth.

But if this is another case where a homeowner is going to think that the court's going to grant free house because the bank screwed up a little paperwork in 2011, like I say, I haven't seen that case yet from the Supreme Court.

And so, again, I'm just having real issues, you know, as to where we're going on this. I've yet to see a case from the Nevada Supreme Court where paperwork leads to homeowners coming out with 6, \(\$ 700,000\), whatever the property's worth.

MR. BRENNER: And, Your Honor, I don't want to (indiscernible) to beat a dead horse, the question I'm going to ask you just for direction going forward, the allegations of the complaint are for breach of contract --

THE COURT: All right.
MR. BRENNER: -- and --
THE COURT: I understand, let me -- I understand where you're going. So I'm going to grant the motion as to the injunctive relief because they're no longer -- they've transferred everything and they're not involved in any sort of CAPITOL REPORTERS (775) 882-5322
foreclosure. They weren't involved in the foreclosure when it occurred.

MR. MILLWARD: I don't believe that the complaint seeks to enjoin them specifically, but it might say Defendants generally, so that's fine.

THE COURT: All right. So I'm going to grant injunctive relief. That's out. I'll dismiss the injunctive relief against Bank of America.

And then as to the monetary damages, again, I -it's written broadly enough to allege that your client had somehow damaged them with the recordkeeping and then -- and so forth, I'll -- we'll deal with that theory I guess in -- when we get the motions for summary judgment.

But at this point in time, on the -- on the 12B5, I think they survive a 12B5 on the request for monetary, not the --

MR. BRENNER: Not declaratory relief?
THE COURT: What's that?
MR. BRENNER: You said you would grant on injunctive relief, does Your Honor mean you would grant on declaratory relief count?

THE COURT: Yeah, I'll grant on the injunctive relief that, you know, you're not longer involved, I think that's a legitimate argument. And then just as to the CAPITOL REPORTERS (775) 882-5322
monetary claim against the Defendants, again, I'll deny it on the basis of a 12B5 on the pleadings, but certainly, you know, will entertain a motion for summary judgment.

MR. BRENNER: Very good, Your Honor. Thank you.
THE COURT: All right. Any other clarifications you need?

MR. BRENNER: No, Your Honor. Thank you.
THE COURT: All right. Any clarification?
MR. HERNANDEZ: So, Your Honor, just out of clarity, are you granting the motion for relief then because you haven't asked Sables, you haven't --

THE COURT: Yeah, let's talk about the motion for leave. All right. Again, what are you trying to accomplish with the motion for leave, Mr. Millward?

MR. MILLWARD: Your Honor, it's in essence to bring all the parties that have now come into play to the table so we can look at having an accurate settlement conference.

THE COURT: Well, who do we need to add at this point?

MR. MILLWARD: Well, we now have a buyer of the property that bought out the foreclosure that's involved. And we also have -- and I'm not positive which one owns the loan or at least owned the loan prior to foreclosure.

CAPITOL REPORTERS (775) 882-5322

We have two -- my client received two notices that the loan had been transferred after the last hearing. In fact, it was --

THE COURT: Okay. Can I ask you what is your claim going to be against the buyer?

MR. MILLWARD: Against the buyer?
THE COURT: Yeah.
MR. MILLWARD: It's just going to be essentially declaratory relief that -- that they (indiscernible) subject to, for example, if the deed of trust is not enforceable because of Bank of America's breach and that's really an issue of law that we have -- we'll have to resolve, then -- then you can't accept title to the property when the foreclosure on that property was thus nil.

THE COURT: So if it was sold at a valid sale that the court said could go through we're going to bring the third party in?

MR. MILLWARD: Right. Because they brought -they came in knowing that there was, for example, lis pendens on the property. I have spoke with the attorney for the owner and he said oh, yeah, we do this all the time.

THE COURT: Okay.
MR. MILLWARD: We know that it's subject to being brought in the case.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Okay.
MR. MILLWARD: We might just want out, but yeah, they've indicated to me --

THE COURT: Okay.
MR. MILLWARD: -- that they knew what they were getting into.

THE COURT: All right. And then you're saying there was two prior loan servicers?

MR. MILLWARD: I don't know that they're loan servicers, I believe they're actual owners, holders of the deed of trust.

So at the time of foreclosure sale it may not have been U.S. Bank that owned the loan that was subject to the deed of trust. I don't know that. I have to explore that.

But in the motion I designate who those two owners are and request that they be added as parties. If they're not necessary parties --

THE COURT: Well, I guess I'm having difficulty, why is the buyer a necessary party?

MR. MILLWARD: Because we are contesting the validity of the sale.

THE COURT: Okay. And then as to the owners of the deed, when did they own it you believe? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: I believe that they owned it right prior to the sale within two weeks. In fact --

THE COURT: Okay.
MR. MILLWARD: -- my client was receiving notices for hey, we want to help you get -- correct this and not be foreclosed upon.

THE COURT: Okay.
MR. MILLWARD: The statements --
THE COURT: Okay.
MR. MILLWARD: -- from three servicers.
THE COURT: So the cause of action gets the buyers to undo the sale?

MR. MILLWARD: It's to determine the rights of the parties, yes, under the declaratory relief.

THE COURT: Okay. And then -- all right. As to the deed that's clear. All right. Anything else as to who else you want to add?

MR. MILLWARD: I believe those are the only parties I'm adding, yes.

THE COURT: Okay. All right. Did you want to go first since you're in the courtroom or?

MR. HERNANDEZ: Your Honor, I didn't file an opposition.

THE COURT: Okay.
CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: I heard Mr. Brenner I think in (indiscernible) Sables, I don't know what their position is on --

THE COURT: All right. What's Sables' position?
MR. WADE: With respect to what exactly, Your Honor?

THE COURT: I'm asking do you have a position on the motion for leave to file the amended complaint to substitute parties?

MR. WADE: I -- I have no problem with him substituting parties. I do believe we still have our declaration of nonmonetary status.

THE COURT: All right. I'll do that motion next. So what I'm hearing the current parties, I'm not hearing anyone's going to oppose the motion for leave to substitute parties.

Now, is there anything in the complaint though where there -- you're amending theories?

MR. MILLWARD: Yes. Let me go over the causes of action. Just a second, Your Honor. I'm trying to get to the attached complaint, unfortunately it's 84 pages and it's taking me a while. I'm sorry. I -- let me see if I can pull it up faster in paper form. Okay. So there's a claim for wrongful foreclosure.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Okay.
MR. MILLWARD: That remains a declaratory relief claim, an injunctive relief claim.

THE COURT: Okay. So we have wrongful foreclosure, then what?

MR. MILLWARD: Injunctive relief, declaratory relief.

THE COURT: And what would the injunctive relief be?

MR. MILLWARD: Well, at the time I did not know the validity of the foreclosure occurring January 4th. So it would be continuing to enjoin the foreclosure sale of the property.

THE COURT: Okay. But the property's been sold, so do we need the injunctive relief at this point in time?

MR. MILLWARD: Yeah, this is what I'm saying. At the time of writing this --

THE COURT: Okay.
MR. MILLWARD: -- I didn't know that.
THE COURT: All right. What's the third one?
MR. MILLWARD: So the next one, breach of contract, Bank of America. And then breach of duty to act in good faith (indiscernible) Bank of America.

THE COURT: Okay.
CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Breach of contract, U.S. Bank. Breach of duty to act in good faith with U.S. Bank.

THE COURT: All right.
MR. MILLWARD: Slander of title. Special damages for attorney's fees.

THE COURT: Okay. Who's the slander of title against?

MR. MILLWARD: The slander of title is going to be -- it looks like it's Sables, U.S. Bank, Fay Servicing.

THE COURT: Okay.
MR. MILLWARD: Yeah, that is all.
THE COURT: Okay. Any comments on the new theories?

MR. HERNANDEZ: No, Your Honor.
THE COURT: On the telephone?
MR. BRENNER: Well, Your Honor, I -- you still have our ending declaration of nonmonetary status.

THE COURT: Okay. No, I appreciate, I'm just trying to get through motion by motion.

MR. BRENNER: I understand that, but what I'm saying is depending on how (indiscernible).

THE COURT: Okay. Now you're correct. All right. So let's hear the -- before I rule on the complaint as to Sables, I understand their request. How is Sables -- I'm CAPITOL REPORTERS (775) 882-5322
going to ask Mr. Millward the nonmonetary?
MR. MILLWARD: Yes. So, in fact, the statute in NRS, I believe it's 107020 -- it's 023 or 028 , I don't have it memorized per se.

It says that when a trustee is given notice of incorrect terms, incorrect amounts owed, incorrect -- anything in the notice of default, notice of sale, that they have a duty to correct within 20 days.

So, their liability actually extends from the filing of this lawsuit being given actual notice of incorrection and then failing to correct those notice of default, notice of sale within the 20-day time frame as required by NRS 107.

In fact, it says something to the effect that a trustee shall not be held liable for any incorrections made or -- yeah, made in reliance of the beneficiary statements. So long as the corrections are made within 20 days.

THE COURT: Okay. All right. What is Sables' argument to that?

MR. WADE: I'm sorry, Your Honor, which document is he referring to there? I don't see that argument in any of the briefing.

THE COURT: You got a specific statute you want to point to, Mr. Millward?

CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Yeah, I'll find it. I --
MR. HERNANDEZ: I believe, Your Honor, it's NRS 107. 209.

THE COURT: 029?
MR. HERNANDEZ: Yes, sir.
THE COURT: Okay. Let me see if I can pull that up. All right. And what section are you referring to, Mr. Millward?

MR. MILLWARD: I found it, it's 107.0286.
THE COURT: 0286?
MR. MILLWARD: Yes. And it says that the -- in the selection, the trustee incurs no liability for any good faith error resulting from reliance on information provided by the beneficiary of the nature and amount of the default. Under the obligations secured by the deed of trust. If the trustee corrects the good faith error not later than 20 days after discovering the error.

THE COURT: Okay.
MR. WADE: Your Honor --
THE COURT: What's Sables' argument on that?
MR. WADE: Our argument would be that (indiscernible) statute, just further our argument under NRS 107.029 that the trustee is not liable for its dispute between the beneficiary and the borrowers just by virtue of performing CAPITOL REPORTERS (775) 882-5322
the duties it's supposed to be.
(Telephonic feedback.)
THE COURT: All right. So --
MR. WADE: (Indiscernible).
THE COURT: 107.029 what?
MR. WADE: The entire statute of 029.
THE COURT: One more time, 0291?
MR. WADE: 1, yes, it says if the trustee is named in an action in which the deed of trust is the subject, I believe we've met that.

THE COURT: All right.
MR. WADE: Has a reasonable belief, he or she has been named in the action solely in his or her capacity as trustee and not as a result of a wrongful act or omission made in the performance of his or her duties as trustee. The trustee may at any time file a declaration of nonmonetary status.

THE COURT: Okay.
MR. WADE: In this case we don't have a single cause of action pled against Sables. We have attorney's fees based on the fact that Sables recorded the notice of default. The statutory scheme requires the trustee to record the notice of default, it's an express duty of the trustee.
(Telephonic feedback.)
CAPITOL REPORTERS (775) 882-5322

So the argument in this case is the trustee has done nothing but performance duties as required by statute. There is nothing alleged that the trustee has committed any wrongful act or any omission which it's responsible for.

That section pointed out by counsel in 107.0286 actually provided further support for my argument that the trustee doesn't have (indiscernible) obligation even liable for.
(Telephonic feedback.)
THE COURT: Hold on. All right. So you're referring to 0286?

MR. WADE: Right. (Indiscernible) trustee incurs no liability for any good faith error resulting from the (indiscernible) on the information provided by the beneficiary.

Regarding the nature and the amount of the default, that's exactly what we're talking about here, the beneficiary provided information, it's the beneficiary's own record, the trustee does nothing.

But the administerial duties of recording these documents on behalf of the trustee in furtherance of a foreclosure. Plaintiff has pointed to nothing that Sables has done that exposes it to liability outside of the duty of the trustee.

CAPITOL REPORTERS (775) 882-5322

With that, I'll submit, Your Honor.
THE COURT: All right. Your response,
Mr. Millward?
MR. MILLWARD: Yeah, Your Honor, I mean, the point of NRS 107.0286 would be meaningless if Sables is allowed to essentially not correct the documents, not follow the law to correctly state the balance of the correct interest rate.

I mean, Sables knew of the loan modification. They cited it in the notice of default, and yet they don't incorporate any of its terms.

They state that it's a valid modification. They say that the loan was modified by it.

THE COURT: But do you have any evidence that they weren't relying on the information provided from --

MR. MILLWARD: Right. And there's no doubt that they were. The real issue now as to liability arrives, I mean, the -- the allegations made against Sables primarily was for the purpose of preliminary injunction because they violated the homeowner's bill of rights.

But now they've incurred liability under 028 including slander of title by misstating the balance owed. In our opinion no balance is owed because we have a breach of contract that occurred in 2009 that needs to be rectified by CAPITOL REPORTERS (775) 882-5322
the parties.
I understand that. And when I say that, Your Honor, I feel (indiscernible) court (indiscernible) position, I want the court to understand that we don't hold the position that we're entitled to a house. We hold the position that the law says a breaching party breaches, we've got to resolve that breach for the parties coming forward.

THE COURT: I appreciate that. I'm going to grant the nonmonetary status under 107.029. And then therefore, as to the additional theories in the motion for leave to file, I'm going to require you to submit another motion for leave to file that's in accordance with the nonmonetary status of Sables. And then also with my previous rulings on the injunctive relief.

All right. So Sables, you'll provide the court an order for the granting of the nonmonetary status.

MR. WADE: Yes, Your Honor, I will do that. Thank you.

THE COURT: Okay. All right. Is there any other motions or anything else we need to address?

MR. HERNANDEZ: Just for the record, the obligation to enter default judgment (indiscernible).

THE COURT: Right. So you'll go ahead and like I say, supply --

CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: (Indiscernible).
THE COURT: So you're out of it.
MR. HERNANDEZ: I'm not out of it, Your Honor.
THE COURT: Well --
MR. HERNANDEZ: I'm still in this case.
THE COURT: No, U.S. -- but there was a stipulation.

MR. HERNANDEZ: That's the Bank of America.
THE COURT: For Bank of America. Okay. All right. So go ahead as to the default judgment, I'm not granting that.

So you'll supply me an order.
MR. HERNANDEZ: Well, do you want one order or do you want separate orders on everything? I'm happy to produce a super order to share with everybody, if everybody -whatever you want, Your Honor, I'm happy to do.

THE COURT: All right. If you're willing to do it. Okay.

MR. HERNANDEZ: Okay.
THE COURT: All right.
MR. MILLWARD: Your Honor, \(I\) won't submit an order on the motion for leave to file the amended complaint. I will just submit another motion.

THE COURT: All right. CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: If that's fine.
THE COURT: Can you just note in your orders that he'll submit a second motion with the amended complaint that he's proposing?

MR. HERNANDEZ: So is it denied or is it a
(indiscernible)?
THE COURT: Well, what I'll do, I guess the court's withdrawing it for him.

MR. HERNANDEZ: Okay.
THE COURT: So, I'll order -- well, no, I got in trouble the last time, so I'm going to grant leave to file an amended motion to amend.

MR. HERNANDEZ: Okay.
THE COURT: All right. Okay. How much time do you need to file the motion to amend?

MR. MILLWARD: I don't think it will take me more than a couple days to put it together, so a week.

THE COURT: So if I give you 20 days.
MR. MILLWARD: Oh, that's perfect.
THE COURT: So 20 days. And if there's any comments you have the normal filing time to respond to the renewed motion?

MR. MILLWARD: Your Honor, with the renewed motion, all I'm going to do is remove Sables (indiscernible) CAPITOL REPORTERS (775) 882-5322
essentially a named liable party under the slander of title -THE COURT: Okay.

MR. MILLWARD: -- claim. With that being said, can I file just a complaint that comports with that --

THE COURT: No.
MR. MILLWARD: -- statement?
THE COURT: No, I want to see what you're going to file and then give everybody an opportunity to respond to it.

MR. MILLWARD: Because I don't see it materially change otherwise.

THE COURT: Counsel, I'm just afraid I tell you you're okay to file and then I'm going to see something else.

MR. MILLWARD: I understand.
THE COURT: So -- all right?
MR. MILLWARD: Okay. Okay.
MR. HERNANDEZ: I hate to bring up the sore subject.

THE COURT: All right.
MR. HERNANDEZ: (Indiscernible) I'm happy (indiscernible) settlement conference I have upon this, I'm -I don't see why we can't be (indiscernible) to the settlement conference and the parties if they want to end, it's not mandatory (indiscernible) mandatory voluntary. CAPITOL REPORTERS (775) 882-5322

THE COURT: I appreciate that, but the problem I have is Judge McGee, and when the parties are still filing flurries of motions and so forth it's a waste of his time.

MR. HERNANDEZ: Okay.
THE COURT: Okay. So what I'll do -- all right. Now, I guess the other thing we need to do is get a scheduling order, but we really can't do that until the new parties are involved. So -- and again, I'm not familiar with the new 161. So what's going to happen, what happens with the new 161 when the additional parties, you have to do a new case management or --

MR. MILLWARD: Well, we haven't done a case management yet because of the motions --

THE COURT: Motions.
MR. MILLWARD: -- to dismiss and motions in this matter.

As soon as \(I\) have everyone served --
THE COURT: Okay.
MR. MILLWARD: -- I'll schedule the case management conference. And I don't anticipate or see any future motions other than motions for summary judgment coming down the pike.

THE COURT: Okay.
MR. MILLWARD: In the relatively short order. So CAPITOL REPORTERS (775) 882-5322

I will work towards --
THE COURT: All right. Let's go just go ahead when we have the case management discussed and I'll try to get a senior judge, Judge Hardy no longer does outside -- we had tried to get Judge Hardy, he doesn't do outside settlement conferences anymore.

So I'll try to get a senior judge. And again, I'll try for the benefit of the attorneys, I'll try to have it set up in Reno Behavioral or Carson.

MR. MILLWARD: Okay. And with that being said, I clerked for Judge Gamble.

THE COURT: Yeah.
MR. MILLWARD: Don't --
THE COURT: Don't bother calling Judge Gamble.
MR. MILLWARD: -- bother him, yes.
MR. HERNANDEZ: I'm happy with the bankruptcy judges, I don't know if they would do it.

MR. MILLWARD: Yeah, if they're willing to.
MR. HERNANDEZ: If they're willing to do it, I think that would be --

MR. MILLWARD: Judge Beasley would be fine.
MR. HERNANDEZ: They don't usually assign whoever you want, Your Honor.

THE COURT: Now, again, if there's a judge you CAPITOL REPORTERS (775) 882-5322
all agree upon I have no problem with that.
MR. MILLWARD: Judge McGee was fine as well.
MR. HERNANDEZ: Judge McGee is fine, Your Honor.
THE COURT: All right. All right. Any other questions before we go into recess? No?

All right. So Counsel on the telephone, thank you very much, I'm going to hang up the telephone. You have a good day.

MR. BRENNER: Thank you, Your Honor.
MR. WADE: Thank you, Your Honor.
THE COURT: Court's in recess.
(Proceedings ended at 3:12 p.m.)

CAPITOL REPORTERS (775) 882-5322

STATE OF NEVADA COUNTY OF LYON

I, Shellie Loomis, a transcriber for the Third Judicial District Court of the State of Nevada, in and for Lyon County, do hereby certify:

That I received an audio recording of the above-entitled court proceedings and transcribed the proceedings herein into typewriting as herein appears to the best of my ability;

That the foregoing transcript is a full, true and correct transcription of said proceedings.

DATED: At Carson City, Nevada, this 11th day of March, 2019.
//SHELLIE LOOMIS//
Shellie Loomis, RPR

CAPITOL REPORTERS (775) 882-5322
\begin{tabular}{|c|c|c|c|c|}
\hline & 20 & 11:8,11;13:10;15:1; & America (63) & 12:12;50:14 \\
\hline \$ & actions (1) & 16:20;18:3,5;20:22, & 3:9,15;4:12;5:15, & apply (1) \\
\hline & & 22;22:18;24:18,19; & 20;6:2;8:19;19:19; & 10:2 \\
\hline \$2,013.78 (1) & acts (1) & 29:7;34:17;36:3,19; & 34:5,18,23;35:1,14, & appointed (1) \\
\hline 53:17 & \begin{tabular}{l}
\[
40: 12
\] \\
actual (5)
\end{tabular} & \[
\begin{aligned}
& \text { 40:16;51:1,14;64:8; } \\
& \text { 65:1;66:5,6;71:7; }
\end{aligned}
\] & \[
\begin{aligned}
& 23 ; 36: 7,16,24 ; 37: 2,7, \\
& 22: 38: 13.14 .17: 40: 4
\end{aligned}
\] & \[
22: 22
\] \\
\hline \[
\$ 2,105.10 \text { (1) }
\] & \[
\begin{aligned}
& \text { actual (5) } \\
& \quad 45: 10 ; 54: 12,18 ;
\end{aligned}
\] & \[
\begin{aligned}
& \text { 65:1;66:5,6;71:7; } \\
& 74: 20 ; 76: 18
\end{aligned}
\] & \[
\begin{aligned}
& 22 ; 38: 13,14,17 ; 40: 4, \\
& 9,16,18 ; 41: 7,22
\end{aligned}
\] & \[
\begin{aligned}
& \text { appreciate (5) } \\
& 58: 4 ; 60: 22 ; 71: 18 ;
\end{aligned}
\] \\
\hline \[
\$ 700,000 \text { (1) }
\] & 67:10;72:10 & agree (4) & 43:18;44:3,7,21; & 77:8;81:1 \\
\hline \[
63: 13
\] & actually (5) & 34:19;40:22;55:2; & 45:11;46:3,8,12; & approved (1) \\
\hline A & 72:9; & agreed & 12,16,21;50:12,13; & APRIL (5) \\
\hline & add (6) & 21:24;58 & 52:18;53:9,10;54:15; & 3:1;39:9;53:10; \\
\hline Aberasturi (2) & 11:19;32:10,11; & agreement (24) & 55:23;56:19,22,23; & \[
54: 7,10
\] \\
\hline \[
3: 5,12
\] & \[
34: 13 ; 65: 19 ; 68: 17
\] & \[
34: 19 ; 37: 3 ; 38: 8
\] & \[
58: 13 ; 61: 22 ; 62: 10,
\] & argued (1) \\
\hline ability (2) & \[
\begin{gathered}
\text { added (1) } \\
67: 17
\end{gathered}
\] & \[
\begin{aligned}
& 39: 4 ; 41: 10,18,20 \\
& 43: 3,7 ; 45: 13 ; 48: 1
\end{aligned}
\] & \[
\begin{aligned}
& \text { 20;64:8;70:22,23; } \\
& 78: 8,9
\end{aligned}
\] & \[
\begin{gathered}
53: 20 \\
\text { argues (1) }
\end{gathered}
\] \\
\hline \[
\begin{aligned}
& 42: 18 ; 58: 12 \\
& \text { able (3) }
\end{aligned}
\] & adding (1) & \[
16,21 ; 49: 2,13,22
\] & America's (4) & \[
14: 3
\] \\
\hline \[
\begin{aligned}
& \text { able (3) } \\
& 18: 21 ; 23: 7 ; 42: 16
\end{aligned}
\] & 68:19 & \[
50: 12 ; 52: 9,21 ; 55: 9,
\] & 41:21;44:8;51:24; & arguing (5) \\
\hline Absolutely (4) & additional (7) & 13,14,15;56:22 & 66:11 & 17:2;25:1;47:7; \\
\hline 27:6,18;30:6;60:10 & \[
\begin{aligned}
& 11: 2 ; 15: 2,12 ; 28: 8 \\
& 34: 13 ; 77: 10 ; 81: 10
\end{aligned}
\] & \[
\begin{aligned}
& \text { agreements (1) } \\
& 34: 17
\end{aligned}
\] & \[
\begin{array}{|l|}
\text { amount (5) } \\
42: 12 ; 55: 5 ; 58: 13 ;
\end{array}
\] & \begin{tabular}{l}
54:9;56:15 \\
argument (26)
\end{tabular} \\
\hline \[
\begin{gathered}
\text { accelerated (2) } \\
58: 14,14
\end{gathered}
\] & \begin{tabular}{l}
34:13;77:10;81:10 \\
address (4)
\end{tabular} & \[
\begin{array}{|c|}
\hline 34: 17 \\
\text { ahead (10) }
\end{array}
\] & \[
\begin{aligned}
& \text { 42:12;55:5;58:13; } \\
& 73: 14 ; 75: 16
\end{aligned}
\] & \[
\begin{aligned}
& \text { argument (26) } \\
& 7: 11 ; 9: 20 ; 15: 18 ;
\end{aligned}
\] \\
\hline accept (6) & 19:5;35:21;44:12; & 7:20;11:21;34:7, & amounts (1) & 21:11;24:9;34:6; \\
\hline \[
35: 1 ; 40: 13 ; 42: 20
\] & 77:20 & \[
\begin{aligned}
& 11 ; 47: 4 ; 48: 4 ; 62: 12 \\
& 77: 23 ; 78: 10 ; 82: 2
\end{aligned}
\] & \[
72: 6
\] & \[
\begin{aligned}
& 36: 23 ; 40: 19 ; 43: 22 ; \\
& 44: 2 ; 46: 5,6,19 ; 47: 5
\end{aligned}
\] \\
\hline 45:2;47:13;66:13 & \[
\begin{array}{r}
\text { addres } \\
50: 1
\end{array}
\] & all & \begin{tabular}{l}
ample \\
11:4
\end{tabular} & \[
\begin{aligned}
& 4: 2 ; 46: 5,6,19 ; 47: 5 ; \\
& 1: 1,2 ; 52: 7 ; 62: 9
\end{aligned}
\] \\
\hline \[
55: 24
\] & adequate (3) & 35:20;45:19,22; & announced (1) & 64:24;72:19,2 \\
\hline accepted (20) & 8:21;9:4,13 & 49:11 & 31:21 & 73:20,21,22;75:1,6 \\
\hline \[
34: 24 ; 36: 2 ; 37: 22
\] & adjudicated (1) & allegations (19) & annul (1) & arguments (6) \\
\hline 39:17;40:8;41:10; & 11:6
administerial (1) & \[
\begin{aligned}
& 34: 17,20 ; 35: 4,15, \\
& 23 ; 36: 2 ; 45: 18 ; 47: 11
\end{aligned}
\] & \[
13: 6
\] & \[
\begin{aligned}
& 7: 2,14 ; 8: 1 ; 15: 17 ; \\
& 24: 17: 46: 18
\end{aligned}
\] \\
\hline 45:11,21,23;46:20; & \[
\begin{aligned}
& \text { administerial (1) } \\
& 75: 20
\end{aligned}
\] & \[
\begin{aligned}
& \text { 23;36:2;45:18;47:11; } \\
& \text { 49:5,15,19,20;51:7; }
\end{aligned}
\] & \[
\begin{array}{|c}
\text { anticipate (1) } \\
81: 20
\end{array}
\] & \[
\begin{aligned}
& \text { 24:17;46:18 } \\
& \text { around (4) }
\end{aligned}
\] \\
\hline \[
\begin{aligned}
& 49: 16 ; 51: 13 ; 53: 10 ; \\
& 54: 8,11,15 ; 55: 8,11,
\end{aligned}
\] & admits (1) & \[
52: 24,24 ; 53: 6,23
\] & anymore (2) & \[
16: 4 ; 29: 21 ; 33: 15
\] \\
\hline 12;62:10 & 59:14 & 63:17;76:18 & 61:5;82:6 & 53:7 \\
\hline accepting (2) & advantage (4) & allege (4) & apologize (1) & arrives (1) \\
\hline 34:20;35:24 & :24;18:15,22; & 35:17;53:6;55:11; & 53:12 & 76:17 \\
\hline accomplish (1) & advi & alle & \begin{tabular}{l}
appeal (2 \\
10:14;3
\end{tabular} & aside (21)
\[
4: 14,16 ; 5: 24 ; 6: 2 .
\] \\
\hline 65:13 & 29:22 & \[
7: 4 ; 48: 15 ; 49: 3
\] & Appeals (1) & \[
7: 4,8,23 ; 9: 17,18
\] \\
\hline \[
54: 19,20 ; 62: 22
\] & affect (3) & 53:20;57:2;75:3 & 20:3 & 10:6,9,17;11:18,23, \\
\hline accordance (1) & 17:1;18:5;57:13 & allegedly (2) & appear (2) & 23;12:14;19:19,21, \\
\hline 77:12 & affected (1) & 35:13,14 & 6:21;11:9 & 22;30:2 \\
\hline according (5) & 55:22 & alleges (1) & appearance (2) & assign (1) \\
\hline 30:16;34:22;35:2 & affects (1) & 34:16 & 10:22,24 & 82:22 \\
\hline 39:12;50:24 & 55:18 & allow (2) & appeared (3) & assignable (2) \\
\hline accrue (2) & afford (1) & 18;17:2 & 18:6;21:7;25:17 & 44:6,6 \\
\hline 57:12,13 & & allowed (2) & appearing (1) & assigned \\
\hline accurate (2) & afraid (2) & 7;76 & 11:9 & 43:23 \\
\hline 25:7;65:17 & 18:24;80:12 & alluded (1) & appears (3) & assume (1) \\
\hline Ackerman (1) & afternoon (1)
3.4 & \[
\begin{gathered}
\text { 18:9 } \\
\text { almost (1) }
\end{gathered}
\] & \begin{tabular}{l}
\[
24: 12 ; 40: 9 ; 62: 22
\] \\
application (27)
\end{tabular} & \[
\begin{gathered}
49: 1 \\
\text { attached (2) }
\end{gathered}
\] \\
\hline 3:9 & \begin{tabular}{l}
3:4 \\
afterward (1)
\end{tabular} & \[
\underset{56: 5}{\operatorname{almost}}(\mathbf{1})
\] & application (27)
\[
4: 19 ; 5: 2,5,7,9,15
\] & \[
\begin{array}{|r|}
\hline \text { attached (2) } \\
36: 10 ; 69: 21
\end{array}
\] \\
\hline \[
\begin{aligned}
& \text { acknowledges (1) } \\
& 36: 14
\end{aligned}
\] & 33:20 & Although (1) & \[
\begin{aligned}
& 4: 19 ; 5: 2,5,7,9,15, \\
& 16,21,21 ; 9: 9 ; 19: 13 ;
\end{aligned}
\] & attempt (2) \\
\hline act (5) & again (24) & 35:20 & 20:9;21:17;24:7; & 45:22;54:21 \\
\hline 16:7;70:22;71:2; & 3:20;29:2;31:12; & always (1) & 28:20;33:3,8,14; & attempted (7) \\
\hline 74:14;75:4 & 32:18;33:3,11,14; & 18:13 & 53:11;54:11,14,15, & 12:19;44:14,19 \\
\hline acted (1) & 35:1,24;36:6;38:6; & amend (3) & 17;55:5,24;57:7; & 45:9,19;49:7;51:2 \\
\hline 28:24 & 41:24;47:12;51:21; & 62:2;79:12,1 & 60:12 & attempting (1) \\
\hline acting (2) & 53:23;59:22;63:3,10; & amended (5) & applied (11) & 37:6 \\
\hline 37:7;44:15 & \[
\begin{aligned}
& \text { 64:9;65:1,13;81:8; } \\
& 82: 7.24
\end{aligned}
\] & \[
\begin{aligned}
& 4: 14 ; 69: 8 ; 78: 22 ; \\
& 79: 3,12
\end{aligned}
\] & \[
\begin{aligned}
& \text { 24:5,6;38:15,15; } \\
& \text { 50:11,18;51:2;55:12; }
\end{aligned}
\] & \[
\begin{aligned}
& \text { attempts (1) }
\end{aligned}
\] \\
\hline action (8) & \begin{tabular}{l}
82:7,24 \\
against (31)
\end{tabular} & \[
\begin{gathered}
\text { 79:3,12 } \\
\text { amending (1) }
\end{gathered}
\] & \[
\begin{aligned}
& \text { 50:11,18;51:2;55:12; } \\
& 56: 13,16,20
\end{aligned}
\] & \[
\begin{gathered}
\text { 45:9 } \\
\text { attorney (3) }
\end{gathered}
\] \\
\hline \[
\begin{aligned}
& 35: 7 ; 41: 16 ; 43: 15 \\
& 68: 11 ; 69: 20 ; 74: 9,13,
\end{aligned}
\] & \[
\begin{aligned}
& \text { gainst (31) } \\
& 5: 15 ; 6: 2,18,24 ; 8: 3 ;
\end{aligned}
\] & amending (1)
69:18 & \begin{tabular}{l}
56:13,16,20 \\
applies (2)
\end{tabular} & \[
\begin{aligned}
& \text { attorney (3) } \\
& 8: 20 ; 29: 14 ; 66: 20
\end{aligned}
\] \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline attorneys (5) & 13:2,2;54:17 & 24;59:11;63:18; & 33:20;36:12,13;39:9; & 70:3,3;80:3 \\
\hline 10:18,20;21:2; & beginning (1) & 66:11;70:21,22;71:1, & 47:15;48:24,24; & claimed (1) \\
\hline 29:22;82:8 & 51:18 & 2;76:23;77:7 & 49:20;50:8;52:19 & 42:7 \\
\hline attorney's (2) & begins (1) & breached (3) & 53:5;56:21;59:9,24; & claiming (1) \\
\hline 71:5;74:20 & 47:23 & 43:5;56:22,23 & 61:6;65:17;66:4; & 38:4 \\
\hline auction (1) & behalf (5) & breaches (1) & 69:22;73:6;79:2;80:4 & clarification (2) \\
\hline 14:19 & 3:18,22;4:1,4; & 77:6 & candor (1) & 33:13;65:8 \\
\hline avenues (2) & 75:21 & breaching (1) & 24:13 & clarifications (1) \\
\hline 13:18;49:6 & behavior (2) & 77:6 & capacity (1) & 65:5 \\
\hline Award (2) & 13:13;19:10 & Breckenridge (1) & 74:13 & clarity (1) \\
\hline 32:14,15 & Behavioral (1) & 17:23 & care (2) & 65:10 \\
\hline awarded (1) & 82:9 & BRENNER (44) & 21:12,12 & clear (6) \\
\hline 13:13 & belief (1) & 3:6,8,8,14,14;4:7; & Carson (1) & 12:7,15;16:11; \\
\hline away (2) & 74:12 & 34:4,5,8,12;39:11,15; & 82:9 & 26:13;27:18;68:16 \\
\hline 19:4,7 & believes (1) & 45:17;46:3;47:3,6,18, & case (40) & clearly (2) \\
\hline B & 37:11 & \[
\begin{aligned}
& 21,23 ; 48: 2,5,9,15,18 \\
& 52: 23: 53: 22: 54: 1:
\end{aligned}
\] & \[
6: 21 ; 8: 24 ; 10: 7
\] & \[
23: 22 ; 35: 22
\] \\
\hline B & 29:18 & 56:2,5,9,12;61:23; & 13:11,14;15:24;16:2, & 5:19,20;9:10;10:3, \\
\hline back (14) & beneficiary (6) & 62:3,15;63:15,20; & 6,10;18:6,9,11;20:17; & 5;18:19;21:9;26:17; \\
\hline 13:19;15:19;17:10; & 17:2;72:16;73:14, & 64:17,19;65:4,7; & 22:24;23:3;24:3; & 28:11,16;42:18 \\
\hline 20:18;25:9;35:13,24; & 24;75:15,18 & 69:1;71:16,20;83:9 & 33:3,4;44:4,5;55:19; & clerked (1) \\
\hline 36:14;41:21;45:20; & beneficiary's (1) & brief (3) & 56:21;63:2,6,9,11; & 82:11 \\
\hline 47:14,15;56:14; & 75:18 & 34:5,9,14 & 66:24;74:19;75:1; & clerk's (2) \\
\hline 58:21 & benefit (3) & briefing (3) & 78:5;81:10,12,19; & 15:5;25:13 \\
\hline balance (3) & 28:19;29:3;82:8 & 44:4;47:8;72:22 & 82:3 & client (65) \\
\hline 76:7,22,23 & best (1) & briefs (2) & cases (4) & 7:16;20:22;22:3; \\
\hline Bank (75) & 50:3 & 35:12;50:1 & 10:15,15;11:22; & 26:13;27:13;28:20; \\
\hline 3:9,15;4:4,12;5:15, & better (1) & bring (4) & 16:3 & \[
29: 4 ; 30: 7,18,19,22
\] \\
\hline \[
20 ; 6: 2 ; 7: 18 ; 8: 18
\] & 45:4 & 61:2;65:16;66:16; & cause (6) & \[
23 ; 31: 1,11,15 ; 32: 20
\] \\
\hline 19:19;20:23;34:5,18, & bill (3) & 80:17 & 9:19;25:17;41:16; & 33:11;34:18;36:3,15, \\
\hline \[
23,24 ; 35: 13,23 ; 36: 7
\] & 42:12;57:14;76:20 & bringing (1) & 43:15;68:11;74:20 & 19,23;37:2,6,8,17,24; \\
\hline 15,24;37:2,7,22; & blank (1) & 32:14 & causes (2) & 38:2,6,17,20,22,24; \\
\hline 38:13, 14,16;40:3,9, & 33:22 & broadly (1) & 35:7;69:19 & 39:2,2,23,24;40:6,10, \\
\hline 16,18;41:7,21,22; & blown (1) & 64:10 & certainly (3) & 12,14,15;41:1,4,13, \\
\hline 43:18;44:3,7,8,21; & 13:3 & broken (1) & 48:19;49:2;65:2 & 24;44:9,14;45:11; \\
\hline 45:11;46:3,8,12; & bona (2) & 13:21 & challenging (2) & 50:15;51:6,17;52:1; \\
\hline 47:13;48:7,13;49:3, & 18:1;61:1 & brought (2) & 27:4;31:12 & 54:16,17;55:12;58:2; \\
\hline 12,15,21;50:12,13; & bond (21) & 66:18,24 & chance (2) & 59:10,10,11;60:10; \\
\hline 51:24;52:18;53:9,10; & 14:1,2;15:2,7,7,11; & Brunzell (4) & 14:9;60:1 & 62:5;64:10;66:1;68:4 \\
\hline 54:15;55:23;56:19, & 17:15,20;22:3;23:8, & 33:5,6,8,18 & change (4) & clients (2) \\
\hline 22,23;58:13;61:22; & 19;26:24;27:22,23; & buyer (5) & 36:8,13;38:8;80:11 & \[
17: 1 ; 37: 18
\] \\
\hline 62:10,20;63:8;64:8; & 28:3,7,10,17;30:19; & 61:1;65:21;66:5,6; & changed (3) & client's (4) \\
\hline \[
66: 11 ; 67: 13 ; 70: 22
\] & 31:4;32:7 & 67:20 & \[
38: 12 ; 61: 3,7
\] & 23:3,9,12,13 \\
\hline \[
23 ; 71: 1,2,9 ; 78: 8,9
\] & bonds (1) & buyers (1) & changes (2) & clock (1) \\
\hline bankruptcy (5) & 17:20 & 68:12 & 14:10;62:4 & 48:22 \\
\hline \[
\begin{aligned}
& 35: 5 ; 40: 3,8 ; 49: 7 \\
& 82: 16
\end{aligned}
\] & \[
\begin{gathered}
\text { borrowers (1) } \\
73: 24
\end{gathered}
\] & C & \(\underset{14: 13}{\text { changing (1) }}\) & \[
\begin{aligned}
& \text { coming (3) } \\
& 63: 13 ; 77: 7 ; 81: 2
\end{aligned}
\] \\
\hline banks (1) & both (2) & & check (1) & commencing (1) \\
\hline 63:2 & 3:13;35:11 & calculated (1) & 6:13 & 46:15 \\
\hline base (1) & bother (3) & 23:7 & circular (1) & comments (2) \\
\hline 25:10 & 26:14;82:14,15 & calculating (1) & 46:6 & 71:12;79:21 \\
\hline based (8) & bought (1) & 62:18 & cite (4) & committed (2) \\
\hline \[
17: 24 ; 35: 3,15,22
\] & 65:22 & call (1) & 10:7;16:3,9, & 43:19;75:3 \\
\hline 36:4;49:5;57:7;74:21 & brakes (1) & 9:6 & cited (3) & communicated (1) \\
\hline basically (2) & 14:8 & called (2) & 10:15;11:17;76:10 & 9:21 \\
\hline 15:16;30:6 & branch (2) & 17:23;18:2 & cites (1) & communicating (2) \\
\hline basis (3) & 34:23;48:7 & calling (1) & 11:22 & 10:19,21 \\
\hline 23:7;36:1;65:2 & Breach (29) & 82:14 & citing (1) & communication (1) \\
\hline Beasley (1) & 35:10,10;37:10,19; & came (3) & 51:8 & 12:18 \\
\hline 82:21 & 40:16,20;41:21; & 16:23;17:24;66:19 & claim (13) & company (2) \\
\hline beat (1) & 42:17,17;43:9;44:9; & \[
\operatorname{can}(27)
\] & \[
29: 10 ; 37: 10,19,24
\] & 42:20;43:2 \\
\hline 63:16 & 47:10,11;48:23;49:9, & 8:2;10:7;20:16; & \[
38: 5 ; 43: 14 ; 49: 17
\] & competing (1) \\
\hline began (3) & 17;53:23;56:17,21, & 23:1;26:21;28:13; & 65:1;66:5;69:23; & 26:6 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline complaint (40) & 70:22;71:1;76:24 & 36:9,21;39:5,7,14,16, & \[
3: 8,14 ; 34: 5
\] & \[
4: 15,17,19 ; 5: 8,9
\] \\
\hline 4:14;19:3;34:16, & contradictory (2) & 20;40:8,19;41:1,11, & date (10) & 15,16,20,21;6:2,5,9, \\
\hline 23;35:2,4,7,16;36:2, & 46:19;47:17 & 15,24;42:5,11,15; & 17:7;24:5,8,21; & 18,24;7:3,8,24;8:14, \\
\hline 7,10;39:13,15;45:18; & contrary (1) & 43:5,7,11,21;44:11 & 29:23;30:12,16; & 19,22;9:1,9,11,14,15, \\
\hline 47:16;49:5,15,19,20; & 16:16 & 45:7,14,16;46:2,6; & 31:20;39:12;50:24 & 16,17,18,22;10:3,3,5, \\
\hline 51:5;52:24;53:1,7,9, & controversy (1) & 47:1,4,15,20,22;48:1, & day (11) & 5,9,17,23,11:8,10,12, \\
\hline 19,22;56:24;57:1,3,6, & 36:18 & 4,6,17;50:2,5,20,23; & 8:10;13:21;15:4, & 12,16,18,23,23;12:1, \\
\hline 6;63:18;64:3;69:8, & copy (3) & 52:3,5,7,12,18,19; & 20;17:19;23:9,13,15; & 4,4,7,10,10,12,12,14; \\
\hline 17,21;71:23;78:22; & 5:11;8:10;41:9 & 53:21,24;54:3,6,8,19; & 24:6;63:4;83:8 & 15:19,20,22;16:19; \\
\hline 79:3;80:4 & corporate (1) & 55:3,10,21,23;56:4,8, & days (12) & 17:3,8,9;18:3,4; \\
\hline complete (4) & 6:14 & 11;57:4,6,23;58:4,7, & 12:17;14:1;17:20; & 19:14,19,21,22;20:9; \\
\hline 49:14;53:12;54:23; & corrections & 10,15,18,23;59:3,8, & 33:18,19,21;72:8,17; & 21:7,10;22:18;24:10, \\
\hline 58:13 & 72:17 & 16,20,24;60:4,8,14, & 73:16;79:17,18,20 & 14,19,22,22,24;25:1, \\
\hline completely (5) & correctly (1) & 19,22;61:10,14,17, & Dayton (2) & 2,19,20,21;29:1,5,14, \\
\hline 46:17;53:3,4,4; & 76:7 & 21;62:1,8,19;63:9,12, & 14:20;15:10 & 19,23;30:2;33:15; \\
\hline 55:2 & corrects (1) & 19,21;64:6,18,22; & de (1) & 38:23;41:14;42:3; \\
\hline compliance (2) & 73:16 & 65:5,8,12,19;66:4,7, & 15:22 & 72:7,12;73:14;74:21, \\
\hline 15:11;28:7 & costs (1) & 15,16,22;67:1,4,7,19, & dead (1) & 23;75:17;76:10; \\
\hline comply (2) & 32:14 & 23;68:3,7,9,11,15,20, & 63:16 & 77:22;78:10 \\
\hline 15:9;27:24 & counsel (39) & 24;69:4,7,13;70:1,4, & deadlines (1) & defaulted (1) \\
\hline comport (1) & 6:10,17;11:8;13:5, & 8,14,18,20,24;71:3,6, & 13:16 & 21:9 \\
\hline 51:5 & 10,14,14;14:3,6,11, & 10,12,15,18,22; & deal (2) & Defendant (1) \\
\hline comports (1) & 17;15:16;16:15;17:8; & 72:18,23;73:4,6,10, & 59:9;64:1 & 12:19 \\
\hline 80:4 & 18:2,9,10,15,18,21; & 18,20;74:3,5,7,11,18; & dealing (1) & Defendants (8) \\
\hline concern (1) & 20:13;21:22,23;24:2, & 75:10;76:2,14;77:3,4, & 35:11 & 8:5;15:1,8,14; \\
\hline 62:17 & 17;25:6;27:9;29:21; & 8,15,19,23;78:2,4,6,9, & decades (1) & \[
20: 23 ; 27: 24 ; 64: 4
\] \\
\hline concerning (2) & 32:1,1,21;46:7,16,23; & 17,20,24;79:2,7,10, & 16:4 & 65:1 \\
\hline 51:10;54:22 & 47:7,8;75:5;80:12; & 14,18,20;80:2,5,7,12, & December (23) & defense (2) \\
\hline condition (1) & 83:6 & 15,19;81:1,5,14,18, & 5:7,8,17,18,19 & 12:3;18:13 \\
\hline 28:2 & counsel's (2) & 23;82:2,12,14,24; & 6:11,16;8:18;10:1,1; & deficiency (8) \\
\hline conditioned (1) & 17:16;25:6 & 83:4,11 & 15:8,19;17:10;21:13; & 23:6;42:6,6,8,12; \\
\hline 13:24 & count (1) & courtesy (1) & 24:24;25:4,21;27:23; & 57:9;59:2;62:18 \\
\hline conduct (2) & 64:21 & 8:9 & 30:20;31:6,10,11,19 & delayed (1) \\
\hline 11:11;49:23 & County (4) & courtroom (3) & decide (1) & 35:21 \\
\hline conference (7) & 14:20,22;15:10 & 3:24;13:20;68:21 & 49:1 & demonstrated (1) \\
\hline 3:11;60:18;62:22 & 39:5 & court's (11) & decided (1) & 11:15 \\
\hline 65:18;80:21,23; & couple (2) & 21:13;24:1,11 & 32:4 & denied (2) \\
\hline 81:20 & 38:18;79:17 & 30:16;32:19;33:15; & decision (2) & 21:3;79:5 \\
\hline conferences (1) & course (3) & 57:24;59:1;63:7; & 10:13;26:6 & deny (3) \\
\hline 82:6 & 34:19;37:20;49:16 & 79:8;83:11 & decisions (1) & 57:18;62:9;65:1 \\
\hline confused (1) & COURT (314) & covenant (1) & 12:20 & depending (2) \\
\hline 59:2 & 3:4,7,10,16,19,23; & 35:10 & declaration (6) & 44:4;71:21 \\
\hline consideration (1) & 4:5,8,10,20,23;5:2, & credited (1) & 4:11;6:7;7:9; & designate (1) \\
\hline 53:5 & 11,12,18,20,23;6:4,7, & 51:14 & 69:12;71:17;74:16 & 67:16 \\
\hline considered (1) & 15;7:10,11,15,18,20; & Crystal (2) & declaratory (8) & Despite (1) \\
\hline 7:9 & 8:15;10:7,8,11,13,13, & 51:11,13 & 36:5,18;64:17,21; & 6:16 \\
\hline construing (1) & 14,16,16,18;11:2,5, & curious (1) & 66:9;68:14;70:2,6 & destroyed (1) \\
\hline 57:6 & 18,21,24;12:2,13,15; & 63:4 & declared (1) & 41:6 \\
\hline contained (1) & 13:7,22;14:23;15:5, & current (2) & 49:7 & deter (1) \\
\hline 36:12 & 13;17:14;19:4,9; & 24:1;69:14 & declined (1) & 13:13 \\
\hline contesting (1) & 20:3,3,4,5,20;21:8, & cute (1) & 45:2 & determine (1) \\
\hline 67:21 & 13,15,19,21,23;22:1, & 32:18 & decorations (1) & 68:13 \\
\hline continue (3) & 8,13,14,17;23:2,5,11, & & \[
11: 16
\] & developed (1) \\
\hline \[
\begin{aligned}
& \text { 18:24;28:3;46:4 } \\
& \text { continuing (1) }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 14,15,15,18,21;24:1, } \\
& \text { 12,12,13;25:5,5,14; }
\end{aligned}
\] & D & deed (22) & \[
\begin{gathered}
14: 16 \\
\text { different (8) }
\end{gathered}
\] \\
\hline 70:12 & 26:8,12,22;27:4,10, & damage (4) & 39:3,3;41:3;45:9,10; & 12:4;42:6;46:17 \\
\hline contract (27) & 10,13,20,21;28:6,15, & 19:20;42:1,15;63:4 & 50:10,11;54:24; & 53:19;56:9;57:13; \\
\hline 35:10;37:10,10,19 & 18,22;29:2,7,13,18, & damaged (2) & 55:18;58:19;59:15, & 58:21;59:18 \\
\hline 40:17,23;41:2;42:18, & 24;30:1,3,5,6,9,13,18, & 41:15;64:11 & 15;66:10;67:11,14, & difficulty (1) \\
\hline 21;43:23;44:5,9; & 22;31:3,7,8,12,17,20, & damages (5) & 24;68:16;73:15;74:9 & \[
67: 19
\] \\
\hline 47:10,11;48:23;49:9, & 23;32:2,5,6,8,10,13; & 16:20;58:5;63:2; & deemed (1) & Digest (1) \\
\hline \[
17,18 ; 50: 9 ; 53: 4,23
\] & \[
33: 1,5,7,9,11,14,19,
\] & 64:9;71:4 & 38:2 & 34:9 \\
\hline \[
54: 23 ; 59: 11 ; 63: 18
\] & 21,24;34:2,6,7,11; & Darren (3) & default (100) & digging (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 30:5 & 14:11 & enjoin (3) & 40:5 & Fay (5) \\
\hline direction (1) & drafting (2) & 17:10;64:4;70:12 & excited (2) & 4:4;7:22;38:12; \\
\hline 63:17 & 16:12,13 & enjoined (2) & 60:11,11 & 44:23;71:9 \\
\hline directly (5) & Drive (2) & 14:18;22:18 & excusable (1) & FedEx (1) \\
\hline 45:18;46:14;53:23; & 14:20;15:10 & enough (2) & 9:20 & 41:6 \\
\hline 54:1;56:6 & due (1) & 59:24;64:10 & exhibits (1) & feedback (9) \\
\hline disagree (1) & 6:15 & enter (5) & 40:5 & 6:22;46:1,2,24; \\
\hline 25:11 & during (3) & 6:17,23;22:17 & exist (1) & 47:2;48:14;74:2,24; \\
\hline disagreement (1) & 37:20;42:1;48:19 & 25:4;77:22 & 37:7 & 75:9 \\
\hline 27:8 & duties (4) & entered (7) & existed (1) & feel (1) \\
\hline discern (1) & 74:1,15;75:2,20 & 13:7;21:14;22:8; & 30:15 & 77:3 \\
\hline 52:19 & duty (8) & 31:16;38:7;51:16; & existence (2) & fees (4) \\
\hline discover (2) & 15:8;24:13;27:24; & 58:15 & 37:24;51:23 & 32:17;33:3;71:5; \\
\hline 49:12;51:6 & 70:22;71:2;72:8; & entertain (1) & explain (3) & 74:20 \\
\hline discovered (3) & 74:23;75:23 & 65:3 & 28:18;48:10,13 & few (1) \\
\hline 37:24;38:20;41:18 & & entire (1) & explore (1) & 59:12 \\
\hline discovering (1) & E & 74:6 & \[
67: 14
\] & fide (2) \\
\hline 73:17 & & entitled (10) & exposes (1) & 18:1;61:1 \\
\hline discovery (9) & earlier (2) & 15:18;23:13;24:10; & 75:23 & figure (1) \\
\hline 35:21;37:1;38:19; & 18:9;41:18 & 26:18;27:18;29:23; & express (4) & 57:7 \\
\hline 43:12;47:10;48:20; & easily (1) & 30:12;42:10,11;77:5 & 35:15;36:1;49:19; & file (41) \\
\hline \[
52: 20 ; 56: 23 ; 61: 12
\] & 26:20 & entry (12) & \[
74: 23
\] & \[
4: 13 ; 5: 10 ; 7: 13,23
\] \\
\hline discretion (1) & effect (2) & 5:7,9,15,16;8:14, & expressed (1) & 8:2,9,10;9:7,13;10:1; \\
\hline 10:14 & 62:21;72:14 & 24,11:8,11;17:3,9,9; & 53:1 & 11:17;19:13,13,14; \\
\hline discretionary (1) & effective (3) & 20:24 & extend (2) & 20:2,5;27:11,14; \\
\hline 10:12 & 15:1;24:4;41:5 & equitable (1) & 54:16;62:11 & 28:3;30:19;31:5,6; \\
\hline discuss (2) & effectuate (1) & 35:20 & extends (1) & 32:17;33:12,20,21; \\
\hline 25:14,15 & 46:13 & error (5) & 72:9 & 37:9;40:16;42:23; \\
\hline discussed (3) & effectuated (1) & 16:12;73:13,16,17; & extension (1) & 43:13;68:22;69:8; \\
\hline 12:11;52:15;82:3 & \[
56: 21
\] & \[
75: 13
\] & & 74:16;77:11,12; \\
\hline \[
\begin{gathered}
\text { discussing (2) } \\
26: 1 ; 47: 17
\end{gathered}
\] & \[
\begin{gathered}
\text { egregious (1) } \\
\text { 19:18 }
\end{gathered}
\] & \[
\begin{aligned}
& \text { especially (3) } \\
& 13: 14 ; 19: 1 ; 47: 12
\end{aligned}
\] & F & \[
\begin{aligned}
& 78: 22 ; 79: 11,15 ; 80: 4, \\
& 8,13
\end{aligned}
\] \\
\hline dismiss (8) & egregiousness (1) & essence (1) & & filed (27) \\
\hline \[
4: 12 ; 34: 3 ; 36: 24
\] & \[
13: 12
\] & \[
65: 15
\] & fact (14) & \[
4: 12 ; 5: 3,5,7,22
\] \\
\hline \[
57: 19 ; 61: 11 ; 62: 9
\] & either (4) & essentially (8) & \[
10: 12 ; 11: 7 ; 15: 24
\] & \[
7: 5,6 ; 9: 15 ; 13: 9
\] \\
\hline 64:7;81:15 & 41:5;44:6;56:19; & 6:24;27:11;28:10; & 16:15,21,23;18:16; & 18:14,19,20;19:3; \\
\hline dispute (2) & 62:20 & 34:8,16;66:8;76:6; & 27:6;39:24;66:3; & 20:9;23:21,23;24:7, \\
\hline 24:9;73:23 & elected (1) & 80:1 & 68:2;72:2,14;74:21 & 13,14;26:20;30:18; \\
\hline \[
\begin{gathered}
\text { disregard (1) } \\
27: 19
\end{gathered}
\] & 49:8
electronic (2) & \(\underset{9.23}{\text { establish (1) }}\) & facts (2) & \(32: 7 ; 36: 24 ; 39: 5 ;\)
\(40 \cdot 21 \cdot 57 \cdot 8 \cdot 61: 15\) \\
\hline dissolved (1) & \[
\begin{array}{r}
\text { electronic (2) } \\
6: 15 ; 18: 16
\end{array}
\] & established (1) & \[
\begin{gathered}
9: 23 ; 50: \\
\text { failed (3) }
\end{gathered}
\] & \begin{tabular}{l}
40:21;57:8;61:15 \\
files (2)
\end{tabular} \\
\hline 17:8 & else (13) & 24:19 & 14:1;24:2;45:11 & 17:8,9 \\
\hline District (4) & 8:15;13:3;20:19; & Even (8) & failing (1) & filing (21) \\
\hline 10:16;15:4,13; & 32:8;42:15;45:14; & 8:23;10:23;19:18; & 72:11 & 5:8;6:12,15,23;8:7, \\
\hline 18:16 & 50:1,14;58:21;68:16, & 35:16;43:14;61:4; & failure (2) & 12;9:9;10:4,15;14:7; \\
\hline document (3)
14:23;39:17;72:20 & 17;77:20;80:13
email (1) & 62:4;75:7
everybody (5) & 15:6;27:21
fair (4) & 18:16;25:23;26:17; \\
\hline documents (4) & email (1) & everybody (5)
\(8: 10 ; 59: 14 ; 78\) & \[
\begin{gathered}
\text { fair (4) } \\
\text { 18:21; }
\end{gathered}
\] & 28:6;31:10;40:3;
59:23;60:8;72:10 \\
\hline 50:23;59:13;75:21; & emailed (2) & 15;80:8 & 35:11 & 79:21;81:2 \\
\hline 76:6 & 6:12;8:10 & everyone (1) & faith (8) & filings (3) \\
\hline dollar (1) & emails (1) & 81:17 & 18:1;35:11;44:15; & 13:15;18:10,11 \\
\hline 19:12 & 18:13 & evidence (1) & 70:23;71:2;73:13,16; & final (1) \\
\hline done (8) & end (5) & 76:14 & 75:13 & 45:1 \\
\hline \[
16: 8 ; 17: 4 ; 24: 16
\] & 23:9;46:23;56:15; & ex (2) & fall (1) & finalized (1) \\
\hline 29:15;58:1;75:2,23; & 63:4;80:23 & 26:20;32:6 & 41:16 & 44:14 \\
\hline 81:12 & ended (2) & exact (2) & familiar (1) & finally (1) \\
\hline doubt (1) & 14:13;83:12 & 12:9;53:5 & 81:8 & 15:10 \\
\hline 76:16 & ending (1) & exactly (5) & far (2) & financially (1) \\
\hline down (10) & 71:17 & 22:5;25:7;29:16; & 14:16;45:2 & 45:5 \\
\hline 5:14;15:6;20:4; & enforce (3) & 69:5;75:17 & faster (1) & find (5) \\
\hline 22:13;32:21;39:10; & 41:18,20;45:12 & example (3) & 69:23 & 12:18;37:4;51:11; \\
\hline 57:20;59:7,21;81:22 & enforceable (1) & 14:10;66:10,19 & favors (1) & 53:5;73:1 \\
\hline draft (1) & 66:10 & except (1) & 12:20 & finding (2) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 10:17;27:3 & 23:3,5;37:15,17; & great (1) & 32:11,24;33:2,6,8,10, & 4;77:3,17;78:3,16,21; \\
\hline Findley (2) & 41:23;60:12;73:9 & 18:19 & 17,20,22;34:1;60:15, & 79:23;82:23;83:3,9, \\
\hline 16:2,2 & frame (5) & ground (1) & 17,20;61:19;65:9; & 10 \\
\hline finds (2) & 9:24;11:10;43:17; & 36:5 & 68:22;69:1;71:14; & honoring (1) \\
\hline 30:1;60:6 & 45:12;72:12 & grounds (1) & 73:2,5;77:21;78:1,3, & 49:18 \\
\hline fine (6) & fraud (2) & 34:13 & 5,8,13,19;79:5,9,13; & hoping (1) \\
\hline 27:16;64:5;79:1; & 43:16,19 & guess (7) & 80:17,20;81:4;82:16, & 45:4 \\
\hline 82:21;83:2,3 & free (1) & 48:9;52:22;56:18; & 19,22;83:3 & horse (1) \\
\hline Firm (2) & 63:7 & 64:12;67:19;79:7; & herring (2) & 63:16 \\
\hline 3:9,17 & frequently (3) & 81:6 & 47:8;49:14 & house (4) \\
\hline first (22) & 18:10,10,11 & & hey (3) & 41:2;61:8;63:7; \\
\hline 4:17;6:5;13:9; & frivolous (2) & H & 11:15;54:14;68:5 & 77:5 \\
\hline 15:18,20;24:5;27:17; & 29:9,10 & & Hi (1) & housekeeping (1) \\
\hline \[
31: 5 ; 34: 24 ; 37: 1
\] & front (1) & hand (2) & 3:6 & 33:17 \\
\hline 38:19,22,24;39:1; & 26:3 & 46:19,22 & hidden (1) & \\
\hline 44:21;48:8;50:8; & further (5) & hands (2) & 46:13 & I \\
\hline \[
\begin{aligned}
& 51: 18 ; 52: 21,22 ; \\
& 53: 16 ; 68: 21
\end{aligned}
\] & \[
\begin{aligned}
& 14: 23 ; 21: 14 ; 35: 1 ; \\
& 73: 22 ; 75: 6
\end{aligned}
\] & 36:8;61:3 & ```
history (4)
    13:1;29:11;54:22;
``` & I1 (1) \\
\hline fit (1) & furtherance (1) & 83:7 & 55:19 & 38:19 \\
\hline 42:22 & 75:21 & hanging (1) & Hold (8) & idea (4) \\
\hline five (2) & futile (1) & 62:21 & 3:10;40:23;46:2; & 37:13;40:15;51:4,5 \\
\hline 4:10;13:9 & 57:2 & happen (3) & 47:1;54:3;75:10; & identified (1) \\
\hline fix (1) & future (2) & 20:8;27:18;81:9 & 77:4,5 & 14:21 \\
\hline 16:13 & 13:13;81:21 & happened (9) & holders (1) & impossible (1) \\
\hline flurries (1) & & \(8: 13 ; 13: 4 ; 14: 6 ;\)
\(20.9 \cdot 35 \cdot 5 \cdot 36 \cdot 14\). & 67:10 & 45:3 \\
\hline 81:3 & G & 20:9;35:5;36:14; & hole (2) & improper (4) \\
\hline \[
\begin{aligned}
& \text { follow (4) } \\
& 21: 13 ; 27: 7 ; 31
\end{aligned}
\] & Gamble (2) & \[
\begin{aligned}
& \text { 54:10;58:3;60:13 } \\
& \text { happens (1) }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 57:21;59:22 } \\
& \text { home (1) }
\end{aligned}
\] & \[
\begin{aligned}
& 11: 16 ; 17: 4 ; 29: 21 ; \\
& 33: 16
\end{aligned}
\] \\
\hline \[
76: 6
\] & \[
82: 11,14
\] & 81:9 & 51:15 & inability (1) \\
\hline followed (1) & game (1) & happy (5) & homeowner (1) & 57:7 \\
\hline 45:6 & 16:22 & 60:4;78:14,16 & 63:6 & inappropriate (1) \\
\hline following (2) & gave (9) & 80:20;82:16 & homeowners (1) & 29:9 \\
\hline 11:11;51:20 & 9:1,4;10:2;19:15, & harbor (1) & 63:13 & included (2) \\
\hline force (2) & 20;22:2;23:18;35:2; & 19:15 & homeowner's (1) & 30:11;40:4 \\
\hline 26:4;27:3 & 52:8 & Hardy (2) & 76:20 & includes (1) \\
\hline foreclose (5) & generally (1) & 82:4,5 & honest (2) & 36:10 \\
\hline 21:15,16;27:12; & 64:5 & harsh (1) & 13:8;20:11 & including (1) \\
\hline 28:14;32:5 & gets (1) & 20:15 & honestly (1) & 76:22 \\
\hline foreclosed (2) & 68:11 & hate (2) & 62:3 & inclusion (1) \\
\hline 61:8;68:6 & given (13) & 53:18;80:17 & Honor (115) & 25:16 \\
\hline foreclosure (36) & 9:6;11:7,16;29:22; & heading (2) & \[
3: 21 ; 4: 3,7,9,18
\] & incorporate (1) \\
\hline 13:3;17:5,11,13,15, & 32:20,20;36:15; & 57:20;59:21 & 5:6;6:6;7:13,19;8:2, & \[
76: 11
\] \\
\hline 21,24;20:6,8,8;23:2; & 39:23,24;41:17; & hear (6) & 8,17;11:4,20;12:5,8, & incorrect (3) \\
\hline 28:13,19;29:4;30:17; & 53:19;72:5,10 & \[
4: 10,24 ; 6: 4 ; 12: 15
\] & \[
24 ; 13: 4,8,19 ; 14: 5,15
\] & \[
72: 6,6,6
\] \\
\hline \[
\begin{aligned}
& 31: 1,2 ; 36: 17,17 \\
& \text { 57:8;58:19;59:12; }
\end{aligned}
\] & goes (5)
\[
26: 23 ; 52: 8 ; 53: 14
\] & \begin{tabular}{l}
50:4;71:23 \\
heard (7)
\end{tabular} & \[
\begin{aligned}
& \text { 15:15,21;16:10;17:4, } \\
& 18 ; 18: 7,17 ; 19: 7,12,
\end{aligned}
\] & \[
\begin{aligned}
& \text { incorrection (1) } \\
& 72: 11
\end{aligned}
\] \\
\hline 60:12;61:1,3;64:1,1; & 56:14;57:16 & 8eard 8:33:1;24:17; & \[
18 ; 20: 1,12,17,21
\] & incorrections (1) \\
\hline 65:22,24;66:13; & Good (15) & 46:18,22;59:21;69:1 & 21:6;22:6;23:10,23; & 72:15 \\
\hline 67:12;69:24;70:5,11, & 3:4;5:4;9:19;11:5; & hearing (16) & 24:22;26:11;27:17; & incurred (1) \\
\hline 12;75:22 & 17:24;34:4;35:11; & 4:6,6;21:8;22:2,7; & 30:8,21;31:14,18,22; & 76:21 \\
\hline form (1) & 44:15;65:4;70:23; & 24:22,23,24;25:2,3; & 32:9,12,24;33:10,18, & incurs (2) \\
\hline 69:23 & 71:2;73:12,16;75:13; & 31:20;32:6;61:8; & 23;34:4,8,12;35:15, & 73:12;75:12 \\
\hline former (1) & 83:8 & 66:2;69:14,14 & 22;36:6,15,20,22; & indicated (3) \\
\hline 57:2 & gotcha (1) & held (2) & 42:9;45:17;46:10; & 6:12;51:22;67:3 \\
\hline forth (5) & 18:22 & 43:13;72:15 & 47:6,24;49:10,12,21, & indication (1) \\
\hline \[
6: 6 ; 50: 22 ; 63: 5
\] & grant (12) & help (1) & \[
24 ; 50: 3 ; 52: 2 ; 53: 8
\] & \[
6: 16
\] \\
\hline 64:12;81:3 & 12:13;22:15;32:13; & 68:5 & 18;55:1;56:3,10,19; & indignant (1) \\
\hline forward (11) & 61:11;63:7,22;64:6, & hereby (1) & 57:22;58:20;59:17; & 18:7 \\
\hline 6:17;17:11;19:17; & 19,20,22;77:9;79:11 & 14:18 & 60:10,23;61:20,24; & indiscernible (50) \\
\hline 22:11,23;28:12; & granted (2) & HERNANDEZ (51) & 62:3,15;63:15;64:20; & 5:11;6:8;7:1,14,17; \\
\hline 48:13;53:13;62:17; & 13:23;21:3 & 4:3,3;5:6;7:13,17, & 65:4,7,9,15;68:22; & 12:4,6;13:17;16:4,6; \\
\hline 63:17;77:7 & granting (3) & 19,21;11:19,22;12:1, & 69:6,20;71:14,16; & 19:21;33:2;38:3,5, \\
\hline found (7) & 65:10;77:16;78:11 & 3,24;13:23;19:6; & 72:20;73:2,19;76:1, & 11;40:7,13;42:22; \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 43:3;46:3,12,20;47:9, & 62:21;66:11;76:17 & largely (1) & 38:11;40:2 & 39:11,12;45:17; \\
\hline 9;49:13;50:10;51:12; & issued (2) & 35:8 & Lincicomes (4) & 50:24;61:6 \\
\hline 58:22;60:21;61:23; & 26:20;52:17 & Las (1) & 4:2;37:13;48:7; & looks (2) \\
\hline 63:16;66:9;69:2; & issues (3) & 18:18 & 53:11 & 53:7;71:9 \\
\hline 70:23;71:21;73:22; & 26:2;54:21;63:10 & last (18) & Lincicomes' (2) & lost (1) \\
\hline 74:4;75:7,12,14;77:3, & & 21:8;22:2;24:21, & 51:11,15 & 43:20 \\
\hline 3,22;78:1;79:6,24; & J & 23;25:2,3;29:13; & line (1) & \(\boldsymbol{\operatorname { l o t }}\) (2) \\
\hline 80:20,21,22,24 & & 37:21;38:9;47:5; & 3:13 & 8:4;19:22 \\
\hline inform (2) & January (13) & 50:18,18;58:16,18; & lis (1) & loved (1) \\
\hline 40:6;57:14 & 5:8,11, 12, 13, 14, 22, & 62:21;63:3;66:2; & 66:19 & 60:2 \\
\hline information (5) & 23;15:3;17:5,12; & 79:11 & listed (1) & Lyon (3) \\
\hline 51:10;73:13;75:14, & 18:2;30:24;70:11 & later (4) & 56:1 & 14:20,22;15:10 \\
\hline 18;76:15 & joinder (2) & 5:22;14:24;37:15; & listing (1) & \\
\hline informed (4) & 7:13,23 & 73:16 & 7:22 & M \\
\hline 37:2;38:9,21,22
informing (2) & joining (1) & latter (1) & litigated (1) & \\
\hline informing (2) & 15:9 & 56:24 & 11:14 & mail (1) \\
\hline 18:12;40:12 & Judge (19) & Law (14) & litigating (1) & 18:18 \\
\hline injunction (23) & 3:5,12;10:8;12:6; & 3:9,17;11:5,17; & 60:6 & mailed (1) \\
\hline \[
11: 13 ; 13: 24 ; 14: 12
\] & \[
25: 11,12 ; 26: 6 ; 60: 4
\] & \[
12: 14 ; 15: 24 ; 16: 16
\] & litigation (2) & 9:10 \\
\hline \[
14 ; 15: 1,9 ; 17: 7 ; 20: 1
\] & 81:2;82:4,4,5,7,11, & \[
42: 18 ; 50: 8,17,22
\] & 19:1;20:12 & makes (1) \\
\hline 14;21:12;22:12; & 14,21,24;83:2,3 & 66:12;76:7;77:6 & little (3) & 36:23 \\
\hline 23:16;24:8,14,18,19; & judges (1) & laws (1) & 32:18;61:12;63: & making (6) \\
\hline 25:4;27:2,19;28:1,2; & 82:17 & 16:3 & LLC (4) & 8:8;19:8;22:3; \\
\hline \[
30: 14 ; 76: 19
\] & judgment (42) & lawsuit (5) & 3:18,22;6:3;8:18 & 31:1;35:14;51:18 \\
\hline injunctive (15) & 4:19;5:9,22;7:24; & 29:10;37:9;40:16; & LMA (4) & management (4) \\
\hline \[
22: 15 ; 25: 16 ; 30: 13
\] & \[
8: 14 ; 11: 12,23 ; 12: 4
\] & 42:23;72:10 & 48:8;51:15,15,23 & \[
81: 11,13,20 ; 82: 3
\] \\
\hline \[
15 ; 43: 22 ; 63: 23 ; 64: 7,
\] & \[
10,12 ; 15: 19,20,23
\] & leads (1) & loan (60) & mandatory (2) \\
\hline \[
7,20,22 ; 70: 3,6,8,15
\] & 16:19,24;17:3,8,9; & 63:12 & 17:2;34:17,18,22; & 80:24,24 \\
\hline 77:14 & 19:14;20:9,24;21:18; & least (5) & 35:3,6,8,12;36:8,16; & manip (1) \\
\hline insisting (1) & 22:18;23:7;24:4,7; & 19:12;27:3;35:9; & 37:20;38:8,10,15; & 13:5 \\
\hline 19:16 & 25:2,19;29:5,14,19; & 44:19;65:24 & 39:4;43:2;44:15,16; & manipulate (1) \\
\hline Instead (1) & 33:15;42:6,6,8;57:9; & leave (13) & 45:20;46:8,11,13,17; & \[
13: 6
\] \\
\hline \[
18: 14
\] & 59:2;64:13;65:3; & 4:13;53:20;61:15, & 47:13;48:10,15,21; & manipulation (1) \\
\hline intended (2) & \[
77: 22 ; 78: 10 ; 81: 21
\] & \[
18,20 ; 65: 13,14 ; 69: 8,
\] & \[
49: 2,7,13,16,22
\] & 43:16 \\
\hline 6:20;49:12 & Judicial (2) & 15;77:11,12;78:22; & 50:19;51:11;53:2,10, & manner (1) \\
\hline intent (5) & \[
15: 4,13
\] & 79:11 & 14;54:2,8,13;55:3,11, & \[
16: 24
\] \\
\hline 6:8;10:2,22;17:18, & jump (1) & led (2) & 15,24;56:16,17,19; & March (1) \\
\hline 19 & 14:24 & 40:14;57:8 & 57:7;58:15;59:16; & 39:9 \\
\hline intention (2) & & \(\underset{51: 3 ; 64: 24}{\text { legitimate (2) }}\) & 61:3,9;65:23,24; & materially (1) \\
\hline 8:19;9:15 & K & 51:3;64:24 & 66:2;67:8,9,13;76:9, & 80:10 \\
\hline interest (2) & & letting (1) & 13 & matter (12) \\
\hline 44:7;76:7 & keep (1) & 40:10 & loans (2) & \[
8: 21 ; 15: 13,23
\] \\
\hline interested (1) & 44:15 & level (1) & 36:8,12 & 21:5,7;23:2;28:11; \\
\hline \[
60: 9
\] & kept (3) & 13:12 & local (1) & 44:10;55:19;56:13; \\
\hline interference (1) & 19:16;35:18;48:11 & liability (6) & 34:23 & 61:5;81:16 \\
\hline \[
34: 10
\] & kind (1) & 72:9;73:12;75:13, & located (1) & matters (2) \\
\hline interpretation (1) & \[
40: 10
\] & 23;76:17,21 & 14:19 & \[
4: 10 ; 12: 15
\] \\
\hline \[
17: 16
\] & knew (11) & liable (6) & long (3) & may (10) \\
\hline intervening (2) & \begin{tabular}{l}
6:20;9:14;17:18 \\
\(32 \cdot 4 \cdot 35 \cdot 23 \cdot 36 \cdot 3,3\);
\end{tabular} & \[
\begin{aligned}
& 43: 13 ; 44: 8 ; 72: 15 ; \\
& 73: 23 ; 75: 7 ; 80: 1
\end{aligned}
\] & 15:2;59:24;72:17 & \[
11: 19 ; 39: 13,14 ;
\] \\
\hline \[
\begin{aligned}
& \text { 44:11,1 } \\
& \text { into (9) }
\end{aligned}
\] & \[
\begin{aligned}
& 32: 4 ; 35: 23 ; 36: 3,3 \\
& 38: 24 ; 47: 13 ; 67: 5
\end{aligned}
\] & lieu (1) & \[
\begin{array}{|l|}
\hline \text { longer (9) } \\
22: 21 ; 27: 2 ; 36: 7,
\end{array}
\] & \[
\begin{aligned}
& \text { 44:5,6;55:22,22; } \\
& 62: 15 ; 67: 12 ; 74: 16
\end{aligned}
\] \\
\hline 8:24;34:2;38:7; & \[
76: 9
\] & 58:19 & \[
16 ; 43: 23,24 ; 63: 23
\] & maybe (2) \\
\hline 49:8;51:16;58:15; & knowing (3) & likely (2) & 64:23;82:4 & 37:15;47:21 \\
\hline 65:16;67:6;83:5 & 40:16;56:7;66:19 & 23:3,5 & look (13) & McGee (4) \\
\hline invalid (1) & known (3) & limit (1) & 12:9;18:3;24:17; & 60:4;81:2;83:2,3 \\
\hline 17:13 & 37:21;46:7,14 & 35:11 & 25:12;27:21;39:1; & mean (14) \\
\hline involved (7) & & limitation (3) & 45:18;47:19;49:20; & 5:17;23:2;27:8; \\
\hline \(21: 9 ; 61: 4 ; 63: 24 ;\)
\(64: 1,23: 65 \cdot 22: 81: 8\) & L & \(\underset{\text { 35:12,19;36:4 }}{\text { limitations }} \mathbf{( 8 )}\) & 51:7;52:23;62:7;
65:17 & \[
31: 18 ; 40: 15 ; 41: 21
\] \\
\hline 64:1,23;65:22;81:8 issue (14) & & limitations (8) & 65:17
looked (5) & \[
\begin{aligned}
& 42: 19 ; 51: 7 ; 54: 12 ; \\
& 61: 22 ; 64: 20 ; 76: 4,9
\end{aligned}
\] \\
\hline 23:6;24:18;27:14; & 6:15 & 4,19;48:22;50:9; & 12:5;25:9;27:10; & 18 \\
\hline 31:8;46:8,14;48:20; & language (4) & 52:17 & 60:23;62:4 & meaningless (1) \\
\hline 49:4;57:8,17;59:2; & 14:17;22:2,2;36:11 & LINCICOME (2) & looking (5) & 76:5 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline means (1) & miscommunication (1) & \[
\begin{aligned}
& 34: 3,21 ; 35: 9 ; 36: 23 \\
& 40: 4,5 ; 57: 18 ; 61: 11,
\end{aligned}
\] & 66:14 & \[
\begin{aligned}
& 23: 24 ; 28: 20 ; 29: 4,14, \\
& 16,19 ; 33: 14
\end{aligned}
\] \\
\hline & & 40:4,5,57:18,61.11, & nine (1)
37.21 & \\
\hline 15:22;16:17;19:23 & 54:22;61:24 & 63:22;65:3,10,12,14; & nobody (2) & 0 \\
\hline memorized (1) & misstating (2) & 67:16;69:8,13,15; & 24:22;46:7 & \\
\hline 72:4 & 53:12;76:22 & 71:19,19;77:10,12; & none (4) & object (2) \\
\hline merits (6) & modification (65) & 78:22,23;79:3,12,15, & 25:20;28:21;29:6,8 & 16:5,6 \\
\hline 11:6;12:21;23:1,4, & 34:17,18,22;35:3,6, & 22,24 & non-filing (1) & obligation (2) \\
\hline 6;34:20 & 8,13;37:3,13,17,22; & motions (10) & 18:22 & 75:7;77:22 \\
\hline mess (2) & 38:7,7,23;39:4,6,17; & 4:22;32:16;64:13; & nonmonetary (9) & obligations (1) \\
\hline 28:19;29:3 & 40:6,7,8;41:5;44:16; & 77:20;81:3,13,14,15, & 4:11;7:9;69:12; & 73:15 \\
\hline met (2) & 45:1,20;46:9,11,13, & 21,21 & 71:17;72:1;74:16; & obtain (2) \\
\hline 13:19;74:10 & 17,21;47:7,14;48:10, & move (5) & 77:9,13,16 & 11:10,12 \\
\hline method (1) & 16,21;49:2,8,13,16, & 6:17;22:10,22; & nonsense (1) & obviously (3) \\
\hline 16:15 & 22;50:8,14,15;51:3; & 28:12;53:13 & 19:23 & 27:10;30:4;48:24 \\
\hline Michael (1) & 52:11,12;53:2,11,13; & moved (3) & nonsensical (1) & occur (1) \\
\hline 4:1 & 54:2,8,12,18;55:4,7, & 34:12,14;36:5 & 17:17 & 9:19 \\
\hline might (5) & 8,12,16,17,24;56:17, & moving (1) & nor (2) & occurred (10) \\
\hline 4:24;27:8;59:6; & 20;59:15,16;76:9,12 & 6:7 & 8:24;40:7 & 24:23;25:20,22; \\
\hline 64:4;67:2 & modifications (6) & much (5) & normal (1) & 35:13;39:22;43:9; \\
\hline million (1) & 44:12,13,14,18,19; & 47:1;57:9;61:17; & 79:21 & 44:18,20;64:2;76:24 \\
\hline 19:12 & 58:16 & 79:14;83:7 & note (1) & occurring (1) \\
\hline Millward (184) & modified (9) & must (1) & 79:2 & 70:11 \\
\hline 3:24;4:1,1,18,21, & 16:5;38:16;39:3,3; & 5:17 & noted (1) & occurs (1) \\
\hline 24;5:4,10,17,19;6:1; & 41:4;45:10;50:11; & & 49:4 & 44:4 \\
\hline 7:12;8:11,16,17; & 51:15;76:13 & N & notes (1) & October (3) \\
\hline 10:10,12,20;12:8; & modify (7) & & 39:10 & 45:22,23;51:20 \\
\hline 20:20,21;21:20,22, & 44:15;45:3,9; & name (1) & notice (39) & off (15) \\
\hline 24;22:5,16,20;23:10, & 54:13,24;55:15; & 3:20 & 6:8;7:7;8:19,21; & 7:16;20:17;21:22, \\
\hline 12,17,20,23;24:21; & 59:18 & named (3) & 9:1,4,15;10:2,22; & 23;22:13;25:6,10; \\
\hline 25:19;26:10,16;27:1, & modifying (1) & 74:9,13;80:1 & 14:21;15:7,11,11; & 27:9,11;32:1,4; \\
\hline 6,16;28:5,9,16,21,23; & 53:14 & names (1) & 19:20;26:16,17,19; & 41:13;55:6;57:15; \\
\hline 29:6,8,15,20;30:1,3, & MONDAY (1) & 53:12 & 27:22,23;28:4,6,7,16; & 62:6 \\
\hline 4,8,11,15,21,24;31:5, & 3:1 & nature (2) & 32:7;38:2,23;39:24; & offense (1) \\
\hline 14,22,24;32:3,9,19; & monetary (7) & 73:14;75:16 & 41:13;46:14;49:4; & 21:1 \\
\hline 36:21,22;38:12;39:6, & 16:20;18:3;25:15; & necessarily (1) & 72:5,7,7,10,11,12; & office (5) \\
\hline 8,18,19,21;40:3,22; & 58:5;64:9,15;65:1 & 34:19 & 74:21,22;76:10 & 6:8,11,14;14:22; \\
\hline 41:3,12,17;42:2,8,14, & money (2) & necessary (4) & notices (3) & 15:5 \\
\hline 17;43:6,9,12;44:1,13; & 51:22;55:5 & 44:2,3;67:18,20 & 8:7;66:1;68:4 & officially (1) \\
\hline 45:8,15;50:2,3,6,21; & monstrous (1) & need (13) & notification (1) & 62:5 \\
\hline 52:4,6,11,14;54:4,5, & 42:4 & 3:19;22:7;27:14; & 37:16 & omission (2) \\
\hline 7,11,20;55:7,14,22; & month (4) & 30:5;53:6;61:17; & notified (1) & 74:14;75:4 \\
\hline 57:20,22,24;58:6,9, & 5:22;15:4;24:23 & 62:7;65:6,19;70:15; & 11:7 & once (4) \\
\hline 11,17,20,23;59:1,5,9, & 51:20 & 77:20;79:15;81:6 & notify (2) & 7:6;37:24;51:15; \\
\hline 17,20;60:2,7,10,16, & monthly (2) & needed (2) & 40:7;45:11 & 52:8 \\
\hline 23;61:13,16;62:13; & 14:1;17:20 & 32:6;57:15 & notifying (1) & one (33) \\
\hline 64:3;65:14,15,21; & months (2) & needs (3) & 39:2 & 3:10,11;8:8,9; \\
\hline 66:6,8,18,23;67:2,5, & 12:17;17:20 & 19:8,9;76:2 & November (3) & 11:19;12:23;15:21; \\
\hline 9,21;68:1,4,8,10,13, & more (12) & neglect (1) & 13:19;25:1;31:22 & 24:18;28:12,13;29:2; \\
\hline 18;69:19;70:2,6,10, & 3:11;11:19;13:1; & 9:19 & NRCP (2) & 31:7;33:17;34:11; \\
\hline 16,19,21;71:1,4,8,11; & 19:1;29:3;33:17; & negotiation (1) & 9:2,2 & 38:19;46:19;49:10; \\
\hline 72:1,2,24;73:1,8,9, & 35:17;44:2;59:24; & 53:3 & NRCP60 (1) & 52:10,14;54:3;55:10; \\
\hline 11;76:3,4,16;78:21; & 60:17;74:7;79:16 & NEVADA (9) & 12:9 & 56:9;57:12;58:16; \\
\hline 79:1,16,19,23;80:3,6, & mortgage (7) & 3:1;10:7;12:6,14; & NRS (6) & 59:6,6,7,24;65:23; \\
\hline 10,14,16;81:12,15, & 42:19,20;43:2; & 14:20;15:10;16:3,16; & 38:3;72:3,13;73:2, & 70:20,21;74:7;78:13 \\
\hline 19,24;82:10,13,15, & 53:14;57:16;58:8; & 63:12 & 22;76:5 & ongoing (1) \\
\hline 18,21;83:2 & 63:1 & new (6) & number (2) & 28:9 \\
\hline minute (1) & motion (56) & 44:23;71:12;81:7, & 14:23;15:21 & only (6) \\
\hline 14:8 & 4:5,12,12,13,14,16; & 8,10,10 & nunc (24) & 8:8;23:24;25:17; \\
\hline minutes (1) & 7:3,14,23;8:2,3; & next (6) & 11:12;15:19,22; & 44:9,19;68:18 \\
\hline 25:13 & 11:18;12:14,16,22; & 12:23;13:20;35:5; & 16:1,1,7,11,14,24; & oOo- (1) \\
\hline mis (1) & 13:10,12,23;17:3; & 44:23;69:13;70:21 & 19:23;20:10,23,24; & 3:2 \\
\hline 8:4 & 19:15;32:9,14;33:13; & nil (1) & 21:2,17;22:14,16; & open (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 14:17 & 35:11 & parties (22) & 20:22;29:13 & 17:19;22:3;27:22; \\
\hline opening (1) & outside (3) & 3:13;8:5;18:12; & pertains (4) & 28:3,8 \\
\hline 56:15 & 75:23;82:4,5 & 44:10;60:9;61:2,4; & 4:21;36:24;58:2; & posted (4) \\
\hline opinion (2) & outward (1) & 65:16;67:17,18; & 59:13 & 15:2;17:15;23:8; \\
\hline 57:24;76:23 & 40:12 & 68:14,19;69:9,11,14, & phone (2) & 28:17 \\
\hline opportunity (16) & over (4) & 16;77:1,7;80:23; & 4:6;9:6 & posting (1) \\
\hline 9:13;20:2,5,16; & 37:21;40:23;63:1; & 81:2,7,10 & pike (1) & 13:24 \\
\hline 23:18;32:20,21; & 69:19 & party (23) & 81:22 & potential (1) \\
\hline 33:12,13;42:24; & overturned (2) & 3:11;8:20;10:21; & place (6) & 25:18 \\
\hline 54:16;59:18,23; & 10:14;12:6 & 11:14;17:23;18:5,6; & 17:5,7,15,22 & practice (2) \\
\hline 61:12;62:7;80:8 & owe (2) & 24:10,18,20;25:17; & 22:12;57:8 & 13:9;29:11 \\
\hline oppose (3) & 55:5;57:16 & 38:3;40:24;43:16; & Plaintiff (6) & precedent (1) \\
\hline 61:18;62:1;69:15 & owed (7) & 44:2,3;49:2;54:13; & 15:7;28:17;36:14; & 28:2 \\
\hline opposing (23) & 55:4;56:1;57:9 & 62:24;66:17;67:20; & 46:18;56:15;75:22 & precludes (1) \\
\hline 10:15;13:5,10,14; & 58:13;72:6;76:22,23 & 77:6;80:1 & Plaintiffs (14) & 36:3 \\
\hline 14:3,6,10,17;15:16; & own (4) & past (1) & 11:15;15:2;27:22, & prejudice (2) \\
\hline 16:15;17:8,16;18:2,9, & 35:23;43:23;67:24; & 58:3 & 23;28:3;35:2,17; & 7:4,5 \\
\hline 9,15,21;20:13;24:17; & 75:18 & pause (1) & 47:12;48:13;49:5; & preliminary (10) \\
\hline 25:6,6;61:19;62:6 & owned (3) & 48:2 & 53:5,6,19;57:10 & 13:24;14:14;20:13; \\
\hline opposition (4) & 65:24;67:13;68:1 & pay (5) & Plaintiffs' (9) & 22:11;23:16;24:14; \\
\hline \[
8: 16 ; 19: 13 ; 61: 15
\] & owner (2) & \[
23: 9 ; 42: 18 ; 55: 5
\] & \[
6: 10,17 ; 8: 6 ; 15: 1
\] & 25:3;27:2,19;76:19 \\
\hline 68:23 & 57:15;66:20 & 57:15;58:12 & \[
28: 7 ; 35: 23 ; 36: 7 \text {; }
\] & prerogative (1) \\
\hline options (1) & owners (3) & paying (2) & 46:7,22 & 18:4 \\
\hline 56:18 & 67:10,17,23 & 41:24;58:8 & planned (1) & present (3) \\
\hline order (77) & owns (1) & payment (32) & 25:8 & 25:9;34:5;46:6 \\
\hline \[
13: 7 ; 14: 3,5,6,6,9,
\] & \[
65: 23
\] & 26:14;28:10;34:24 & play (5) & presented (1) \\
\hline \[
\begin{aligned}
& \text { 11,18,23;16:2,4,11, } \\
& 12,13 ; 17: 16,17 ; 20: 2
\end{aligned}
\] & P & \[
\begin{aligned}
& 35: 14 ; 37: 7 ; 38: 4,9 \\
& 13 ; 40: 13 ; 43: 2 ; 44: 22
\end{aligned}
\] & \[
\begin{aligned}
& 13: 16 ; 18: 22 ; 59: 14, \\
& 14 ; 65: 16
\end{aligned}
\] & \[
\begin{gathered}
45: 1 \\
\text { presently (1) }
\end{gathered}
\] \\
\hline 21;21:13,14,14,14, & & 45:20;46:16;48:8,11, & plead (6) & \[
29: 1
\] \\
\hline 19;22:1,6,8,11,12; & Page (2) & 15;50:9,11,14,18,18; & 24:3;46:10,11; & prevail (2) \\
\hline 24:1,1,2,11;25:5,8, & \[
47: 22 ; 51: 8
\] & 51:3,13,18,19,21,21, & 47:12;53:20;57:2 & \[
23: 3,5
\] \\
\hline 11,21;26:12,20,23, & pages (1) & 22;53:15,17;54:22,22 & pleading (3) & previous (2) \\
\hline 23;27:4,7,10,12,12, & 69:21 & payments (25) & 7:6;9:7;10:2 & 26:23;77:13 \\
\hline 13,17,20;28:12,13, & paid (1) & 14:1;17:20;22:3; & pleadings (3) & primarily (2) \\
\hline 24,24;30:16,23;31:7, & 63:1 & \[
26: 14 ; 30: 22 ; 31: 1
\] & 20:19;34:9;65: & 36:24;76:18 \\
\hline 9,10,13,16,18,21,24; & paper (1) & 35:1,3,18,24;38:14; & pled (3) & primary (1) \\
\hline 32:4,19;33:12,16,22; & 69:23 & 42:21;43:4;46:20; & 36:6;57:1;74:20 & 36:23 \\
\hline 57:15;62:12;77:16; & papers (1) & 47:9,13;52:19,20; & plenty (1) & prior (7) \\
\hline 78:12,13,15,22; & 6:7 & \[
53: 1,13 ; 56: 13,16,20
\] & \[
10: 3
\] & \[
11: 8 ; 38: 14 ; 54: 10
\] \\
\hline 79:10;81:7,24 & paperwork (3) & \[
62: 10,10
\] & plus (2) & 61:2;65:24;67:8;68:2 \\
\hline ordered (3) & 63:3,8,12 & peer (1) & 58:16;61:2 & pro (25) \\
\hline 25:12;29:7;31:11 & paragraph (13) & 51:24 & PM (2) & 11:12;15:19,22; \\
\hline orders (3) & \[
14: 18 ; 15: 6 ; 27: 21
\] & pendens (1) & \[
3: 1 ; 83: 12
\] & \[
16: 1,1,7,11,14,24
\] \\
\hline 26:6;78:14;79:2 & \[
36: 11 ; 45: 19,24 ; 48: 6
\] & 66:19 & point (29) & 17:3;19:23;20:10,23; \\
\hline order's (1) & 12;51:8,10;53:7,16; & People (1) & 8:1,8,13,23;9:20; & 21:1,2,17;22:14,16; \\
\hline \(31: 16\)
crigina (1) & 54:4 & 49:17 & 10:24;13:2;16:10; & 23:24;28:20;29:4,14, \\
\hline \(\underset{14: 11}{\text { original (1) }}\) & paragraphs (3) & per (1) & 19:6,8,8;21:6,6; & 16,19;33:14 \\
\hline 14:11 originally & \[
\begin{aligned}
& \text { 14:24;47:16;49:21 } \\
& \text { paralegal (3) }
\end{aligned}
\] & \(72: 4\)
perfect & \[
\begin{aligned}
& \text { 24:15;35:22;42:9; } \\
& \text { 47:16;49:11;52:20; }
\end{aligned}
\] & probably (7)
\(4: 24 ; 19: 2 ; 20: 4\) \\
\hline \[
57: 5
\] & \[
6: 11 ; 9: 5,8
\] & \[
79: 19
\] & \[
\begin{aligned}
& 47: 16 ; 49: 11 ; 52: 20 \\
& 56: 9,14,18 ; 57: 1,19
\end{aligned}
\] & \[
\begin{aligned}
& 4: 24 ; 19: 2 ; 20: 4 ; \\
& 22: 21,22 ; 42: 23
\end{aligned}
\] \\
\hline originate (1) & parcel (2) & perform (1) & 64:14;65:20;70:15; & 43:19 \\
\hline 44:16 & 14:14;18:8 & 54:17 & 72:24;76:5 & problem (5) \\
\hline otherwise (3) & part (6) & performance (2) & pointed (2) & 26:12;57:4;69:10; \\
\hline 21:9;24:3;80:11 & \[
11: 1 ; 14: 14 ; 18: 8
\] & \[
74: 15 ; 75: 2
\] & 75:5,22 & 81:1;83:1 \\
\hline out (26) & 53:1;55:4;60:20 & performing (1) & policy (4) & problems (1) \\
\hline \[
\begin{aligned}
& \text { 6:10;8:1,13;9:10; } \\
& 12: 19: 18: 14: 19: 16
\end{aligned}
\] & parte (2) 26:20•32:6 & \[
73: 24
\] & \[
11: 5,5,7 ; 12: 20
\] & \[
25: 17
\] \\
\hline \[
\begin{aligned}
& \text { 12:19;18:14;19:16; } \\
& \text { 32:22;45:2;49:11; }
\end{aligned}
\] & \[
\begin{array}{|c|}
\hline \text { 26:20;32:6 } \\
\text { participated (1) }
\end{array}
\] & \[
\begin{array}{|l|}
\text { period (3) } \\
12: 20 ; 43: 14 ; 48: 19
\end{array}
\] & \[
\begin{array}{|l|}
\hline \text { position (7) } \\
48: 18 ; 69: 2,4,7 ;
\end{array}
\] & \[
\begin{aligned}
& \text { proceeded (4) } \\
& 6: 17,21,23 ; 11: 10
\end{aligned}
\] \\
\hline 52:10;55:16;56:2,6; & 18:6 & permanent (2) & 77:3,4,5 & proceeding (2) \\
\hline 57:7;60:6,12;62:21; & participating (2) & 14:12;24:8 & positive (2) & 11:15;62:16 \\
\hline 63:13;64:7;65:9,22; & 17:11;43:24 & person (1) & 56:5;65:23 & Proceedings (1) \\
\hline 67:2;75:5;78:2,3 & particular (1) & 51:22 & post (9) & 83:12 \\
\hline outermost (1) & 8:6 & personally (2) & 14:2;15:2,7,12; & process (3) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline \[
8: 12 ; 44: 24 ; 51: 19
\] & \[
12: 14 ; 51: 7 ; 59: 12
\] & 77:21 & 54:14,16;58:2;59:10, & respect (1) \\
\hline processed (2) & quote (1) & recorded (8) & 11;63:23;64:7,8,17, & 69:5 \\
\hline 37:15;43:20 & 53:16 & 14:22;37:14;38:3, & 20,21,23;65:10;66:9; & respectfully (2) \\
\hline produce (1) & quoting (1) & 16;39:8;49:12;56:20; & 68:14;70:2,3,6,7,8, & 46:5,10 \\
\hline 78:14 & \[
16: 5
\] & \[
74: 21
\] & \[
15 ; 77: 14
\] & respecting (1) \\
\hline program (1) & & recorder (1) & relieve (2) & 18:14 \\
\hline 46:21 & \(\mathbf{R}\) & 14:22 & 15:8;27:24 & respond (3) \\
\hline promise (2) & & recording (5) & relying (1) & 33:18;79:21;80:8 \\
\hline 23:23;55:5 & rabbit (2) & 39:2,12,22,23 & 76:15 & responded (1) \\
\hline property (9) & 57:21;59:21 & 75:20 & remains (1) & 9:24 \\
\hline \[
14: 19 ; 18: 1 ; 43: 24
\] & rails (1) & recordings (1) & 70:2 & response (5) \\
\hline \[
57: 15 ; 65: 22 ; 66: 13,
\] & 20:17 & 40:4 & remediates (1) & 6:13,14;25:9;50:2; \\
\hline 14,20;70:13 & Ramir (1) & recordkeeping (1) & 49:2 & 76:2 \\
\hline property's (2) & 4:3 & 64:11 & remedies (1) & responsible (2) \\
\hline 63:14;70:14 & rate (4) & records (1) & 49:8 & \[
43: 13 ; 75: 4
\] \\
\hline proposing (1) & 55:6;57:12,13;76:8 & 16:7 & remedy (1) & responsive (2) \\
\hline 79:4 & rather (1) & recovery (1) & 29:10 & 7:5;9:7 \\
\hline provide (4) & 23:1 & 36:3 & remove (1) & restraining (1) \\
\hline 15:7;27:22;28:4; & RBC3.5 (1) & rectified (1) & \[
79: 24
\] & 33:16 \\
\hline \[
77: 15
\] & 8:19 & \[
76: 24
\] & rendition (2) & result (2) \\
\hline provided (6) & reached (1) & red (2) & 25:7;26:4 & 54:18;74:14 \\
\hline 8:18;73:13;75:6, & 6:10 & 47:7;49:14 & renewed (2) & resulting (2) \\
\hline 14,18;76:15 & Reader's (1) & referring (3) & 79:22,23 & 73:13;75:13 \\
\hline providing (1) & 34:9 & 72:21;73:7;75:11 & Reno (1) & retroactive (2) \\
\hline \[
27: 23
\] & reading (1) & reflects (1) & 82:9 & \[
13: 17 ; 15: 22
\] \\
\hline public (5) & 53:8 & 5:11 & repeat (2) & retroactively (3) \\
\hline 11:5;12:20;14:19; & ready (4) & refused (4) & \[
7: 24 ; 47: 4
\] & \[
13: 6 ; 17: 12 ; 41: 20
\] \\
\hline \[
39: 1,21
\] & \[
34: 5,6 ; 48: 3 ; 60: 18
\] & 35:14;49:21;51:21, & reply (4) & retrospect (1) \\
\hline pull (3) & real (4) & 22 & \[
33: 20,21 ; 35: 22
\] & \[
41: 22
\] \\
\hline \[
54: 4 ; 69: 22 ; 73: 6
\] & 14:19;39:9;63:10; & refusing (1) & \[
45: 16
\] & review (1) \\
\hline pulled (1) & 76:17 & 43:2 & reported (1) & 14:9 \\
\hline 16:21 & really (13) & regard (2) & 38:24 & reviewed (1) \\
\hline punitive (1) & 13:1;20:17;31:11; & 36:23;50:7 & represent (1) & 32:3 \\
\hline \[
20: 16
\] & \[
34: 13 ; 39: 1 ; 44: 19
\] & regarding (3) & \[
7: 17
\] & right (110) \\
\hline purchased (1) & \[
47: 18 ; 56: 12,17
\] & \[
8: 6 ; 13: 15 ; 75: 16
\] & represented (1) & \[
3: 4,10,12,23 ; 4: 6
\] \\
\hline 18:1 & 57:23;60:9;66:11; & regardless (2) & \[
6: 20
\] & \[
5: 2,12,13 ; 6: 4 ; 7: 11
\] \\
\hline purchaser (2) & 81:7 & 9:4;22:24 & representing (1) & \[
20 ; 8: 15,16 ; 11: 2,24
\] \\
\hline 18:1;25:18 & reason (6) & regards (1) & 8:20 & \[
12: 2,13,22 ; 21: 21
\] \\
\hline purpose (8) & 15:15;16:9;21:5; & \[
51: 4
\] & request (8) & \[
22: 5,14 ; 23: 17,20
\] \\
\hline \[
7: 2 ; 11: 16 ; 16: 11
\] & \[
22: 6 ; 30: 11 ; 41: 7
\] & reinstate (1) & \[
20: 24 ; 22: 15 ; 28: 22
\] & \[
26: 8,10,17,17 ; 28: 5
\] \\
\hline \[
\begin{aligned}
& 17: 4 ; 27: 8 ; 34: 21 ;
\end{aligned}
\] & reasonable (4) & \[
30: 14
\] & 29:9,19;64:15;67:17 & \[
18 ; 30: 3 ; 32: 2,8,13
\] \\
\hline \(35: 9 ; 76: 19\)
purposes ( 3 ) & 12:19;13:15;45:12; & rejected (1) & \(71: 24\)
requested & \[
\begin{aligned}
& 34: 2,11 ; 36: 18 ; 39: 19 \\
& 41: 18,19,19: 42: 14
\end{aligned}
\] \\
\hline purposes (3)
\(62: 8,16,17\) & reasoning (1) & relate (1) & \[
\begin{array}{|r}
\text { requested (2) } \\
22: 15 ; 29: 14
\end{array}
\] & \[
\begin{aligned}
& 41: 18,19,19 ; 42: 1 \\
& 22,23 ; 43: 11,21 ;
\end{aligned}
\] \\
\hline pursuant (2) & 7:3 & 34:18 & requesting (1) & 45:12,14;47:4,15,22; \\
\hline 30:23;33:3 & reasons (1) & related (3) & 9:6 & 48:4;53:21,24;54:3; \\
\hline pursued (2) & 21:4 & 36:17;46:17;54:1 & require (3) & \[
55: 17,21 ; 56: 4 ; 57: 4
\] \\
\hline 49:6,6 & receive (1) & relates (1) & 9:18;22:24;77:11 & 58:6,7,17,24;59:5,8; \\
\hline put (10) & 38:13 & 44:1 & required (7) & \[
60: 7,19 ; 61: 4,10,16,
\] \\
\hline \[
7: 21 ; 14: 8,11
\] & received (13) & relating (1) & \[
9: 1 ; 28: 8 ; 32: 5
\] & \[
21 ; 62: 13 ; 63: 19 ; 64: 6
\] \\
\hline 15:15;23:18;26:24; & 7:7;9:5,10;37:12, & 35:8 & 53:11;54:9;72:13; & 65:5,8,13;66:18; \\
\hline 31:3;52:21;56:24; & 18,22;38:2;40:13,15; & relatively (1) & 75:2 & 67:7;68:1,15,16,20; \\
\hline 79:17 & 41:6,14;52:19;66:1 & 81:24 & requirement (2) & 69:4,13;70:20;71:3, \\
\hline puts (1) & receives (1)
38.4 & released (1) & 15:12;28:10 & 23;72:18;73:7;74:3, \\
\hline 14:17 & 38:4 & 37:11 & requirements (1) & 11;75:10,12;76:2,16; \\
\hline Q & \[
\begin{aligned}
& \text { receiving (1) } \\
& 68: 4
\end{aligned}
\] & \[
\begin{array}{r}
\text { reliance (2) } \\
72: 16 ; 73: 13
\end{array}
\] & \[
\begin{aligned}
& 57: 14 \\
& \text { requires (3) }
\end{aligned}
\] & \[
\begin{aligned}
& 77: 15,19,23 ; 78: 10 \\
& 17,20,24 ; 79: 14
\end{aligned}
\] \\
\hline & recess (2) & relief (42) & 8:20;10:21;74:22 & 80:15,19;81:5;82:2; \\
\hline quick (1) & 83:5,11 & 13:17,18;21:3; & resolve (4) & 83:4,4,6 \\
\hline 39:9 & record (12) & 22:8,15,15;24:10; & 54:21,23;66:12; & rights (6) \\
\hline quickly (3) & 7:5,22;18:5;39:1, & 25:16;29:16,21,23; & 77:6 & 17:1;37:10;42:12; \\
\hline 7:6;18:20;23:1 & \[
11 ; 41: 12 ; 51: 11,23
\] & \[
30: 12,13,14,15 ; 36: 6
\] & resolved (2) & 57:14;68:13;76:20 \\
\hline quite (3) & 60:17;74:22;75:19; & 19;37:11;40:5;43:22; & \[
27: 9 ; 44: 5
\] & rise (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 49:17 & 35:9;39:16;45:23; & send (3) & 22:13 & 15:24;22:1,2; \\
\hline rises (1) & 47:8 & 6:14;8:9;26:7 & shuttled (1) & 62:17;72:23 \\
\hline 13:11 & sanction (2) & senior (2) & 20:4 & specifically (4) \\
\hline Riverside (2) & 8:3;19:12 & 82:4,7 & side (3) & 16:1;27:7;28:13; \\
\hline 14:20;15:10 & sanctionable (1) & sense (5) & 8:6;18:13,13 & 64:4 \\
\hline road (1) & 21:1 & 22:9;28:11;31:4; & sides (1) & spoke (2) \\
\hline 59:7 & sanctioned (2) & 41:22;45:5 & 8:9 & 6:11;66:20 \\
\hline role (3) & 19:9;29:12 & sent (3) & \(\boldsymbol{\operatorname { s i g n }}\) (4) & spoken (1) \\
\hline 36:7,16,16 & sanctions (6) & 18:13;39:2;41:9 & 22:17;26:5;32:4; & 8:24 \\
\hline rolling (1) & 4:13;12:23;13:12; & sentence (2) & 45:5 & staff (1) \\
\hline 48:22 & 20:15,22;32:14 & 27:17;51:9 & signed (15) & 18:19 \\
\hline routine (1) & satisfaction (5) & separate (5) & 21:22,23;24:1; & stake (1) \\
\hline 36:8 & 15:12;28:7;54:19, & 46:18;53:3,4,4; & 25:5,6;27:10,11; & 16:22 \\
\hline RPC3.5A (1) & 21;62:23 & 78:14 & 31:18;32:1;37:14; & stamped (1) \\
\hline 6:19 & satisfied (1) & September (3) & 38:16;41:8,9;50:12; & 5:11 \\
\hline rug (1) & 11:1 & 45:20;46:15;47:14 & 55:8 & standard (6) \\
\hline 40:10 & saw (1) & serve (1) & signing (1) & 12:3,9,10,11,11; \\
\hline Rule (11) & 32:3 & 37:9 & 27:9 & 36:11 \\
\hline 4:13;9:16;10:21; & saying (16) & served (2) & simple (1) & standards (1) \\
\hline 11:1;12:22;13:10; & 18:14;22:18;23:12, & 15:14;81:17 & 51:7 & 12:9 \\
\hline 19:14;20:15;32:14; & 13;27:11;31:15; & service (1) & simply (2) & start (3) \\
\hline 43:12;71:23 & 40:18;46:23;47:6; & 6:15 & 13:13;36:6 & 4:16;22:3;37:23 \\
\hline rules (1) & 52:6;54:14;58:23; & servicer (4) & single (1) & started (1) \\
\hline 9:18 & 62:24;67:7;70:16; & 17:2;36:13;44:22, & 74:19 & 48:22 \\
\hline ruling (2) & 71:21 & 23 & situation (1) & starting (1) \\
\hline 25:18;33:15 & schedule (1) & servicers (3) & 10:11 & 48:12 \\
\hline rulings (1) & 81:19 & 67:8,10;68:10 & \(\boldsymbol{\operatorname { s i x }}\) (2) & starts (3) \\
\hline 77:14 & scheduling (1) & Servicing (3) & 35:12,16 & 47:18;49:4;53:7 \\
\hline run (3) & 81:6 & 38:12;44:24;71:9 & Slander (5) & State (5) \\
\hline 38:4;62:5,6 & scheme (1) & SESSION (1) & 71:4,6,8;76:22; & 10:16;31:7;44:5; \\
\hline running (2) & 74:22 & 3:1 & 80:1 & 76:7,12 \\
\hline 23:1;37:24 & screwed (1) & set (23) & sold (4) & stated (2) \\
\hline & se (1) \({ }^{\text {63:8 }}\) & \begin{tabular}{l}
\[
4: 5,14,16 ; 5: 24 ; 6: 1
\] \\
5,6:7:4,8:23.9.17,18
\end{tabular} & 36:13;61:9;66:15; & 17:14;36:6 \\
\hline S & se (1) & \[
\begin{aligned}
& 5,6 ; 7: 4,8,23 ; 9: 17,18 \\
& 10: 5 \cdot 17: 11: 18: 12 \cdot 14
\end{aligned}
\] & \[
\begin{gathered}
70: 14 \\
\text { solely (1) }
\end{gathered}
\] & statement (4)
\(32: 17 ; 50: 7 ; 56: 15 ;\) \\
\hline Sable (2) & searching (2) & 19:19,21,22;30:2; & 74:13 & 80:6 \\
\hline 61:21;62:20 & 51:9,10 & 50:22;60:5;82:9 & somebody (1) & statements (2) \\
\hline Sables (46) & second (17) & setting (3) & 48:24 & 68:8;72:16 \\
\hline \[
3: 18,22 ; 5: 16,20
\] & 3:10;34:11;35:6; & 10:8;11:23,23 & somehow (2) & states (2) \\
\hline \[
6: 3,5,18,20,24 ; 8: 18
\] & 36:5;49:7;52:8,10,11, & settle (1) & 27:1;64:11 & 27:13;48:6 \\
\hline 23;9:6,12;11:3,8,11, & 12,14,21,22;53:2; & 61:5 & someone (2) & status (8) \\
\hline 16;12:19;14:18; & 54:3,5;69:20;79:3 & settlement (10) & 3:16;58:7 & 4:11;7:9;69:12; \\
\hline 16:20;17:10;18:4,5; & Section (3) & 23:2;60:3,18;61:7, & soon (1) & 71:17;74:17;77:9,13, \\
\hline 19:21,22;21:6,15; & 39:15;73:7;75:5 & 8;62:22;65:17;80:21, & 81:17 & 16 \\
\hline 22:18,21;25:21; & secured (1) & 22;82:5 & sore (1) & statute (20) \\
\hline 27:11;29:7;65:11; & 73:15 & settling (2) & 80:17 & 34:15;35:12,18; \\
\hline 69:2;71:9,24,24; & security (3) & 60:1,9 & Sorry (9) & 36:4;37:23;38:1,4,5, \\
\hline 74:20,21;75:22;76:5, & 15:2,12;28:8 & several (1) & 3:8;16:5,5;18:7; & 18;43:10;48:22;50:9; \\
\hline 9,18;77:13,15;79:24 & seek (9) & 14:10 & 32:24;42:20;61:24; & 52:16,17;62:11;72:2, \\
\hline Sables' (3) & 9:14,15;14:12; & Shadd (3) & 69:22;72:20 & 23;73:22;74:6;75:2 \\
\hline 69:4;72:18;73:20 & 15:20;16:24;18:3,4; & 3:18,21;7:22 & sort (1) & statutory (1) \\
\hline safe (1) & 22:7,22 & shall (5) & 63:24 & 74:22 \\
\hline 19:15 & seeking (11) & 15:1,8;21:15; & sought (9) & Stay (4) \\
\hline sale (29) & \[
9: 16 ; 11: 8,12
\] & 27:24;72:15 & \[
21: 5,17 ; 24: 4,10
\] & 19:4,7;40:4,5 \\
\hline 14:21;15:9;17:5, & 23:22;30:14;42:13; & share (1) & 29:16,21;41:20;42:9; & step (1) \\
\hline 11,13,15,21,24;20:6, & 58:4;59:10,10,11; & 78:15 & 59:3 & 47:15 \\
\hline 8,8;22:4;23:8;26:15, & 63:1 & short (1) & sounds (1) & still (13) \\
\hline 18,21;28:19;29:4; & seeks (1) & 81:24 & 55:13 & 3:14;9:1;22:12; \\
\hline 43:24;57:16;61:3; & 64:4 & showing (1) & speak (4) & 42:2;54:9;60:6,8; \\
\hline 66:15;67:12,22;68:2, & selection (1) & 28:17 & 3:19;16:7;56:2,6 & 61:22,23;69:11; \\
\hline 12;70:12;72:7,12 & 73:12 & shown (2) & Special (1) & 71:16;78:5;81:2 \\
\hline same (7) & selling (1) & 21:8,11 & 71:4 & stipulation (5) \\
\hline 5:1;12:9;24:16; & 14:19 & shutting (1) & specific (5) & 5:24;6:1,3;7:16; \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 78:7 & 74:1 & therefore (2) & transferred (2) & 16;35:7,17;38:14; \\
\hline stop (6) & supposedly (1) & 15:13;77:10 & 63:24;66:2 & 44:19,19;46:12,18; \\
\hline 13:2;20:6;23:8; & 47:10 & Third (7) & travel (1) & 56:18;58:16;66:1,1; \\
\hline 30:5;35:14;59:23 & Supreme (9) & 15:4,13;17:23; & 32:15 & 67:8,16;68:2 \\
\hline stopped (1) & 10:8,16;11:4;20:2, & 44:22;51:9;66:17; & traveled (1) & type (4) \\
\hline 42:18 & 4,5;33:14;63:9,12 & 70:20 & 48:7 & 10:11;19:9;22:8; \\
\hline story (1) & Sure (3) & third-party (1) & trial (3) & 49:22 \\
\hline 14:15 & 47:18;50:5,15 & 25:18 & 53:2,12,17 & typically (1) \\
\hline strongly (1) & surprise (1) & though (6) & tried (7) & 26:8 \\
\hline 59:22 & 8:12 & 8:23;10:23;40:19; & 14:11;19:15;20:10; & \\
\hline subject (9) & survive (1) & 52:8;57:5;69:17 & 32:19,21;46:4;82:5 & U \\
\hline 42:3,5;43:22; & 64:15 & thought (8) & tries (1) & \\
\hline 55:19;66:9,23;67:13; & sweep (1) & 7:15;22:9;23:24; & 17:9 & ultimately (3) \\
\hline 74:9;80:18 & 40:10 & 26:11;27:17;28:11; & trigger (1) & 14:13;34:19;56:13 \\
\hline submit (13) & system (5) & 39:10;41:1 & 52:13 & unbeknownst (1) \\
\hline 9:8;11:17;25:11; & 13:6;18:22;37:5; & three (4) & triggered (1) & 38:17 \\
\hline 33:22;36:19;54:13; & 51:12,16 & 5:1;20:23;58:15; & 48:20 & under (19) \\
\hline 57:1;62:12;76:1; & systems (1) & 68:10 & trilevel (1) & 40:10;41:16;42:11, \\
\hline 77:11;78:21,23;79:3 & 51:24 & three-day (2) & 46:21 & 17;45:3;46:20;48:8, \\
\hline \[
\begin{gathered}
\text { submitted (11) } \\
14: 4,6 ; 21: 19
\end{gathered}
\] & T & 6:8;7:7
throw (1) & TRO (1) & \[
\begin{aligned}
& 15 ; 50: 21,21,22 \\
& 51: 13 ; 54: 17 ; 68: 14
\end{aligned}
\] \\
\hline \[
22: 11 ; 25: 5,8,9
\] & T & 42:22 & trouble (1) & \[
73: 15,22 ; 76: 21 ; 77: 9
\] \\
\hline 26:13;27:5;37:3; & table (1) & thus (1) & 79:11 & 80:1 \\
\hline 50:23 & 65:17 & 66:14 & true (3) & undisputed (1) \\
\hline submitting (2) & talk (6) & timely (5) & 16:7;34:20;36:2 & 17:5 \\
\hline 25:21;31:8 & 14:5;19:15;32:22; & 15:7;25:23;27:22; & Trust (21) & undo (4) \\
\hline subsequent (1) & 53:14;59:6;65:12 & 40:15;41:5 & 4:4;7:19;36:10,12; & 23:22;32:19;58:1; \\
\hline 49:23 & talked (1) & tipped (1) & 38:15;39:3,3;41:3; & 68:12 \\
\hline subsequently (1) & 59:6 & 41:13 & 45:9,10;50:10,11; & unfair (1) \\
\hline 35:5 & talking (9) & title (6) & 54:24;55:18;59:15, & 32:22 \\
\hline substantial (1) & 12:17;16:21;26:2; & 66:13;71:4,6,8; & 15;66:10;67:11,14; & unfortunately (2) \\
\hline 14:10 & 39:16;46:16;52:15; & 76:22;80:1 & 73:15;74:9 & 38:8;69:21 \\
\hline substantially (1) & 55:10;59:5;75:17 & Today (6) & trustee (21) & unhappy (1) \\
\hline 17:1 & telephone (5) & 4:5,11;16:21,22; & 14:21;22:21,22; & 33:11 \\
\hline substitute (2) & 3:5;13:21;71:15; & 17:3;52:1 & 72:5,15;73:12,16,23; & unless (2) \\
\hline 69:9,15 & 83:6,7 & together (4) & 74:8,14,15,16,22,23; & 20:18;49:24 \\
\hline substituting (1) & Telephonic (8) & 15:16;18:12;63:3 & 75:1,3,7,12,19,21,24 & unreasonable (1) \\
\hline 69:11 & 6:22;34:10;46:1, & 79:17 & try (8) & 37:8 \\
\hline successors (1) & 24;48:14;74:2,24; & told (9) & 3:11;13:3;20:13; & up (25) \\
\hline 44:7 & 75:9 & 9:8;14:7;41:9; & 30:14;82:3,7,8,8 & \[
3: 19 ; 13: 3 ; 14: 13 ;
\] \\
\hline sue (3) & teller (2) & 42:20;43:1,3,7;51:18, & trying (25) & 16:21;18:19,20;21:8, \\
\hline 48:24;49:1,18 & 34:23;48:10 & 21 & 13:5,6,16,17;14:12, & 12;23:19;26:24; \\
\hline suggest (2) & telling (2) & tolled (4) & 15;16:23;19:7,24; & 28:19;29:3;31:3; \\
\hline 53:18;59:22 & 30:6;43:1 & 38:19;47:10;50:17; & 28:19;29:3;32:22; & 35:2;36:15;52:8; \\
\hline suggesting (2) & temporary (2) & 52:16 & 35:3,18;38:6;40:9; & 54:4;58:21;60:5; \\
\hline 43:18,19 & 33:16;38:7 & tolling (1) & 50:6,16;56:14;57:1; & 63:8;69:23;73:7; \\
\hline sum (2) & ten (5) & 43:10 & 58:1,1;65:13;69:20; & 80:17;82:9;83:7 \\
\hline 15:3;36:15 & 33:18,19,21;63:1,3 & tolls (2) & 71:19 & updated (2) \\
\hline summarize (1) & terms (16) & 38:5;43:16 & tunc (25) & 41:10;43:20 \\
\hline 34:14 & 31:15;32:18,21; & took (5) & 11:13;15:19,22; & upheld (1) \\
\hline summary (4) & 38:8;41:10;45:1,4,4, & 5:20;9:11,21;17:5, & 16:1,1,7,11,14,24; & 10:16 \\
\hline 34:9;64:13;65:3; & 13;49:18;52:9;54:17; & 7 & 17:4;19:23;20:10,23; & uphold (1) \\
\hline 81:21 & 55:23;56:22;72:6; & tortured (1) & 21:1,2,17;22:14,16; & 10:8 \\
\hline super (1) & 76:11 & 13:1 & 23:24;28:20;29:5,14, & upon (8) \\
\hline 78:15 & testify (1) & totalling (1) & 16,19;33:14 & 5:21;9:19;15:14; \\
\hline supplied (1) & 52:1 & 35:21 & turn (2) & 57:7;61:8;68:6; \\
\hline 16:15 & theories (4) & towards (4) & 56:2,6 & 80:21;83:1 \\
\hline supply (2) & 63:4;69:18;71:13; & 46:23;52:21;55:15; & turning (1) & used (1) \\
\hline 77:24;78:12 & 77:10 & 82:1 & 22:13 & 16:14 \\
\hline support (2) & theory (1) & track (1) & twice (2) & using (2) \\
\hline 11:5;75:6 & 64:12 & 20:18 & 61:3,9 & 8:12;18:17 \\
\hline supposed (5) & thereafter (2) & tradition (1) & two (18) & usually (2) \\
\hline 12:15;30:9, 10,23 ; & 15:4;26:14 & 11:6 & 14:24;15:16;34:13, & 40:22;82:22 \\
\hline
\end{tabular}

ALBERT ELLIS LINCICOME,JR.AND VICENTE LINCICOME vs SABLES LL,



\section*{In The Matter Of: \\ ALBERT ELLIS LINCICOME,JR.AND VICENTE LINCICOME vs SABLES LLC,}

February 4, 2020

\author{
Capitol Reporters \\ 628 E. John St \# 3 \\ Carson City, Nevada 89706 \\ 775 882-5322
}

Original File 2-4-20lincicome.txt

Case No. 18-CV-01332
Department II

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA BEFORE THE HONORABLE LEON ABERASTURI

DISTRICT JUDGE, PRESIDING

LINCICOME, )
Plaintiff, )
vs.
SABLES, LLC, et al.,
Defendants.
)


JAVS-RECORDED TRANSCRIPT OF PROCEEDINGS MOTIONS HEARING TUESDAY, FEBRUARY 4, 2020 YERINGTON, NEVADA

Transcribed by:
CAPITOL REPORTERS (775) 882-5322

APPEARANCES:

For Lincicome:

For Fay Servicing, LLC:
For Breckenridge Property Fund 2016, LLC:

For Defendant Sables, LLC:
For Bank of America:

Millward Law, LTD.
Michael G. Millward, Esq. -and-
Justin M. Clouser, Esq.

Ramir Hernandez, Esq.

Matthew K. Schriever, Esq.

Shadd A. Wade, Esq.
Akerman, LLP
Darren T. Brenner, Esq.

CAPITOL REPORTERS (775) 882-5322

YERINGTON, NEVADA, TUESDAY, FEBRUARY 4, 2020, A.M. SESSION
-000-

THE COURT: Good morning. Who do I haven on the
telephone? This is Judge Aberasturi.

MR. HERNANDEZ: Hi, Judge, this is Ramir
Hernandez representing Fay.
(Indiscernible audio via the
telephone.)
MR. SCHRIEVER: Matt Schriever, representing
Breckenridge Property Fund.
THE COURT: All right. Did you get all those? All right.

THE CLERK: (Indiscernible).
THE COURT: Which two did you get?
THE CLERK: (Indiscernible).
THE COURT: All right. We got Mr. Hernandez and Mr. Schriever. Who else do we have on the line?

MR. WADE: Good morning, Your Honor, Shadd Wade on behalf of Sables, LLC.

THE COURT: Okay. All right. Anyone else? All right.

MR. HERNANDEZ: I think we're going to be waiting for Akerman, Your Honor.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Oh, we're still waiting for Akerman. Are they appearing up here or are they going to appear by telephone?

I just had Mr. Millward --
MR. HERNANDEZ: It was my understanding they were going to appear by telephone.

THE COURT: And Mr. Millward just entered. All right. Mr. Clouser's here. All right. And then I heard a ring in the background?

Was that Akerman?
MR. BRENNER: Yes, it is. This is Darren Brenner with Akerman for Bank of America.

THE COURT: Okay. All right. Did you get that? Okay, the clerk's telling me she has everybody.

All right. So we'll start the hearing.
18-CV-01332 --
(The JAVS recording glitches out of the program for about 30 seconds to minute...)
(The recording continues to play for the rest of the hearing with no issues.)

MR. MILLWARD: -- using the new provisions of the Nevada Rules of Civil Procedure that were revised earlier last year. I have not had the response from the two substituted parties as of yet.

CAPITOL REPORTERS (775) 882-5322

I had the clerk issue new summonses that reflect the updated rules and so those new summonses have been issued and I'm going to be doing personal service here shortly.

I was going to give it about 20 days from the waivers of service to be contacted to see if I could get waivers accepted so that we can just move forward and get answers on file. 20 days would be roughly, two, three days from now.

THE COURT: Okay. All right. Are there going let me ask the attorneys on the other end. Are there going to be issues as to personal service or are the attorneys going to accept service?

MR. HERNANDEZ: Your Honor, this is Ramir
Hernandez. We have filed an answer to the -- Fay has filed an answer to the complaint.

THE COURT: Okay. Anyone else?
MR. SCHRIEVER: This is Matt Schriever. Breckenridge has also filed an answer.

MR. BRENNER: This is Darren Brenner for Bank of America, so there's no issue.

MR. MILLWARD: Yeah, so there's no issue as to the parties that were not substituted. There's only an issue as to the substituted parties that haven't been involved.

THE COURT: Okay. And who are those parties? CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Yeah, so let me give you the names here. Okay. It appears that they would be 1900 Capital Trust Number 2 by U.S. Bank Trust National Association, as well as Shellpoint Mortgage Servicing, LLC.

THE COURT: Okay. All right. And then you're hoping those will all be served within the next 20 days.

MR. MILLWARD: Well, I'm hoping that they waive, but if \(I\) don't receive something in the next week or so, I'm going to be working on personal service on both of them.

THE COURT: Okay. All right. And these are all in Nevada? We don't have any issues with out of state?

MR. MILLWARD: I believe both are out of state.
THE COURT: Okay. All right. And then is there an issue with setting a 16.1?

MR. MILLWARD: There's not. I was actually drafting one up. I'm hoping to have one maybe in the middle of March.

THE COURT: Okay.
MR. MILLWARD: That way I can give time for 20 days for a response on personal service. So I was looking at my calendar, March 16 th would be good.

THE COURT: Okay.
MR. MILLWARD: I was thinking something like that too.

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. Is there an issue as to location?

MR. MILLWARD: I would imagine the parties would want just stay by phone. I don't know that.

THE COURT: All right. Is there an issue participating by telephone, any of the attorneys on the line?

MR. BRENNER: This is Darren Brenner for Bank of America, that would be preferred to do it by phone.

THE COURT: Okay.
MR. HERNANDEZ: This is Ramir Hernandez for Fay.
I agree, Your Honor.
THE COURT: Okay. And how about Mr. Schriever?
MR. SCHRIEVER: We would agree with telephonic, Your Honor.

THE COURT: Okay.
MR. WADE: Your Honor, this is Shadd Wade for Defendant Sables, LLC. I just want to confirm that our declaration of non-monetary status that is filed is still standing.

I understand the petition to the Supreme Court was denied, and I just want to confirm that pursuant to the statute, we're not obligated to put (indiscernible) discovery other than responding to the request concerning the deed of trust.

CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. That's my understanding as well. I think last week, I don't know if the Supreme Court sent anything to our clerk yet, but --

MR. MILLWARD: I don't know that anything's been sent to your clerk. I was working on a petition for review by the Supreme Court. So, I anticipate that will be filed.

THE COURT: Okay. All right. Well, but my viewpoint on that until the appellate court overturns me, I think you're correct in what you're stating in terms of 16.

So, any -- do we need a ruling or an order or what's your thought process on that?

MR. CLOUSER: Your Honor, if I might, I think getting an initial 16.1 in the books is imperative.

THE COURT: Okay.
MR. CLOUSER: And if there's any delay with the two additional parties that --

MR. WADE: This is Shadd Wade.
THE COURT: Wait, wait.
MR. WADE: I don't have any objection to the 16.1 conference proceeding.

THE COURT: Okay.
MR. WADE: I'm just -- I just want to confirm on the record that Sables, LLC is not obligated to participate. I have no objection to the other parties proceeding. CAPITOL REPORTERS (775) 882-5322

THE COURT: So, is there going to be any objection if they comply with 16 as if they hadn't the limited obligations based upon my previous ruling.

MR. MILLWARD: Yeah. As long as under the statute, they comply with the discovery request, I would have no objection to that.

MR. CLOUSER: And we can have a supplemental 16.1 after the other, the new parties are brought in. But I think it's important to go ahead and move forward and get 16.1 in place so we've got that aspect covered by the Court.

THE COURT: All right. Is there any objection to that?

MR. HERNANDEZ: Your Honor, can that be repeated because it didn't come through on my end. I didn't hear --

THE COURT: Go ahead and pull that closer. Is the blue light on?

MR. CLOUSER: Yes, it is.
THE COURT: Okay. Thank you.
MR. CLOUSER: This is Justin Clouser with Michael Millward. My comment was that at this point in the case, it's imperative that we go ahead and schedule the 16.1. And if we can get the substitute, the parties that are coming that are out for service, that's great.

But if not, we should move forward with the CAPITOL REPORTERS (775) 882-5322
parties that are already in the matter, so we at least have a 16.1 on file with the Court and we can always do a supplemental 16 point, supplemental JCCR after those other parties are brought in. But at least we're moving in the right direction at that point.

THE COURT: All right. Any objection?
MR. HERNANDEZ: As long as we schedule it by no later than March 16th, Your Honor, this is Ramir Hernandez. I think I can say that we don't want any, and I'm speaking for myself, I'm sure the other Defendants will agree, that we really want to get this case moving forward.

So I really, really would want no later than March 16th for the 16.1.

THE COURT: All right. And I think Mr. Millward has thrown out that date as well. Can we all agree on March 16th?

Is there anyone that can't do that? Okay. All right. So then --

MR. BRENNER: Your Honor, this is Darren Brenner. I don't know, but as long as it's okay with everyone if 1 find a substitute if that date doesn't work for me, then absolutely we'll make it work with Bank of America.

THE COURT: I don't think anyone is going to have an issue with a substitute. All right. So, any issue if I CAPITOL REPORTERS (775) 882-5322
just order that it will occur on or before March 16.
MR. MILLWARD: That sounds fine, Your Honor. Why don't we just work on a time then --

THE COURT: Okay.
MR. MILLWARD: -- that way I don't even have to send a notice out.

THE COURT: All right. Is there a time on the 16th, that's a Monday.

MR. MILLWARD: I'm available the whole day. At 9:30 would be great.

THE COURT: All right. How about you, Mr.
Clouser?
MR. CLOUSER: We'll make that work.
THE COURT: How about 9:30 on the 16th?
MR. HERNANDEZ: Your Honor, this is Ramir
Hernandez. I actually have a mediation in Reno at 9:00 a.m. on March the 16th.

If we could do -- if we could push it back probably to 11 o'clock or noon, probably better by noon, I think \(I\) can get it in at that time.

THE COURT: All right. Any issue with noon?
MR. CLOUSER: That's fine.
MR. MILLWARD: Noon is fine.
THE COURT: I'm hearing from both attorneys in CAPITOL REPORTERS (775) 882-5322
the courtroom noon is fine? How about the attorneys --
MR. SCHRIEVER: Matt Schriever for Breckenridge, noon is fine for me, Your Honor.

THE COURT: Okay.
MR. BRENNER: Same for Bank of America.
THE COURT: All right. So what I'll do is order today March 16th, noon. All right. And then who's going to set up the conference call.

MR. CLOUSER: We'll set up the conference call.
THE COURT: All right.
MR. CLOUSER: The Plaintiffs will set up the conference call.

THE COURT: THE Plaintiffs will set up the conference. Okay. And then, okay, anything else regarding the 16.1?

MR. CLOUSER: Just if we could request that all the parties provide us with the best call-in number so we can notify, so we can make sure that everyone is notified properly.

THE COURT: Okay. Which office do you want them to call?

MR. CLOUSER: Mr. Millward's office, please.
THE COURT: So if everyone else on the telephone contact Mr. Millward's office, let him know what the telephone CAPITOL REPORTERS (775) 882-5322
numbers are and then they'll contact. All right.
MR. HERNANDEZ: This is Ramir Hernandez, we'll do that, Your Honor.

THE COURT: All right. Anything else regarding the \(16 ?\)

MR. CLOUSER: I don't believe so from Plaintiffs, Your Honor.

THE COURT: All right. Now, as to the remaining, there were some motions, did we want to deal with those today or do we want to wait and see what happens after the 16.1?

MR. SCHRIEVER: Your Honor, this is Matt Schriever for Breckenridge. We have a request for --

THE COURT: Restitution.
MR. SCHRIEVER: -- restitution. I would like to argue that today.

THE COURT: Okay. All right. And then I believe there was one other motion for reconsideration on the declaratory judgment; is that correct?

MR. MILLWARD: Yes, Your Honor.
THE COURT: All right. Let me start off before we discuss that one. I think in terms of reading the pleadings, the issue that \(I\) saw in the pleadings is not necessarily the cause of action, but what declaratory -- what are you seeking to declare?

CAPITOL REPORTERS (775) 882-5322

Is there an issue if Mr. Millward sets forth exactly what he's seeking to have the Court declare, is there still going to be an issue as to the cause of action? Let me ask the attorneys on the phone?

Did any of you have a point of view on that?
Are we still there?
MR. SCHRIEVER: This is Matt Schriever for
Breckenridge. Your Honor, I didn't file any sort of opposition and I don't believe, I don't recall to the motion for reconsideration.

I'm not sure that I understand the necessary point of the motion at this point, but maybe I did not file an opposition to it.

THE COURT: All right. Either of the other two attorneys on the phone?

MR. HERNANDEZ: Your Honor, this is Ramir
Hernandez. We also did not file a motion for reconsideration, or an opposition for a motion for reconsideration.

THE COURT: All right.
MR. BRENNER: Your Honor, Darren Brenner for Bank of America. We don't have a position on this issue.

THE COURT: Okay.
MR. MILLWARD: And, Your Honor, just to maybe clarify some things. So it was argued by Breckenridge that CAPITOL REPORTERS (775) 882-5322
the, that a single claim for declaratory relief was improper in Nevada, that you couldn't file a suit against one party for declaratory relief by itself.

MR. SCHRIEVER: This is Matt Schriever for Breckenridge. I think we cut out again. I couldn't hear the rest of Mr. Millward.

THE COURT: Pull the microphone closer.
MR. MILLWARD: Let me say that again. I said that it was argued by Breckenridge, and I'm trying to remember the motion. I believe it was the motion pertaining to the lis pendens.

But anyway, it was argued that you could not bring an action for a single relief against a party for declaratory relief. And Breckenridge cited to Federal District Court cases and Federal case law to substantiate that position, granted they were Nevada Federal District Court cases.

NRS 30 in Nevada makes it clear that you can. And so the Court entered an order establishing that in this case that the actions for declaratory relief where it stood as the sole action against a party were improper.

And so thereafter, I filed a motion to amend and I included additional causes of action against parties that the Court allowed for me to file.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Right.
MR. MILLWARD: Gave me leave to file. And so I think that in some respects the motion is moot.

THE COURT: Okay.
MR. MILLWARD: And if everybody would agree to that, then I would agree to withdraw the motion.

THE COURT: All right. Is there any objection to having the Plaintiffs withdraw the motion if everyone agrees that it's moot at this point in time?

MR. HERNANDEZ: Ramir Hernandez --
MR. SCHRIEVER: -- Matt Schriever --
MR. HERNANDEZ: Go ahead, Matt.
MR. SCHRIEVER: Matt Schriever has no objection to that.

MR. HERNANDEZ: This is Ramir Hernandez. I have no objection to that, Your Honor.

THE COURT: Okay. All right.
MR. BRENNER: Darren Brenner, I have no objection. I just don't think it involves my client at all.

THE COURT: Okay. So we'll go ahead and withdraw that. And so are there they other motions before we get to the writ of restitution that I need to address today?

MR. CLOUSER: Not that I'm aware, Your Honor.
THE COURT: All right. So as to the writ of CAPITOL REPORTERS (775) 882-5322
restitution, let me hear argument and then I'll hear from the Plaintiff.

MR. SCHRIEVER: All right. Your Honor, again this is Matt Schriever. Your Honor, as the Court is well aware, Your Honor entered an order on December 31st, 2018, enjoining the foreclosure sale if the Plaintiff filed a bond of \(\$ 172,000\), and then thereafter posted approximately \(\$ 2,100\) a month thereafter.

No bond was posted, and so on January 4th, 2019, the foreclosure sale was held and my client purchased the property for \(\$ 294,000\).

On January 28th, 2019, we filed -- or served the three-day notice and the Plaintiffs are remaining in the property. They're squatting on the property and my client's the title owner the property as it is right now and we are entitled to possession of the property.

It's currently costing my client approximately \$75 a day just to carry this property that the Plaintiffs are living in rent free, mortgage free, and my client is holding a loan and carrying the property. And so we're asking for possession of the property.

If the Court is not inclined possession of the property during the pendency of this action, then we request that the Plaintiffs be required to post a bond and I -- if -CAPITOL REPORTERS (775) 882-5322

I calculate that to be about a \(\$ 30,000\) bond. That's based on the \(\$ 75.65\) per month times, it's been approximately 400 days since the foreclosure sale. That came out to \(\$ 30,260\).

So we would ask if the Court is not inclined to grant possession or grant a writ of restitution, it is required the Plaintiffs to post a bond of \(\$ 30,000\) and then plus the \(\$ 2,105\) amount that the Court previously ordered in December per month.

That's just to protect my client in the event that the Court ultimately finds that the foreclosure sale was valid and those would be rents that would be payable to my client for this possession period where the Plaintiff is renamed in the property without paying rent.

And then if the Court determines that the sale is void, then that amount would -- would be determined later on where that amount should go.

THE COURT: Okay. Mr. Millward.
MR. SCHRIEVER: And with that, Your Honor, I have nothing else unless the Court has questions.

THE COURT: All right. Mr. Millward, are you going to argue?

MR. MILLWARD: Yeah. I'll sit.
THE COURT: Yeah, have a seat.
MR. MILLWARD: Otherwise they won't be able to CAPITOL REPORTERS (775) 882-5322
hear me. So, Your Honor, so my client's position is that the foreclosure sale should never have happened.

My client's position has been, throughout this matter that they've never been in breach of contract. That there was no default. That the trustee under NRS \(107.080(1)\) and (2) do not permit a sale by foreclosure unless at first a default is had by the homeowner.

In this instance, the default was caused by Bank of America. The Court's preliminary findings in the December 31st order establish, at least as a preliminary determination, that my clients are likely to prevail on those -- on proof of those facts. That the evidence before the Court are primarily public documents and recorded documents.

Other than my clients's testimony that was admitted before the Court in their affidavit at the hearing in November of 2018, most of the facts, almost all the facts here are undisputed.

There was a loan modification in July of 2009. It was signed and recorded by Bank of America in May of 2011. My clients attempted make payment as their affidavits that have been admitted into evidence before this court established, that they were -- those payments were refused as of October of 2018.

That all this information was available to the CAPITOL REPORTERS (775) 882-5322
trustee and available to the parties prior to and they were made aware of the information prior to the foreclosure sale on January 4th.

There was a lis pendens recorded. The purchaser purchased subject to knowledge of this suit, purchased subject to the allegations that, that there was no authority to foreclose in this matter, because there was no default, as well as knowledge of documents, including inaccurate interest rates, inaccurate balances, inaccurate dates.

In this case, Your Honor, this is almost an issue of summary judgment. It's undisputed that my clients have never been permitted under the loan modification agreement to make a payment.

THE COURT: Okay. But which loan modification agreement are you talking about, because there was --

MR. MILLWARD: There's only one. And that's the 2009 loan modification agreement that was ever agreed to by the parties and recorded.

THE COURT: Right. But then there was a settlement through the foreclosure process.

MR. MILLWARD: Yeah, Your Honor, and we have talked about that. And it was -- the settlement was simply mediation would end if my clients did a deed in lieu, but nobody's held the position that my clients entered into an CAPITOL REPORTERS (775) 882-5322
intervening agreement that eliminated their rights or changed the rights under the original loan, under the loan modification agreement. Nobody's held that position. Nobody's taken that position.

THE COURT: Right. At this time.
MR. MILLWARD: Right.
THE COURT: Okay.
MR. MILLWARD: Right. And I've reviewed those documents and I don't see that they create an intervening contract. I would imagine this case would be over if they did. That would be a simple resolution to the case if that were the matter.

Your Honor, but what the point of this is, is that we've got a purchaser here that knew what they were purchasing. That knew that they were buying a property that was going to be subject to a claim that the foreclosure sale was void.

When you look at the statutes that are applicable to this matter, when you look at NRS \(107.080(5)\), right. It states: That when the trustee or other person authorized to make sale does not substantially comply with the provisions of this section, right, that the Court must determine, must declare that the sale is void.

It says, "must". And the very first obligation CAPITOL REPORTERS (775) 882-5322
that the trustee had to do is to make sure that the homeowners' in default.

So, so based on the argument that there was a mediation agreement, right, that supersedes the loan modification agreement, the trustee sale would have to be in violation for violation of that agreement which it was not.

THE COURT: Okay.
MR. MILLWARD: The notice of sale, the notice of default, all the documents reported that are required by NRS 107.080 establish that there was a loan modification, acknowledge that there was a loan modification, and yet none of the terms repeated in those documents reflect the modified loan.

THE COURT: Okay.
MR. MILLWARD: My clients's position has always been in this matter that they've never been permitted to make payment according to that agreement.

THE COURT: All right. Now, if is only issue is the deficiency, if the Court doesn't see that, because your clients still had a duty to make the payments.

I understand your argument you want to argue that they tried to make payments at some point eight, nine years ago, so now they're excused from making payments forever.

But if the Court doesn't accept that agreement, CAPITOL REPORTERS (775) 882-5322
is the fact that there is an issue with the deficiency enough under Chapter 107 to undo the sale?

MR. MILLWARD: I don't think so, Your Honor, because at no point has anybody, any party in this matter, offered my client the opportunity to make payments under the terms of the loan modification.

THE COURT: Well, you had that there were offers in terms of the foreclosure and mediation, and if I'm recalling everything correctly, I know it's been a year, but there were attempts to rework it. There was at least two or three.

MR. MILLWARD: By my client.
THE COURT: Right.
MR. MILLWARD: Absolutely. My clients tried to preserve their home and preserve the mortgage, and unfortunately, they were never able to enter into a superseding agreement that would resolve the whole case.

THE COURT: All right.
MR. MILLWARD: They were real close, but then when the offer came through from the bank, they realized that the terms were absolutely unaffordable to them, they couldn't -- they would have been back in the same place that they had been. So they had to reject those terms leaving the loan modification agreement from 2009 in place.

CAPITOL REPORTERS (775) 882-5322

THE COURT: Right.
MR. MILLWARD: And so the point though, is Your Honor, we have Bank of America refusing those payments. There's no evidence showing that, that they didn't refuse the payment in October. There is evidence that they accepted my clients's first payment in September, right.

THE COURT: Right. But it gets back to my question, though, if at the end of the day the only issue is what is the deficiency --

MR. MILLWARD: Right.
THE COURT: -- is that sufficient under 107 to --
MR. MILLWARD: My argument, Your Honor, is that 107 requires a breach and default. And you can't hold my clients liable for a breach and default when they've never been given the opportunity from July of 2094 (sic.) to make payment on the agreed upon terms.

THE COURT: All right. Let me rephrase it a different way.

If the only breach the Court at the end of the day finds the only breach is they didn't notify your clients as to what the correct deficiency judgment was or what the correct deficiency, would that be enough under 107 to undo the sale?

MR. MILLWARD: I think, Your Honor, for a CAPITOL REPORTERS (775) 882-5322
deficiency to exist, right, would have to have my clients obligated to make a payment, right.

THE COURT: Which they were under the agreement.
MR. MILLWARD: Right, and they did. They made a payment in September and were refused a payment in October.

THE COURT: Right.
MR. MILLWARD: So that the deficiency is, if any deficiency, is one payment in October that was refused.

THE COURT: All right. But they still have to, all right, \(I\) 'm not going to -- all right.

So, are you going to answer my question as to whether or not if at the end of the day, the only violation of 107 was the bank didn't notify them of what they owed.

MR. MILIWARD: I don't see how we can get to that point, Your Honor. Like I understand where the Court's going and I appreciate the Court's statements, but what I'm saying is I don't get how you -- how you get to notifying someone that they owe something when they wanted to and haven't been able to make payment the entire time.

I mean, if at any time any of the banks involved said, oh, we discovered erred this loan modification. It's never been -- we've never accepted a payment from you and we're willing to start accepting payments, then my clients would have started making payments. CAPITOL REPORTERS (775) 882-5322

THE COURT: Well, that's not true, because they didn't.

MR. MILLWARD: It's never happened, Your Honor. There is no evidence whatsoever in this case.

THE COURT: They were asked -- all right. All right. I'm not -- all right, any other arguments?

MR. MILLWARD: Your Honor, it's quite simple. The right to restitution relies upon the validity of the foreclosure sale, right.

THE COURT: Okay.
MR. MILLWARD: As a matter of law in this state, when a party breaches an agreement, right, the other party is let off the hook.

THE COURT: That's not true.
MR. MILLWARD: It is true.
THE COURT: That is absolutely not true.
MR. MILLWARD: I can give you citations and case law, Your Honor.

THE COURT: All right. So you're saying if the bank didn't accept two or three payments nine years ago, your clients get a free house.

MR. MILLWARD: That's not at all what I'm saying, Your Honor. My argument is simply that my clients can't be held liable for missed payments that they couldn't make. CAPITOL REPORTERS (775) 882-5322

THE COURT: All right. Okay. Anything else?
MR. MILLWARD: Do you have any argument?
THE COURT: All right. Response?
MR. SCHRIEVER: Your Honor, this Matt Schriever with Breckenridge. Your Honor, my client wasn't involved in this property until they purchased it on January 4th of 2019. I'm not concerned with all these payments that they tried to make in 2009 to 2019.

I'm concerned with what have they done since foreclosure occurred on January 4th, 2019, to try to make some sort of payment make some payments. They knew that it was coming.

We've been asking since May, we filed our motion to intervene May 23 rd, asking that the Court set some sort of bond for the Plaintiffs to post a monthly amount as a rent to some sort, something, some sort of security to -- for this property and they haven't -- they haven't done it.

And like, I mean, that's where what we're asking for is a monthly security amount to protect the parties' interests during the resolution of everything.

I would like possession of the property, that's my primary -- that's my primary request. But if the Court's not willing to, then we're asking for a bond that acts as a security until the final resolution of this and the proper CAPITOL REPORTERS (775) 882-5322
amount of that would be 30,000 , plus what the Court previously ordered in December of 2018, \(\$ 2,100\) per month and then that acts as that security, because to make payment status quo until the case is resolved.

And I think it's -- I think it's bad faith and they come with unclean hands if they say, oh, well, we're not entitled, or we're not need to make any payments at all and we can stay in this house for the next three years as we slowly drag this litigation on. That's not how, that's not how litigation works. There needs to be some sort of responsibility to hold their feet to the fire and to let there be security in this case.

THE COURT: All right. But do you want to address --

MR. SCHRIEVER: As far as --
THE COURT: Can you address, though, the issue if at the end of the day, because I think at the end of the day like I held previously are likely to prevail that the bank did not give them the proper information as to what the interest rate was and what their deficiency would be which is required under 107. Would that be enough to undo the sale?

MR. SCHRIEVER: Your Honor, I think that's a -that's a discovery issue that we need to look at the facts a little more into.

CAPITOL REPORTERS (775) 882-5322

I mean, if the Court in the end of the day undoes the sale, declares the sale void, then these -- these rental payments that they're holding in, as a security that they're posting with the Court, if the sale is ultimately void, then they would probably be entitled to have those returned back to them or else they get applied to the mortgage. But, I'm just asking for there to be some sort of security posted in the mean time.

THE COURT: Okay, but --
MR. SCHRIEVER: To protect everybody's interests and to make sure that the property is being protected, that my client is protected in the long run if the sale is declared valid.

THE COURT: Well, that seqways into my next issue though, this isn't a joint motion between your client and the bank and I'm not being asked to protect the bank any more. It's just an issue from your client. And my concern is if \(I\) do over turn the sale, and at this point in time \(I\) don't know, I haven't heard the arguments.

You raised the issue of discovery, you know, that's my concern. But, if it is enough to over turn the sale, then they've been required to do something that they shouldn't have been required to do.

MR. SCHRIEVER: Well --
CAPITOL REPORTERS (775) 882-5322

MR. HERNANDEZ: Your Honor, I shouldn't -- Your Honor, I didn't file, but I do have a point of law, this is Ramir Hernandez. I have a point of law regarding your question that may address it, but I don't know if I'm allowed to speak to --

THE COURT: Well, no I --
MR. HERNANDEZ: -- I don't have a dog in this show.

THE COURT: Like I'm saying, I appreciate, Mr. Hernandez, you're not on the motion, so, all right. right, is there any --

MR. HERNANDEZ: No, I was just trying to be helpful, I'm sorry.

THE COURT: I appreciate that.
Anything else?
MR. SCHRIEVER: Your Honor, if they post a bond and any party or they or my client, since it's our motion and we're asking for the bond, if they're ultimately successful they can ask for a motion to release the bond back to them in the long run if this were declared that the sale was void.

But, if the Court declares that the sale was valid, then we would request that the bond be released back to us. And I think that's an issue that we deal with once we get there, but there needs to be security posted, a bond posted in CAPITOL REPORTERS (775) 882-5322
place to make payments status quo until that time comes.
THE COURT: All right. Anything else?
MR. SCHRIEVER: No, Your Honor.
MR. WADE: Your Honor, this is Shadd Wade, President of Sables, LLC, and I would request permission to put my input in based on the fact that Plaintiffs, essentially Plaintiffs' opposition implicated the trustee's conduct with respect to the recorded documents and proceeding for sale.

THE COURT: All right. At this point, I'm not going to allow to you get into -- we're dealing with the writ of restitution. All right. Yes, go ahead.

MR. WADE: It's not related to the writ of restitution, it's more related to the fact that the Court allowed the foreclosure to proceed.

You ordered an injunction, but required a bond because the Plaintiffs' request for the injunction presupposes the idea that they were able and ready to pay.

So the bond amount was essentially saying, okay, you haven't been able to pay for ten years, pay the bond amount and stop the sale. They weren't willing or able to do that. So that essentially establishes that they were unable to perform under the contract any way.

So what when counsel says there was no default, that's inaccurate. There was a default. There was a failure CAPITOL REPORTERS (775) 882-5322
to pay. And then when the Court provided them an opportunity to cure that default through a bond to obtain an injunction to stop the sale, they failed to make that payment which is just furthering their pattern and practice of conduct in failing to pay.

So, I just wanted to point that out that there was, in fact, a default, that that issue is not in dispute. That there was a failure to pay on behalf of the Plaintiffs. That (indiscernible).

THE COURT: All right. Did you want to respond to that, Mr. Millward?

MR. MILLWARD: Yeah, Your Honor.
THE COURT: Let me, just before you do that, then the other issue is what is the status quo.

MR. MILLWARD: Yeah. Thank you, Your Honor.
THE COURT: Go ahead.
MR. MILLWARD: Just as to the bond, as a matter of practicality, my clients would have to post cash for \(\$ 30,000\). And I don't -- while I -- if the Court were inclined to follow the argument that some security is necessary to protect the buyer's interest, if the Court's going to go that way, then I certainly could understand that the Court would require some kind of payment or something.

But requiring a \(\$ 30,000\) in cash security up front CAPITOL REPORTERS (775) 882-5322
that my clients I know would not be able to post in cash would essentially by force, and my clients's ability to proceed here and protect their interest.

And I don't think that would be equitable in light of the fact that this buyer knew what they were buying. The buyer was aware of the action and was aware of all the allegations.

And had they pulled the Court file before they purchased the property, they would have seen in the Court's order that -- that it said, until further order of the Court, there should be no foreclosure and there was no further order of the Court.

So, they should have known at least, at least as to the Court's order that purchase of the property was going to be subject to litigation and that they were the one risking moving forward in purchasing the property.

They can't now ask for security, or shouldn't be permitted to ask for security when they were jumping into this case by buying the property, and doing it knowingly.

THE COURT: Okay. All right. What I'm going to do, I'm going to deny the motion without prejudice. I'll hear it again after discovery.

MR. MILLWARD: Your Honor --
MR. CLOUSER: Thank you. CAPITOL REPORTERS (775) 882-5322

MR. MILLWARD: Thank you.
THE COURT: Hold on. Let me just keep my notes -- all right. And like I say, because if there's some legal issues here and again, as to the breach and the lack of payments, I'll certainly see the legal arguments and so forth once we're done with discovery, and -- but at the same time, I, like saying, the bank, again, I'm -- you can change my mind after we've seen some discovery and so forth, but the initial documents and so forth indicated that this was a typical case where the bank, the modification was attempted.

I don't know which mortgage I'm dealing with. I don't know what the deficiency was. I don't have an accounting before me and I think at the end of the day, it's going to be clear that the bank didn't satisfy the provisions in 107 in terms of notifying the homeowners what the deficiency would be.

So, again, I'll allow you to make arguments, Mr. Millward, that there was a breach and that there was no breach on their part, no breach, I'll listen to all that, but the problem I'm having from the banks and the third party now argument, we know that there was a deficiency.

And then again, the other big problem I'm having with the Plaintiffs' argument is regarding the foreclosure mediation process and what that did to it.

CAPITOL REPORTERS (775) 882-5322

But even with the foreclosure mediation process, I don't believe that anyone in this room today can, with any sort of certainty, tell the Court what would be the end deficiency.

So, I'll deny it without prejudice. We can bring it up later after discovery, and then if the bank and the trustee want to get in on the restitution and the preserving the asset, I'll certainly allow to you do that at that point in time.

But the only motion before me today is regarding the third pretty purchaser who --

MR. SCHRIEVER: Your Honor --
THE COURT: Yeah.
MR. SCHRIEVER: -- this is Matt Schriever for Breckenridge. For clarification, you're denying the request for writ of restitution.

Are you also denying the request that the bond be posted?

THE COURT: Yes.
MR. SCHRIEVER: And that -- the -- are -- can we get a bond posted going forward every month?

THE COURT: Well, again, the issue I'm having with ordering the bond at this point in time is I see separate issues in terms of who I'm protecting and what I'm protecting. CAPITOL REPORTERS (775) 882-5322

And then I still the issue hanging out there as to it is possible at the end of the day, I undo the sale.

MR. SCHRIEVER: Correct. And that's why I'm asking for the bond just going forward at this point, just between Plaintiff and Breckenridge, if the sale is unwound, they would simply be able to give that money back. If it's not unwound, then it would come to us for the security going forward.

THE COURT: Right. But, again, the status quo, when you're client purchased the property, they knew that they were getting into litigation.

And at this point in time too, I don't have any information regarding their ability to pay and so forth, and so I'll allow you to re-raise the motion after discovery and then the one thing I'll put everyone on notice is this isn't going to be another four or five years.

MR. SCHRIEVER: I'm sorry, it's not going to be another what?

THE COURT: We're not going to let this case go on for four or five years or even three. You know, we will resolve this quickly.

I think once the discovery is done in this case, there should be some summary judgment motions. The record is what the record is, and at that point in time, I don't see a CAPITOL REPORTERS (775) 882-5322
lot of material issues of fact coming at me.
So, we'll know what the record is and then we should be able to resolve this on summary judgment motions.

MR. SCHRIEVER: Your Honor, if I could just -one last plea here.

THE COURT: Okay.
MR. SCHRIEVER: Ordering -- ordering on-going monthly payments would be consistent with your order from December 31st, 2018, when in an attempt to stop the sale, you ordered that they pay me \(\$ 2,100\) per month going forward.

I'm simply asking for consistency here. That's what I would ask for at this point. They pay \(\$ 2,100\) going forward to stop the eviction, to stop the restitution of the property.

THE COURT: All right.
MR. SCHRIEVER: I mean, that's consistent with what you ordered a year ago.

THE COURT: Well, but again, it's -- it's different in that \(I\) ordered it a year ago to protect the bank and the mortgage and they had paperwork showing that there was a mortgage plan, an agreement to pay \(X, Y\) and \(Z\) each month.

And now I'm in a situation with what is the rental value of the property and so forth. So, I don't see it exactly as apples to apples.

CAPITOL REPORTERS (775) 882-5322

All right, did you want to put something on the record, Mr. Clouser?

MR. CLOUSER: Yes, if I may. I find it interesting that they are ignoring the part of your order that precluded them from a foreclosure sale going forward, they're ignoring that part, and they're just trying to hang their hat on the order requiring \(\$ 2,100\) a month. They can't argue both sides of that, Your Honor.

THE COURT: Well, I think that's an interesting reading of my order, but your clients were ordered to put up the bond or the house would be sold.

So, all right, anything else?
MR. SCHRIEVER: Your Honor, as far as rental value, I mean, we can look -- we know the property was sold for \(\$ 294,000\). If you simply take that at seven percent interest --

THE COURT: Okay, but see this is what I'm not ready to do, and I'll give you an opportunity. Like I'm saying, I'm denying this without prejudice.

If you want to bring something else in, I'll gladly consider it, but, you know, in terms of covering the costs and so forth, \(I\) don't see that's relative.

MR. SCHRIEVER: Okay.
THE COURT: So, if you want to file another CAPITOL REPORTERS (775) 882-5322
motion, I'll gladly hear it again and so forth, but I can't just force them to put up a bond to cover your clients' investment costs. I'm not going to head there.

MR. SCHRIEVER: All right. I appreciate your time in hearing my arguments, Your Honor.

THE COURT: All right, thank you. Is there anything else we need to discuss today?

MR. CLOUSER: Nothing from us, Your Honor.
THE COURT: All right. So I'll do the order on the denying the writ and then do we need an order on the 16.1 info, or do --

MR. MILLWARD: Your Honor, I can prepare that, or I can just do a notice of 16.1 case conference according to what the Court wants.

THE COURT: All right. Is there any issue if Mr. Millward just issues a notice of 16.1?

MR. HERNANDEZ: This is Ramir Hernandez, I have no problem with that.

THE COURT: Okay.
MR. SCHRIEVER: This is Matt Schriever, I have no issue, Your Honor.

MR. BRENNER: Your Honor, Darren Brenner, no issue.

THE COURT: Okay. All right. So anything else CAPITOL REPORTERS (775) 882-5322
we need to discuss?
MR. CLOUSER: Nothing, Your Honor.
THE COURT: All right. So thank you, very much.
You all have a good day. I'm going to hang up the telephone.
MR. HERNANDEZ: Thank you, Your Honor.
MR. SCHRIEVER: Thank you.
THE COURT: And thank you for setting up the conference call. I appreciate that.

MR. HERNANDEZ; of course, Your Honor.
(Proceedings ended at 10:10 a.m..)


\(\qquad\)
 \(N\) (0) 1 \(\square 0\)

CAPITOL REPORTERS (775) 882-5322

STATE OF NEVADA, ) ) \(s s\). CARSON CITY. )

I, Shellie Loomis, a certified transcriber for the Third Judicial District Court, do hereby certify:

That \(I\) received a CD-ROM containing the above-entitled hearing and transcribed said hearing to the best of my ability.

That the foregoing transcript, consisting of pages 1 through 40, is a full, true and correct transcript of said hearing.

Dated at Carson City, Nevada, this 5th day of August, 2021.
//Shellie Loomis// SHELLIE LOOMIS, RPR

CAPITOL REPORTERS (775) 882-5322
\begin{tabular}{|c|c|c|c|c|}
\hline \$ & \[
\begin{gathered}
\text { 19:15 } \\
\text { affidavits (1) } \\
19: 20
\end{gathered}
\] & \[
\begin{array}{|l}
\text { appreciate }(\mathbf{5}) \\
25: 16 ; 30: 9,14 ; \\
39: 4 ; 40: 8
\end{array}
\] & \[
\begin{aligned}
& \text { 9:3;18:1;22:3;31:6 } \\
& \text { behalf (2) } \\
& 3: 20 ; 32: 8
\end{aligned}
\] & \[
\begin{aligned}
& \text { 20;38:14;39:12,13 } \\
& \text { Capital (1) } \\
& \text { 6:2 }
\end{aligned}
\] \\
\hline \$172,000 (1) & again (12) & approximately (3) & best (1) & carry (1) \\
\hline \[
17: 7
\] & 15:5,8;17:3;33:22; & \[
17: 7,17 ; 18: 2
\] & 12:17 & \[
17: 18
\] \\
\hline \[
\begin{gathered}
\mathbf{\$ 2 , 1 0 0}(\mathbf{5}) \\
17: 7: 28:
\end{gathered}
\] & 36:9;37:18;39:1 & 13:15;18:21;22:21; & \[
11: 19
\] & \[
17: 20
\] \\
\hline \[
12 ; 38: 7
\] & against (4) & 38:7 & big (1) & case (17) \\
\hline \[
\$ 2,105(1)
\] & 15:2,13,21,23 & argued (3) & 34:22 & 9:20;10:11;15:15, \\
\hline \[
18: 7
\] & ago (4) & 14:24;15:9,12 & blue (1) & 20;20:10;21:10,1 \\
\hline \$294,000 (2) & \(22: 23 ; 26: 20 ; 37: 17\)
19 & \(\underset{\text { argument (9) }}{\text { a }}\) & \begin{tabular}{l}
\[
9: 16
\] \\
bond (23)
\end{tabular} & \[
\begin{aligned}
& 23: 17 ; 26: 4,17 ; 28: 4, \\
& 12: 33: 19: 34: 9: 36: 19
\end{aligned}
\] \\
\hline \(17: 11 ; 38: 15\)
\(\mathbf{\$ 3 0 , 0 0 0}\) & agree (6) & \[
\begin{aligned}
& 17: 1 ; 22: 3,21 ; \\
& 24: 12 ; 26: 23 ; 27: 2
\end{aligned}
\] & bond (23)
17:6,9,24;18:1,6; & \[
\begin{aligned}
& 12 ; 33: 19 ; 34: 9 ; 36: 19 \\
& 22 ; 39: 13
\end{aligned}
\] \\
\hline \[
\begin{aligned}
& \mathbf{\$ 3 0 , 0 0 0}(4) \\
& 18: 1,6 ; 32: 19,24
\end{aligned}
\] & \[
7: 11,13 ; 10: 10,15
\] & \[
\begin{aligned}
& 24: 12 ; 26: 23 ; 27: 2 \\
& 32: 20 ; 34: 21,23
\end{aligned}
\] & 17:6,9,24;18:1,6;
27:15,23;30:16,18, & cases (2) \\
\hline \$30,260 (1) & 16:5,6 & arguments (5) & 19,22,24;31:15,18, & 15:15,17 \\
\hline 18:3 & agreed (2) & 26:6;29:19;34:5 & 9;32:2,17;35:17,21, & cash (3) \\
\hline \$75 (1) & 20:17;24:16 & 17;39: & 23;36:4;38:11;39:2 & 32:18,24;33 \\
\hline 17:18 & agreement (15) & aspect (1) & books (1) & cause (2) \\
\hline \$75.65 (1) & 20:12,15,17;21:1, & 9:10 & 8:13 & 13:23;14:3 \\
\hline 18:2 & 6,17 & asset & both (4) & caused (1) \\
\hline A & 37:21 & Association (1) & breach (9) & causes (1) \\
\hline & (1) & & \[
4 ; 24: 13,14,19
\] & \\
\hline Aberasturi (1) & ahead (7) & 37:9 & breaches (1) & certainly (32:22;34:5;35:8 \\
\hline ability (2) & \multirow[t]{2}{*}{\[
\begin{aligned}
& 9: 9,15,21 ; 16: 12, \\
& 20 ; 31: 11 ; 32: 16
\end{aligned}
\]} & attempted (2) & 26:12 & certainty (1) \\
\hline \multirow[t]{2}{*}{\(33: 2 ; 36: 13\)
able (9)} & & 19:20;34:10 & Breckenridge (12) & 35:3 \\
\hline & Akerman (1) & attempts (1) & 3:11;5:18;12:2; & change (1) \\
\hline \multirow[t]{3}{*}{\[
\begin{aligned}
& 18: 24 ; 23: 16 ; 25: 19 \\
& 31: 17,19,20 ; 33: 1 \\
& 36: 6 ; 37: 3
\end{aligned}
\]} & \multirow[t]{2}{*}{3:24
allegations (2)} & 23:10 & 13:12;14:8,24;15:5,9, & 34:7 \\
\hline & & attorneys & \[
: 5 ; 35: 15 ; 36:
\] & changed (1) \\
\hline & allow (4) & \[
\begin{aligned}
& 5: 10,11 ; 7: 6 \\
& 12: 1 ; 14: 4,1
\end{aligned}
\] & \[
5: 19,19 ; 7: 7,7
\] & Chapter \\
\hline absolutely (4)
10:21;23:14, & 31:10;34:17;35:8; & audio (1) & 10:19,19;12:5;14:20, & \[
23: 2
\] \\
\hline \[
26: 16
\] & 36:14 & 3:8 & 20;16:18,18;39:22,22 & citations (1) \\
\hline accept (3) & allowed (3) & authority (1) & bring (3) & 26:17
cited (1) \\
\hline 5:12;22:24;26:20 & 15:24;30:4;31:14 & 20:6 & 15:13;35:5;38:20 & cited (1) \\
\hline accepted (3) & almost (2) & authorized (1) & brought (2) & \[
15: 14
\] \\
\hline 5:6;24:5;25:22 & always (2) & available (3) & 9:8;10: & \[
\begin{aligned}
& \text { claim (2) } \\
& 15: 1 ; 21: 16
\end{aligned}
\] \\
\hline \[
\begin{aligned}
& \text { accepting (1) } \\
& 25: 23
\end{aligned}
\] & - 10:2;22:15 & 11:9;19:24;20:1 & 33:5,6 & clarification (1) \\
\hline according (2) & amend (1) & aware & buyer's (1) & 35:15 \\
\hline 22:17;39:13 & 15:22 & 16:23;17:5;20:2; & 32:21 & clarify (1) \\
\hline \multirow[t]{2}{*}{accounting (1)
\(34: 13\)} & \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { America (8) } \\
& 5: 20 ; 7: 8 ; 10: 22 ; \\
& 12: 5 ; 14: 21 ; 19: 9,19 ;
\end{aligned}
\]} & 33:6,6 & buying (3) & 14:24 \\
\hline & & & 21:15;33:5,19 & clear (2) \\
\hline acknowledge (1) 22:11 & \[
\begin{aligned}
& 12: 5 ; 14: 21 ; 19: 9,19 \\
& 24: 3
\end{aligned}
\] & B & C & \[
\begin{gathered}
\text { 15:18;34:1 } \\
\text { CLERK (5) }
\end{gathered}
\] \\
\hline \multirow[t]{3}{*}{```
action (7)
    13:23;14:3;15:13,
    21,23;17:23;33:6
```} & amount (8) & back (7) & & 3:14,16;5:1;8:3,5 \\
\hline & 18:7,15,16;27:15, & 11:18;23:22;24:7; & calculate (1) & client (14) \\
\hline & \[
\begin{aligned}
& 19 ; 28: 1 ; 31: 18,20 \\
& \text { anticipate }(\mathbf{1})
\end{aligned}
\] & \[
\begin{aligned}
& \text { 29:5;30:19,22;36:6 } \\
& \text { bad (1) }
\end{aligned}
\] & \[
\begin{aligned}
& 18: 1 \\
& \text { calendar (1) }
\end{aligned}
\] & \[
\begin{aligned}
& \text { 16:19;17:10,17,19; } \\
& 18: 9,12 ; 23: 5,12 ;
\end{aligned}
\] \\
\hline \[
\begin{gathered}
\text { actions (1) } \\
15: 20
\end{gathered}
\] & anticipate (1)
\(8: 6\) & \[
\begin{array}{|c}
\mid \operatorname{bad}(1) \\
28: 5
\end{array}
\] & \[
\begin{aligned}
& \text { calendar (1) } \\
& 6: 21
\end{aligned}
\] & \[
\begin{aligned}
& 18: 9,12 ; 23: 5,12 ; \\
& 27: 5 ; 29: 12,15,17
\end{aligned}
\] \\
\hline acts (2) & anything's (1) & balances (1) & call (5) & 30:17;36:10 \\
\hline 27:23;28:3 & 8:4 & 20:9 & 12:8,9,12,21;40:8 & clients (16) \\
\hline actually (2) & appears (1) & Bank (20) & call-in (1) & 19:11,20;20:11,23, \\
\hline 6:15;11:16 & 6:2 & 5:19;6:3;7:7; &  & \[
24 ; 22: 20 ; 23
\] \\
\hline additional (2) & appeliate
8:8 & \[
\begin{aligned}
& 10: 22 ; 12: 5 ; 14: 20 ; \\
& 19: 8,19 ; 23: 20 ; 24: 3
\end{aligned}
\] & \[
\begin{aligned}
& \text { came (2) } \\
& 18: 3 ; 23: 20
\end{aligned}
\] & \[
\begin{aligned}
& \text { 24:14,20;25:1,23; } \\
& \text { 26:21,23;32:18;33:1; }
\end{aligned}
\] \\
\hline address (4) & apples (2) & 25:13;26:20; 28:18; & can (24) & 38:10 \\
\hline 16:22;28:14,16; & 37:24,24 & 29:16,16;34:7,10,14, & 5:6;6:19;9:7,13,22; & clients' (1) \\
\hline 30:4 & applicable (1) & 35:6;37:19 & 10:2,9,15;11:20; & 39:2 \\
\hline admitted (2) & 21:18 & banks (2) & 12:17,18;15:18 & client's (3) \\
\hline 19:15,21 & applied (1) & 25:20;34:20 & 25:14;26:17;28:8,16; & 17:14;19:1,3 \\
\hline affidavit (1) & 29:6 & based (4) & 30:19;34:7;35:2,5, & clients's (4) \\
\hline
\end{tabular}

\section*{IN THE SUPREME COURT OF THE STATE OF NEVADA OFFICE OF THE CLERK}


\section*{APPELLANTS' APPENDIX TO OPENING BRIEF}

\section*{INDEX OF APPENDIX}

VOLUME I
\# Document
1 Complaint
2 Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction

VOLUME II
2 (Continued) Application for Ex Parte Restraining Order Preliminary Injunction and Permanent Injunction
3 Affidavit of Counsel
4 Notice of Lis Pendens APN 29-401-17
5 Order After Hearing Concerning Restraining Order and Preliminary Injunction
6 Corrected Order Concerning Restraining Order and Preliminary Injunction
7 Response to Application for Ex Parte Restraining Order, Preliminary Injunction, and Permanent Injunction

\section*{VOLUME III}

7 (Continued) Response to Application for Ex Parte 11-15-2018 AA00501 Restraining Order, Preliminary Injunction, and Permanent Injunction

\section*{VOLUME IV}
7 \begin{tabular}{llrl} 
(Continued) Response to Application for Ex Parte & 11-15-2018 AA00751 \\
Restraining Order, Preliminary Injunction, and \\
Permanent Injunction
\end{tabular}

8 Declaration of Fay Servicing, LLC in Response to 11-15-2018 AA00778 Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction
9 US Bank Trust's Answer to Complaint
11-29-2018 AA00782
10 Defendant Bank of America, N.A.'s Notice of Motion and Motion to Dismiss Plaintiffs' Complaint11 Declaration of Non-Monetary Status (Sables)12-24-2018 AA00805
12 Order After Hearing Concerning Restraining Order12-31-2018 AA00809and Preliminary Injunction and Setting Aside OrderEntered 11-8-18 and Corrected Order 11-14-18.
13 Objection to Declaration of Non-Monetary Status
14 Sables, LLC's Response to Objection to ItsDeclaration of Non-Monetary Status
15 Sables, LLC's Motion to Set Aside Default16 Plaintiffs' Motion for Leave to File AmendedComplaint to Substitute Parties
17 Motion for Rule 11 Sanctions Against Plaintiffs18 Declaration of Ramir M. Hernandez, Esq. in Supportof Motion for Rule 11 Sanctions Against Plaintiffs
19 Defendant Bank of America, N.A.'s Motion to ..... 03-22-2019 AA00935Dismiss Plaintiffs' Complaint
20 Opposition to US Bank's Motion for Rule 11 ..... 03-28-2019 AA00944
Sanctions
21 Opposition to Bank of America’s Motion to Dismiss ..... 04-04-2019 AA00975 Plaintiff's Complaint
VOLUME V21 (Continued) Opposition to Bank of America'sMotion to Dismiss Plaintiff's Complaint
22 Response to Declaration of Shadd A. Wade ..... 04-11-2019 AA01078
23 Defendant Bank of America, N.A.'s Reply to04-12-2019 AA01094Opposition on Motion to Dismiss Plaintiffs'Complaint
24 Reply in Support of Motion for Rule 11 SanctionsAgainst Plaintiffs
25 Motion to Intervene and Expunge Lis Pendens ..... 05-24-2019 AA01111
26 Order
27 Plaintiffs’ Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims for Relief
28 Opposition to Motion to Intervene
30 Reply in Support of Motion to Intervene and ..... 06-19-2019 AA01230 Expunge Lis Pendens
31 Sables, LLC’s Opposition to Plaintiffs' Amended Motion to Amend
32 Reply to Breckenridge Property Fund 2016, LLC’s Opposition to the Amended Motion for Leave to Amend Complaint
33 Petition for Writ of Mandamus (Supreme Court)06-20-2019 AA0123506-10-2019 AA01213
29 Opposition to Plaintiffs' Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims and Relief ..... 06-19-2019 AA01225
06-07-2019 AA01127
\begin{tabular}{|c|c|c|c|}
\hline 42 & Plaintiffs' Opposition to Breckenridge's Motion for Order to Show Cause Re Writ of Restitution & 10-18-2019 & AA01445 \\
\hline 43 & Plaintiffs’ Answer to Counterclaim and Counterclaim Against Intervener & 10-23-2019 & AA01473 \\
\hline 44 & Order Denying Ex Parte Motion and Setting Hearing & 10-24-2019 & AA01495 \\
\hline 45 & Sables, LLC's Response to Petition for Writ of Mandamus (Supreme Court) & 10-25-2019 & AA01498 \\
\hline & VOLUME VII & & \\
\hline 45 & (Continued) Sables, LLC’s Response to Petition for Writ of Mandamus (Supreme Court) & 10-25-2019 & AA01501 \\
\hline 46 & Breckenridge’s Answer to the Counterclaim Filed by Albert Ellis Lincicome, Jr. and Vicenta Lincicome & 11-18-2019 & AA01516 \\
\hline 47 & Order Concerning Motion for Leave to File Motion for Reconsideration of the Court's August 23, 2019 Order Re Declaratory Relief. & 11-22-2019 & AA01521 \\
\hline 48 & Petitioners’ Reply to Responses to Petition for Writ of Mandamus (Supreme Court) & 11-27-2019 & AA01523 \\
\hline 49 & Order (Concerning Motion to File Second Amended Complaint) & 12-06-2019 & AA01544 \\
\hline 50 & Plaintiffs’ Motion for Reconsideration & 12-13-2019 & AA01546 \\
\hline 51 & Plaintiffs' Second Amended Complaint & 12-20-2019 & AA01553 \\
\hline 52 & Answer to Second Amended Complaint (US Bank, Prof-2013 M4-Legal Title Trust and Fay Servicing) & 01-07-2020 & AA01697 \\
\hline 53 & Breckenridge Property Fund 2016, LLC’s Answer to Second Amended Complaint & 01-08-2020 & AA01721 \\
\hline 54 & Order Denying Petition for Review (Supreme Court) & 01-22-2020 & AA01726 \\
\hline 55 & Bank of America, N.A.'s Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint & 01-23-2020 & AA01728 \\
\hline 56 & Order Denying Without Prejudice Ex Parte Motion for Order to Show Cause Why a Temporary Writ of Restitution Should Not Be Granted and Request to Shorten Time to Answer & 02-11-2020 & AA01748 \\
\hline
\end{tabular}

\section*{VOLUME VIII}

57 Answer to Second Amended Complaint (Newrez, 03-19-2020 AA01751 LLC, d/b/a Shellpoint Mortgage)
58 Breckenridge Motion for Order Requiring Plaintiff to 03-27-2020 AA01776 Deposit Rental and/or Mortgage Payments With Court
59 Plaintiffs' Opposition to Motion for Deposit of
04-13-2020 AA01806 Payments With Court
60 Breckenridge Reply in Support of Motion for Order
04-24-2020 AA01839
Requiring Plaintiff to Deposit Rental and/or Mortgage Payments with Court
61 Breckenridge Property Fund 2016, LLC’s Reply in 09-11-2020 AA01844 Support of Motion for Leave to File Crossclaim Against Prof-2013-M4 Legal Title Trust by U.S. Bank National Association, as Legal Title Trustee
62 Breckenridge Property Fund 2016, LLC’s
10-02-2020 AA01853
Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
63 Answer to Breckenridge Property Fund 2016, LLC's
11-02-2020 AA01860 Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee
64 Bank of America, N.A.'s Motion for Summary Judgment and Motion for Sanctions

\section*{VOLUME IX}

64 (Continued) Bank of America, N.A.'s Motion for
03-17-2021 AA02001 Summary Judgment and Motion for Sanctions
\(65 \begin{aligned} & \text { Breckenridge Property Fund } 2016 \text { LLC's Motion for } \\ & \text { Summary Judgment Against Plaintiff }\end{aligned}\)
66 (Plaintiffs') Motion for Partial Summary Judgment 03-19-2021 AA02230 VOLUME X
66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02251 Judgment

\section*{VOLUME XI}

66 (Continued) (Plaintiffs') Motion for Partial Summary 03-19-2021 AA02501 Judgment

67 Shellpoint Mortgage Servicing, LLC’s Undisputed 03-25-2021 AA02540 Statement of Facts in Support of Motion for Summary Judgment

\section*{VOLUME XII}

67 (Continued) Shellpoint Mortgage Servicing, LLC’s 03-25-2021 AA02751 Undisputed Statement of Facts in Support of Motion for Summary Judgment
68 Prof-2013-M4 Legal Title Trust, By U.S. Bank, 03-25-2021 AA02764 National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment
69 Request for Judicial Notice in Support of Prof-2013M4 Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's and Fay Servicing LLC's Motion for Summary Judgment and Shellpoint Mortgage Servicing LLC's Motion for Summary Judgment
70 Shellpoint Mortgage Servicing, LLC’s Motion for 03-25-2021 AA02785 Summary Judgment
71 Prof-2013-M4 Legal Title Trust, By U.S. Bank,
03-25-2021 AA02796
National Association, as Legal Title Trustee's and Fay Servicing LLC’s Undisputed Statement of Facts in Support of Motion for Summary Judgment

\section*{VOLUME XIII}

71 (Continued) Prof-2013-M4 Legal Title Trust, By
03-25-2021 AA03001
U.S. Bank, National Association, as Legal Title

Trustee's and Fay Servicing LLC’s Undisputed
Statement of Facts in Support of Motion for Summary Judgment

72 Bank of America, N.A.’s Errata to Bank of America, 04-02-2021 AA03017 N.A.'s Motion for Summary Judgment and Motion for Sanctions
73 Bank of America, N.A.'s Opposition to Plaintiffs'04-14-2021 AA03021Partial Motion for Summary Judgment
74 Plaintiffs' Opposition to US Bank, Fay Servicing,and Shellpoint's Motions for Summary Judgment
75 Plaintiffs' Opposition to BANA's Motion for Summary Judgment
76 Plaintiffs' Opposition to Breckenridge's Motion for
Summary Judgment04-15-2021
04-15-2021 AA03089
77 Plaintiffs' Statement of Undisputed Material Facts ..... 04-15-2021 AA03136
VOLUME XIV
77 (Continued) Plaintiffs' Statement of Undisputed Material Facts04-15-2021 AA03251
78 Prof-2013 M4-Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee's, and Fay Servicing LLC's Opposition to Plaintiffs'Motion for Partial Summary Judgment
VOLUME XV
78 (Continued) Prof-2013 M4-Legal Title Trust, By ..... 04-19-2021 AA03501
U.S. Bank, National Association, as Legal Title Trustee’s, and Fay Servicing LLC’s Opposition to Plaintiffs' Motion for Partial Summary Judgment
79 Bank of America, N.A.’s Reply Supporting Motion 05-05-2021 AA03506 for Summary Judgment
80 Supplement to Plaintiffs' Statement of Undisputed ..... 05-06-2021 AA03519 Material Facts
81 Reply to Bank of America, N.A.'s Opposition to ..... 05-06-2021 AA03671Plaintiffs' Motion for Partial Summary Judgment
82 Reply to US Bank \& Fay Servicing, LLC’s ..... 05-06-2021 AA03698 Opposition to Plaintiffs' Motion for Partial Summary Judgment
83 Shellpoint Mortgage Servicing, LLC’s Reply in ..... 05-10-2021 AA03720Support of Motion for Summary Judgment
84 Prof-2013 M4-Legal Title Trust, By U.S. Bank, ..... 05-10-2021 AA03727

Fay Servicing LLC's Reply in Support of Motion for Summary Judgment
85 Breckenridge Property Fund 2016 LLC's Reply in Support of Motion for Summary Judgment Against Plaintiff
86 Order on Breckenridge Motion for Summary Judgment

\section*{VOLUME XVI}
87 \begin{tabular}{l} 
Order Denying Plaintiffs' Motion for Partial \\
Summary Judgment/Granting Motions for Summary \\
Judgment filed by BANA, Prof-2013 M4 Legal \\
Trust, US Bank and Fay Servicing LLC
\end{tabular}
88 Notice of Entry of Order (Order on Breckenridge

07-06-2021 AA03769
 Motion for Summary Judgment)
89 Notice of Entry of Order (Order Denying Plaintiffs ..... 07-06-2021 AA03780 Motion for Partial Summary Judgment)
90 Notice of Entry of Order (Order on Breckenridge ..... 07-06-2021 AA03801 Motion for Summary Judgment)
91 Lincicomes' Notice of Appeal07-19-2021 AA03812
92 Case Appeal Statement07-30-2021 AA03815
93 Order Regarding Permanent Writ of Restitution08-20-2021 AA03823
94 Breckenridge Property Fund 2016’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents09-09-2021 AA03826
95 Plaintiffs' Motion for Stay Pending Appeal96 Opposition to Breckenridge Property Fund 2016’s09-24-2021 AA03904Motion for Entry of Order Granting Permanent Writof Restitution and Payment of Overdue Rents
97 Defendant Breckenridge Property Fund 2016, LLC’s 10-01-2021 AA03906 Opposition to Plaintiffs' Motion to Stay PendingAppeal
98 Request for Transcripts10-04-2021 AA03974
99 Breckenridge Property Fund 2016’s Reply in10-06-2021 AA03976
Support of Motion for Entry of Order Granting

Permanent Writ of Restitution and Payment of Overdue Rents

100 Transcripts of Hearings
10-18-2021 AA03979

\section*{VOLUME XVII}

100 (Continued) Transcripts of Hearings
10-18-2021 AA04001

\section*{VOLUME XVIII}

100 (Continued) Transcripts of Hearings
10-18-2021 AA04251
101 Order Concerning: Breckenridge Property Fund
11-05-2021 AA04257 2016, LLC’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs’ Motion for Stay Pending Appeal

102 Lincicomes’ Ex Parte Motion for Additional Time to 11-15-021 AA04267 Obtain Supersedeas Bond

103 Breckenridge Property Fund 2016’s Opposition to 11-16-2021 AA04274 Plaintiffs’ Improper Ex Parte Motion for Additional Time to Obtain Supersedeas Bond and Request for Sanctions

104 Order Denying Ex Parte Motion (for additional time 11-17-2021 AA04301 for bond)
105 Permanent Writ of Restitution (order permitting 11-22-2021 AA04304 eviction of Lincicomes from their home)
\begin{tabular}{|c|c|c|c|c|}
\hline 19:14;22:15;24:6; & 10,13,20,23;13:4,8, & 7:18 & done (4) & everybody (1) \\
\hline 33:2 & 13,16,20;14:2,14,19, & declaratory (6) & 27:9,17;34:6;36:22 & 16:5 \\
\hline close (1) & 22;15:7,15,16,19,24; & 13:18,23;15:1,3,14, & drafting (1) & everybody's (1) \\
\hline 23:19 & 16:1,4,7,17,20,24; & 20 & 6:16 & 29:10 \\
\hline closer (2) & 17:4,22;18:4,7,10,14, & declare (3) & drag (1) & everyone (5) \\
\hline 9:15;15:7 & 17,19,20,23;19:13, & 13:24;14:2;21:23 & 28:9 & 10:20;12:18,23; \\
\hline CLOUSER (20) & 15,21;20:14,19;21:5, & declared (2) & during (2) & 16:8;36:15 \\
\hline 8:12,15;9:7,17,19, & 7,22;22:7,14,18,19, & 29:12;30:20 & 17:23;27:20 & eviction (1) \\
\hline 19;11:12,13,22;12:9, & 24;23:7,13,18;24:1,7, & declares (2) & duty (1) & 37:13 \\
\hline 11,16,22;13:6;16:23; & 11,17,19;25:3,6,9; & 29:2;30:21 & 22:20 & evidence (5) \\
\hline \[
\begin{aligned}
& 33: 24 ; 38: 2,3 ; 39: 8 \\
& 40: 2
\end{aligned}
\] & 26:1,5,10,14,16,19;
\[
27: 1,3,14 ; 28: 1,13,16
\] & \[
\begin{aligned}
& \text { deed (2) } \\
& 7: 23 ; 20: 23
\end{aligned}
\] & E & \[
\begin{aligned}
& 19: 12,21 ; 24: 4,5 ; \\
& 26: 4
\end{aligned}
\] \\
\hline coming (3) & \[
29: 1,4,9,14 ; 30: 6,9
\] & default (12) & L & exactly (2) \\
\hline 9:22;27:12;37:1 & 14,21;31:2,9,13;32:1, & 19:5,7,8;20:7;22:2, & eight (1) & 14:2;37:24 \\
\hline comment (1) & 10,13,16,19,22;33:8, & 9;24:13,14;31:23,24; & 22:22 & excused (1) \\
\hline 9:20 & 10,12,20;34:2;35:3, & 32:2,7 & Either (1) & 22:23 \\
\hline complaint (1) & 13,19,22;36:9,19; & Defendant (1) & 14:14 & exist (1) \\
\hline 5:15 & 37:6,15,18;38:9,17, & 7:17 & eliminated (1) & 25:1 \\
\hline comply (3) & 24;39:6,9,14,15,19, & Defendants (1) & 21:1 & \\
\hline 9:2,5;21:21 & 24;40:3,7 & 10:10 & else (15) & F \\
\hline concern (2) & courtroom (1) & deficiency (13) & 3:18,21;5:16; & \\
\hline 29:17,21 & 12:1 & 22:19;23:1;24:9, & 12:14,23;13:4;18:19; & fact (6) \\
\hline concerned (2) & Court's (7) & 21,22;25:1,7,8;28:20; & 27:1;29:6;30:15; & 23:1;31:6,13;32:7; \\
\hline 27:7,9 & 19:9;25:15,16; & 34:12,16,21;35:4 & 31:2;38:12,20;39:7, & 33:5;37:1 \\
\hline concerning (1) & 27:22;32:21;33:9,14 & delay (1) & 24 & facts (4) \\
\hline 7:23 & cover (1) & 8:15 & end (12) & 19:12,16,16;28:23 \\
\hline conduct (2) & 39:2 & denied (1) & 5:10;9:14;20:23; & failed (1) \\
\hline 31:7;32:4 & covered (1) & 7:21 & 24:8,19;25:12;28:17, & 32:3 \\
\hline conference (7) & 9:10 & deny (2) & 17;29:1;34:13;35:3; & failing (1) \\
\hline 8:20;12:8,9,12,14; & covering (1) & \[
33: 21 ; 35: 5
\] & 36:2 & 32:4 \\
\hline \[
39: 13 ; 40: 8
\] & 38:21 & denying (4) & ended (1) & failure (2) \\
\hline confirm (3) & create (1) & 35:15,17;38:19; & 40:10 & 31:24;32:8 \\
\hline 7:17,21;8:22 & 21:9 & 39:10 & enjoining (1) & faith (1) \\
\hline consider (1) & cure (1) & determination (1) & 17:6 & 28:5 \\
\hline 38:21 & 32:2 & 19:11 & enough (4) & far (2) \\
\hline consistency (1) & currently (1) & determine (1) & 23:1;24:22;28:21; & 28:15;38:13 \\
\hline 37:11 & 17:17 & 21:22 & 29:21 & Fay (3) \\
\hline consistent (2) & cut (1) & determined (1) & enter (1) & 3:7;5:14;7:10 \\
\hline 37:8,16 & 15:5 & 18:15 & 23:16 & FEBRUARY (1) \\
\hline contact (2) & & determines (1) & entered (3) & 3:1 \\
\hline \[
12: 24 ; 13: 1
\] & D & 18:14 & 15:19;17:5;20:24 & Federal (3) \\
\hline \[
\begin{aligned}
& \text { contacted (1) } \\
& 5: 5
\end{aligned}
\] & Darren & different (2)
24:18;37:19 & entire (1)
\(25: 19\) & \(15: 14,15,16\)
feet (1) \\
\hline contract (3) & - 5:19;7:7;10:19; & direction (1) & entitled (3) & 28:11 \\
\hline 19:4;21:10;31:22 & 14:20;16:18;39:22 & 10:5 & 17:16;28:7;29:5 & file (11) \\
\hline correctly (1) & date (2) & discovered (1) & equitable (1) & 5:7;10:2;14:8,12, \\
\hline 23:9 & 10:15,21 & 25:21 & 33:4 & 17;15:2,24;16:2; \\
\hline costing (1) & dates (1) & discovery (10) & erred (1) & 30:2;33:8;38:24 \\
\hline 17:17 & 20:9 & 7:22;9:5;28:23; & 25:21 & filed (9) \\
\hline costs (2) & day (11) & 29:20;33:22;34:6,8; & essentially (4) & 5:14,14,18;7:18; \\
\hline 38:22;39:3 & 11:9;17:18;24:8, & 35:6;36:14,22 & 31:6,18,21;33:2 & 8:6;15:22;17:6,12; \\
\hline counsel (1) & 20;25:12;28:17,17; & discuss (3) & establish (2) & 27:13 \\
\hline 31:23 & 29:1;34:13;36:2;40:4 & 13:21;39:7;40:1 & 19:10;22:10 & final (1) \\
\hline course (1) & days (6) & dispute (1) & established (1) & 27:24 \\
\hline 40:9 & 5:4,7,7;6:6,20;18:2 & 32:7 & 19:22 & find (2) \\
\hline COURT (156) & deal (2) & District (2) & establishes (1) & 10:20;38:3 \\
\hline 3:4,12,15,17,21; & 13:9;30:23 & 15:15,16 & 31:21 & findings (1) \\
\hline 5:9,16,24;6:5,10,13, & dealing (2) & documents (8) & establishing (1) & 19:9 \\
\hline 18,22;7:1,5,9,12,15, & 31:10;34:11 & 19:13,13;20:8; & 15:19 & finds (2) \\
\hline 20;8:1,2,6,7,8,14,18, & December (5) & 21:9;22:9,12;31:8; & even (3) & 18:10;24:20 \\
\hline 21;9:1,10,11,15,18; & 17:5;18:8;19:10; & 34:9 & 11:5;35:1;36:20 & fine (5) \\
\hline 10:2,6,14,23;11:4,7, & 28:2;37:9 & \(\operatorname{dog}(1)\) & event (1) & 11:2,22,23;12:1,3 \\
\hline 11,14,21,24;12:4,6, & declaration (1) & 30:7 & 18:9 & fire (1) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 28:11 & hang (2) & 26:13 & investment (1) & 8:2;37:5 \\
\hline first (3) & 38:6;40:4 & hoping (3) & 39:3 & later (4) \\
\hline 19:6;21:24;24:6 & hanging (1) & 6:6,7,16 & involved (3) & 10:8,12;18:15;35:6 \\
\hline five (2) & 36:1 & house (3) & 5:23;25:20;27:5 & law (5) \\
\hline 36:16,20 & happened (2) & 26:21;28:8;38:11 & involves (1) & 15:15;26:11,18; \\
\hline \[
\begin{gathered}
\text { follow (1) } \\
32 \cdot 20
\end{gathered}
\] & 19:2;26:3 & I & 16:19
issue (31) & \(30: 2,3\)
least (6) \\
\hline force (2) & \[
13: 10
\] & I & \[
5: 1,20,21,22 ; 6: 14
\] & \[
10: 1,4 ; 19: 10
\] \\
\hline 33:2;39:2 & hat (1) & idea (1) & 7:1,5;10:24,24; & 23:10;33:13,13 \\
\hline foreclose (1) & 38:6 & 31:17 & 11:21;13:22;14:1,3, & leave (1) \\
\hline 20:7 & haven (1) & ignoring (2) & 21;20:10;22:18;23:1; & 16:2 \\
\hline foreclosure (17) & 3:4 & 38:4,6 & 24:8;28:16,23;29:14, & leaving (1) \\
\hline 17:6,10;18:3,10; & head (1) & imagine (2) & 17,20;30:23;32:7,14; & 23:23 \\
\hline 19:2,6;20:2,20; & 39:3 & 7:3;21:10 & 35:22;36:1;39:15,21, & legal (2) \\
\hline 21:16;23:8;26:9; & hear (7) & imperative (2) & 23 & 34:4,5 \\
\hline 27:10;31:14;33:11; & 9:14;15:5;17:1,1; & 8:13;9:21 & issued (1) & liable (2) \\
\hline 34:23;35:1;38:5 & 19:1;33:21;39:1 & implicated (1) & 5:2 & 24:14;26:24 \\
\hline forever (1) & heard (1) & 31:7 & issues (6) & lieu (1) \\
\hline 22:23 & 29:19 & important (1) & 5:11;6:11;34:4; & 20:23 \\
\hline forth (8) & hearing (3) & 9:9 & 35:24;37:1;39:16 & light (2) \\
\hline \[
\begin{aligned}
& 14: 1 ; 34: 5,8,9 ; \\
& 36: 13: 37: 23: 38: 22
\end{aligned}
\] & \[
11: 24 ; 19: 15 ; 39: 5
\] & improper (2) 15:1,21 & J & \begin{tabular}{l}
\[
9: 16 ; 33: 5
\] \\
likely (2)
\end{tabular} \\
\hline \[
\begin{aligned}
& 36: 13 ; 37: 23 ; 38: 22 ; \\
& 39: 1
\end{aligned}
\] & \[
17: 10 ; 20: 24 ; 21: 3
\] & inaccurate (4) & J & \[
19: 11 ; 28: 18
\] \\
\hline forward (11) & 26:24;28:18 & 20:8,9,9;31:24 & January (5) & limited (1) \\
\hline 5:6;9:9,24;10:11; & helpful (1) & inclined (3) & 17:9,12;20:3;27:6, & 9:2 \\
\hline 33:16;35:21;36:4,8; & 30:13 & 17:22;18:4;32:19 & 10 & line (2) \\
\hline 37:10,13;38:5 & HERNANDEZ (31) & included (1) & JCCR (1) & 3:18;7:6 \\
\hline four (2) & 3:6,7,17,23;5:13, & 15:23 & 10:3 & lis (2) \\
\hline 36:16,20 & 14;7:10,10;9:13; & including (1) & joint (1) & 15:10;20:4 \\
\hline free (3) & 10:7,8;11:15,16;13:2, & 20:8 & 29:15 & listen (1) \\
\hline 17:19,19;26:21 & 2;14:16,17;16:10,10, & indicated (1) & Judge (2) & 34:19 \\
\hline front (1) & 12,15,15;30:1,3,7,10, & 34:9 & 3:5,6 & litigation (4) \\
\hline 32:24 & 12;39:17,17;40:5,9 & Indiscernible (5) & judgment (5) & 28:9,10;33:15; \\
\hline Fund (1) & Hi (1) & 3:8,14,16;7:22; & 13:18;20:11;24:21; & 36:11 \\
\hline 3:11 & 3:6 & 32:9 & 36:23;37:3 & little (1) \\
\hline further (2) & hold (3) & info (1) & July (2) & 28:24 \\
\hline 33:10,11 & 24:13;28:11;34:2 & 39:11 & 19:18;24:15 & living (1) \\
\hline furthering (1) & holding (2) & information (4) & jumping (1) & 17:19 \\
\hline \[
32: 4
\] & 17:19;29:3 & \[
19: 24 ; 20: 2 ; 28: 19
\] & \[
33: 18
\] & LLC (5) \\
\hline G & home (1)
\(23: 15\) & \[
\begin{gathered}
36: 13 \\
\text { initial (2) }
\end{gathered}
\] & \[
\begin{gathered}
\text { Justin (1) } \\
9: 19
\end{gathered}
\] & \[
\begin{aligned}
& 3: 20 ; 6: 4 ; 7: 17 ; \\
& 8: 23 ; 31: 5
\end{aligned}
\] \\
\hline & homeowner (1) & 8:13;34:8 & & \(\boldsymbol{l o a n}(14)\) \\
\hline Gave (1) & 19:7 & injunction (3) & K & 17:20;19:18;20:12, \\
\hline \[
\begin{array}{r}
16: 2 \\
\text { gets }(\mathbf{1})
\end{array}
\] & \[
\begin{aligned}
& \text { homeowners (1) } \\
& 34: 15
\end{aligned}
\] & \[
\begin{aligned}
& 31: 15,16 ; 32: 2 \\
& \text { input }(\mathbf{1})
\end{aligned}
\] & & \[
\begin{aligned}
& 14,17 ; 21: 2,2 ; 22: 4,10, \\
& 11,13 ; 23: 6,23 ; 25: 21
\end{aligned}
\] \\
\hline gets \((1)\)
\(24: 7\) & homeowners' (1) & 31:6 & \[
34: 2
\] & cotion (1) \\
\hline given (1) & 22:2 & instance (1) & kind (1) & 7:2 \\
\hline 24:15 & Honor (63) & 19:8 & 32:23 & long (5) \\
\hline gladly (2) & 3:19,24;5:13;7:11, & interest (5) & knew (5) & 9:4;10:7,20;29:12; \\
\hline 38:21;39:1 & 14,16;8:12;9:13; & 20:8;28:19;32:21; & 21:14,15;27:11; & 30:20 \\
\hline Good (4) & 10:8,19;11:2,15; & 33:3;38:16 & 33:5;36:10 & look (4) \\
\hline 3:4,19;6:21;40:4 & 12:3;13:3,7,11,19; & interesting (2) & knowingly (1) & 21:18,19;28:23; \\
\hline grant (2) & 14:8,16,20,23;16:16, & \[
38: 4,9
\] & \[
33: 19
\] & \[
38: 14
\] \\
\hline 18:5,5 & 23;17:3,4,5;18:18; & interests (2) & knowledge (2) & looking (1) \\
\hline granted (1) & 19:1;20:10,21;21:13; & 27:20;29:10 & 20:5,8 & 6:20 \\
\hline 15:16 & 23:3;24:3,12,24; & intervene (1) & known (1) & \(\boldsymbol{\operatorname { l o t }}(\mathbf{1})\) \\
\hline great (2) & 25:15;26:3,7,18,23; & 27:14 & 33:13 & 37:1 \\
\hline 9:23;11:10 & 27:4,5;28:22;30:1,2, & intervening (2) & L & M \\
\hline H & \[
\begin{aligned}
& \text { 16;31:3,4;32:12,15; } \\
& 33: 23 ; 35: 12 ; 37: 4
\end{aligned}
\] & into (8) & L & M \\
\hline & 38:8,13;39:5,8,12,21, & 19:21;20:24;23:16; & lack (1) & makes (1) \\
\hline hands (1) & \[
22 ; 40: 2,5,9
\] & \[
28: 24 ; 29: 14 ; 31: 10
\] & \[
34: 4
\] & 15:18 \\
\hline 28:6 & hook (1) & \[
33: 18 ; 36: 11
\] & last (2) & making (2) \\
\hline Min-U-Script \({ }^{( }\) & & Capitol Reporters 775-882-5322 & & (3) first - making AA04252 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 22:23;25:24 & month (8) & 22:11 & 33:15;36:15;37:5 & 34:20 \\
\hline March (8) & 17:8;18:2,8;28:2; & non-monetary (1) & on-going (1) & pattern (1) \\
\hline 6:17,21;10:8,13, & 35:21;37:10,21;38:7 & 7:18 & 37:7 & 32:4 \\
\hline 16;11:1,17;12:7 & monthly (3) & noon (7) & only (8) & pay (10) \\
\hline material (1) & 27:15,19;37:8 & 11:19,19,21,23; & 5:22;20:16;22:18; & 31:17,19,19;32:1,5, \\
\hline 37:1 & \(\boldsymbol{m o o t}(2)\) & 12:1,3,7 & 24:8,19,20;25:12; & 8;36:13;37:10,12,21 \\
\hline Matt (13) & 16:3,9 & notes (1) & 35:10 & payable (1) \\
\hline 3:10;5:17;12:2; & more (3) & 34:3 & oOo- (1) & 18:11 \\
\hline 13:11;14:7;15:4; & 28:24;29:16;31:13 & notice (7) & 3:2 & paying (1) \\
\hline 16:11,12,13;17:4; & morning (2) & 11:6;17:13;22:8,8; & opportunity (4) & 18:13 \\
\hline 27:4;35:14;39:20 & 3:4,19 & 36:15;39:13,16 & 23:5;24:15;32:1; & payment (16) \\
\hline matter (9) & Mortgage (7) & notified (1) & 38:18 & 19:20;20:13;22:17; \\
\hline 10:1;19:4;20:7; & 6:4;17:19;23:15; & 12:18 & opposition (4) & 24:5,6,16;25:2,5,5,8, \\
\hline 21:12,19;22:16;23:4; & 29:6;34:11;37:20,21 & notify (3) & 14:9,13,18;31:7 & 19,22;27:11;28:3; \\
\hline 26:11;32:17 & most (1) & 12:18;24:20;25:13 & order (16) & 32:3,23 \\
\hline May (5) & 19:16 & notifying (2) & 8:10;11:1;12:6; & payments (17) \\
\hline 19:19;27:13,14; & motion (20) & 25:17;34:15 & 15:19;17:5;19:10; & 19:22;22:20,22,23; \\
\hline 30:4;38:3 & 13:17;14:9,12,17, & November (1) & 33:10,10,11,14;37:8; & 23:5;24:3;25:23,24; \\
\hline maybe (3) & 18;15:10,10,22;16:3, & 19:16 & 38:4,7,10;39:9,10 & 26:20,24;27:7,11; \\
\hline 6:16;14:12,23 & 6,8;27:13;29:15; & NRS (4) & ordered (7) & 28:7;29:3;31:1;34:5; \\
\hline mean (6) & 30:10,17,19;33:21; & 15:18;19:5;21:19; & 18:7;28:2;31:15; & 37:8 \\
\hline 25:20;27:18;29:1, & 35:10;36:14;39:1 & 22:9 & 37:10,17,19;38:10 & pendency (1) \\
\hline 8;37:16;38:14 & motions (4) & Number (2) & ordering (3) & 17:23 \\
\hline mediation (6) & 13:9;16:21;36:23; & 6:3;12:17 & 35:23;37:7,7 & pendens (2) \\
\hline 11:16;20:23;22:4; & 37:3 & numbers (1) & original (1) & \[
15: 11 ; 20: 4
\] \\
\hline 23:8;34:24;35:1 & move (3) & 13:1 & 21:2 & per (4) \\
\hline \[
\begin{gathered}
\text { Michael (1) } \\
9: 19
\end{gathered}
\] & 5:6;9:9,24
moving (3) & 0 & Otherwise (1)
\(18: 24\) & \[
18: 2,8 ; 28: 2 ; 37: 10
\] \\
\hline microphone (1) & \[
10: 4,11 ; 33:
\] & 0 & out (9) & 38:15 \\
\hline 15:7 & much (1) & objection (10) & 6:11,12;9:23; & perform (1) \\
\hline middle (1) & 40:3 & 8:19,24;9:2,6,11; & 10:15;11:6;15:5; & 31:22 \\
\hline 6:16 & must (3) & 10:6;16:7,13,16,19 & 18:3;32:6;36:1 & period (1) \\
\hline might (1) & 21:22,22,24 & obligated (3) & over (3) & 18:12 \\
\hline 8:12 & myself (1) & 7:22;8:23;25:2 & 21:10;29:18,21 & permission (1) \\
\hline MILLWARD (60) & \[
10: 10
\] & obligation (1) & overturns (1) & 31:5 \\
\hline 5:21;6:1,7,12,15, & & 21:24 & 8:8 & permit (1) \\
\hline 19,23;7:3;8:4;9:4,20; & \(\mathbf{N}\) & obligations (1) & owe (1) & 19:6 \\
\hline \[
\begin{aligned}
& 10: 14 ; 11: 2,5,9,23 \\
& 13: 19 ; 14: 1,23 ; 15: 6
\end{aligned}
\] & & 9:3 & 25:18 & \[
\begin{aligned}
& \text { permitted (3) } \\
& 20: 12 ; 22: 16 ; 33: 18
\end{aligned}
\] \\
\hline 8;16:2,5;18:17,20,22, & 6:1 & 32:2 & 25:13 & person (1) \\
\hline 24;20:16,21;21:6,8; & National (1) & occur (1) & owner (1) & 21:20 \\
\hline 22:8,15;23:3,12,14, & 6:3 & 11:1 & 17:15 & personal (4) \\
\hline 19;24:2,10, 12,24; & necessarily (1) & occurred (1) & & 5:3,11;6:9,20 \\
\hline 25:4,7,14;26:3,7,11, & 13:23 & 27:10 & P & pertaining (1) \\
\hline 15,17,22;27:2;32:11, & necessary (2) & o'clock (1) & & 15:10 \\
\hline 12,15,17;33:23;34:1, & 14:11;32:20 & 11:19 & paperwork (1) & petition (2) \\
\hline 18;39:12,16 & need (7) & October (4) & 37:20 & 7:20;8:5 \\
\hline Millward's (2) & 8:10;16:22;28:7, & 19:23;24:5;25:5,8 & part (3) & phone (4) \\
\hline 12:22,24 & 23;39:7,10;40:1 & off (2) & 34:19;38:4,6 & 7:4,8;14:4,15 \\
\hline mind (1) & needs (2) & 13:20;26:13 & participate (1) & place (4) \\
\hline 34:7 & 28:10;30:24 & offer (1) & 8:23 & 9:10;23:22,24;31:1 \\
\hline missed (1) & NEVADA (5) & 23:20 & participating (1) & Plaintiff (4) \\
\hline 26:24 & 3:1;6:11;15:2,16, & offered (1) & 7:6 & 17:2,6;18:12;36:5 \\
\hline modification (12) & 18 & 23:5 & parties (14) & Plaintiffs (11) \\
\hline 19:18;20:12,14,17; & new (3) & offers (1) & 5:22,23,24;7:3; & 12:11,13;13:6; \\
\hline 21:3;22:5,10,11;23:6, & 5:1,2;9:8 & 23:7 & 8:16,24;9:8,22;10:1, & 16:8;17:13,18,24; \\
\hline 24;25:21;34:10 & next (4) & office (3) & 4;12:17;15:23;20:1, & 18:6;27:15;31:6;32:8 \\
\hline modified (1) & 6:6,8;28:8;29:14 & 12:20,22,24 & 18 & Plaintiffs' (3) \\
\hline 22:12 & nine (2) & once (3) & parties' (1) & 31:7,16;34:23 \\
\hline Monday (1) & 22:22;26:20 & 30:23;34:6;36:22 & 27:19 & plan (1) \\
\hline 11:8 & nobody's (3) & one (10) & party (8) & 37:21 \\
\hline money (1) & \[
20: 24 ; 21: 3,4
\] & \[
6: 16,16 ; 13: 17,21
\] & \[
15: 2,13,21 ; 23: 4
\] & plea (1) \\
\hline 36:6 & none (1) & 15:2;20:16;25:8; & 26:12,12;30:17; & 37:5 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline pleadings (2) & prior (2) & & relative (1) & response (2) \\
\hline 13:22,22 & 20:1,2 & Q & 38:22 & 6:20;27:3 \\
\hline please (1) & probably (3) & & release (1) & responsibility (1) \\
\hline 12:22 & 11:19,19;29:5 & quickly (1) & 30:19 & 28:11 \\
\hline plus (2) & problem (3) & \[
36: 21
\] & released (1) & rest (1) \\
\hline 18:7;28:1 & 34:20,22;39:18 & quite (1) & 30:22 & 15:6 \\
\hline point (23) & proceed (2) & \[
26: 7
\] & relief (5) & Restitution (11) \\
\hline \[
9: 20 ; 10: 3,5 ; 14: 5,
\] & 31:14;33:2 & quo (4) & \[
15: 1,3,13,14,20
\] & \[
13: 13,14 ; 16: 22
\] \\
\hline 12,12;16:9;21:13; & proceeding (3) & \[
28: 3 ; 31: 1 ; 32: 14
\] & relies (1) & 17:1;18:5;26:8; \\
\hline 22:22;23:4;24:2; & 8:20,24;31:8
Proceedings (1) & 36:9 & \[
26: 8
\] & 31:11,13;35:7,16; \\
\hline 31:9;32:6;35:8,23; & 40:10 & \(\mathbf{R}\) & 13:8;17:13 & returned (1) \\
\hline 36:4,12,24;37:12 & process (4) & & remember (1) & 29:5 \\
\hline position (8) & 8:11;20:20;34:24; & raised (1) & 15:9 & review (1) \\
\hline 14:21;15:16;19:1, & \(35: 1\)
prof( 1 ( & 29:20 & renamed (1) & 8:5 \\
\hline 3;20:24;21:3,4;22:15 & proof (1) & Ramir (11) & 18:13 & reviewed (1) \\
\hline possession (6) & \(19: 12\)
proper & 3:6;5:13;7:10; & Reno (1) & \[
21: 8
\] \\
\hline 17:16,21,22;18:5,
\(12 ; 27: 21\) & proper (2)
27:24;28:19 & 10:8;11:15;13:2; & \[
\begin{array}{r}
11: 16 \\
\text { rent (3) }
\end{array}
\] & \[
\begin{array}{|c}
\hline \text { rework (1) } \\
23: 10
\end{array}
\] \\
\hline 12;27:21 & 27:24;28:19 & \[
14: 16 ; 16: 10,15 ; 30: 3
\] & \[
\begin{array}{|c|}
\hline \boldsymbol{r e n t}(\mathbf{3}) \\
17: 19 ; 18
\end{array}
\] & \[
\begin{array}{|c}
23: 10 \\
\text { right (89) }
\end{array}
\] \\
\hline 36:2 & 12:19 & rate & rental (3) & 3:12,13,17,21,22; \\
\hline post (6) & Property (24) & 28:20 & 29:2;37:23;38:13 & 5:9;6:5,10,13;7:1,5; \\
\hline 17:24;18:6;27:15; & 3:11,17:11,14,14, & rates (1) & rents (1) & 8:1,7;9:11;10:5,6,14, \\
\hline 30:16;32:18;33:1 & 15,16,18,20,21,23; & 20:9 & 18:11 & 18,24;11:7,11,21; \\
\hline posted (7) & 18:13;21:15;27:6,17, & reading (2) & repeated (2) & 12:6,7,10;13:1,4,8, \\
\hline 17:7,9;29:7;30:24, & 21;29:11;33:9,14,16, & \[
13: 21 ; 38: 10
\] & \[
9: 13 ; 22: 12
\] & 16,20;14:14,19;16:1, \\
\hline 24;35:18,21 & 19;36:10;37:14,23; & ready (2) & rephrase (1) & \[
7,17,24 ; 17: 3,15
\] \\
\hline posting (1) & 38:14 & \[
31: 17 ; 38: 18
\] & \[
24: 17
\] & \[
18: 20 ; 20: 19 ; 21: 5,6,8
\] \\
\hline 29:4 & protect (7) & real (1) & reported (1) & \[
19,22 ; 22: 4,18 ; 23: 13
\] \\
\hline practicality (1) & 18:9;27:19;29:10, & \[
23: 19
\] & \[
22: 9
\] & 18;24:1,6,7,10,17; \\
\hline 32:18 & 16;32:21;33:3;37:19 & realized (1) & representing (2) & 25:1,2,4,6,9,10,10; \\
\hline practice (1) & protected (2) & 23:20 & 3:7,10 & 26:5,6,6,8,9,12,19; \\
\hline \[
32: 4
\] & 29:11,12 & really (3) & request (11) & \[
27: 1,3 ; 28: 13 ; 30: 10
\] \\
\hline precluded (1) & protecting (2) & \[
10: 11,12,12
\] & \[
7: 23 ; 9: 5 ; 12: 16
\] & \[
11 ; 31: 2,9,11 ; 32: 10
\] \\
\hline 38:5
preferred (1) & 35:24,24 & recall (1) & \[
13: 12 ; 17: 23 ; 27: 22
\] & \[
33: 20 ; 34: 3 ; 36: 9
\] \\
\hline preferred (1) & provide (1) & \[
14: 9
\] & 30:22;31:5,16;35:15, & \[
37: 15 ; 38: 1,12 ; 39: 4,6,
\] \\
\hline 7:8 & \(12: 17\)
provided (1) & recalling (1) & \[
17
\] & \[
9,15,24 ; 40: 3
\] \\
\hline prejudice (3) & provided (1) & \[
23: 9
\] & require (1) & rights (2) \\
\hline 33:21;35:5;38:19 & 32:1 & receive (1) & 32:23 & \[
21: 1,2
\] \\
\hline preliminary (2) & provisions (2) & 6:8 & required (7) & risking (1) \\
\hline \[
19: 9,10
\] & 21:21;34:14 & reconsideration (4) & 17:24;18:6;22:9; & 33:15 \\
\hline prepare (1) & public (1) & \[
13: 17 ; 14: 10,17,18
\] & 28:20;29:22,23; & room (1) \\
\hline 39:12
preserve (2) & 19:13
pull (2) & record (5) & \[
\begin{aligned}
& 31: 15 \\
& \text { requires (1) }
\end{aligned}
\] & \[
\begin{gathered}
35: 2 \\
\text { roughly (1) }
\end{gathered}
\] \\
\hline preserve (2)
23:15,15 & pull (2) & \[
8: 23 ; 36: 23,24
\] & \[
\underset{24: 13}{\text { requires }(1)}
\] & \[
\begin{array}{|c}
\text { roughly (1) } \\
5: 7
\end{array}
\] \\
\hline preserving (1) & pulled (1) & \[
\begin{gathered}
37: 2 ; 38: 2 \\
\text { recorded (5) }
\end{gathered}
\] & requiring (2) & rules (1) \\
\hline 35:7 & 33:8 & 19:13,19;20:4,18; & 32:24;38:7 & 5:2 \\
\hline President (1) & purchase (1) & \[
31: 8
\] & re-raise (1) & ruling (2) \\
\hline 31:5 & 33:14 & reflect (2) & 36:14 & 8:10;9:3 \\
\hline presupposes (1) & purchased (6) & 5:1;22:12 & resolution (3) & run (2) \\
\hline \(31: 16\)
pretty (1) & 17:10;20:5,5;27:6; & refuse (1) & 21:11;27:20,2 & 29:12;30:20 \\
\hline \[
\begin{gathered}
\text { pretty (1) } \\
35: 11
\end{gathered}
\] & 33:9;36:10
purchaser (3) & \[
\begin{gathered}
24: 4 \\
\text { refused (3) }
\end{gathered}
\] & \[
\begin{aligned}
& \text { resolve (3) } \\
& 23: 17 ; 36: 21 ; 37: 3
\end{aligned}
\] & S \\
\hline prevail (2) & 20:4;21:14;35:11 & \[
19: 22 ; 25: 5,
\] & resolved (1) & \\
\hline 19:11;28:18 & purchasing (2) & refusing (1) & 28:4 & \\
\hline previous (1) & 21:15;33:16 & \[
24: 3
\] & respect (1) & \[
3: 20 ; 7: 17 ; 8: 23
\] \\
\hline 9:3
previously (3) & pursuant (1) & regarding (6) & \[
31: 8
\] & \[
31: 5
\] \\
\hline previously (3) 18:7;28:1,18 & \[
7: 21
\] & 12:14;13:4;30:3; & respects (1) & sale (32) \\
\hline \[
\begin{gathered}
18: 7 ; 28: 1,18 \\
\text { primarily (1) }
\end{gathered}
\] & \[
\begin{gathered}
\text { push (1) } \\
11: 18
\end{gathered}
\] & \[
34: 23 ; 35: 10 ; 36: 13
\] & \[
\begin{array}{|c|}
\hline \text { 16:3 } \\
\text { respond (1) }
\end{array}
\] & \[
\begin{aligned}
& \text { 17:6,10;18:3,10, } \\
& \text { 14;19:2,6;20:2; }
\end{aligned}
\] \\
\hline 19:13 & put (6) & \[
\begin{gathered}
\text { reject (1) } \\
23: 23
\end{gathered}
\] & respond
32:10 & 21:16,21,23;22:5,8; \\
\hline primary (2) & 7:22;31:6;36:15; & related (2) & responding (1) & \[
23: 2 ; 24: 23 ; 26: 9
\] \\
\hline 27:22,22 & 38:1,10;39:2 & \[
31: 12,13
\] & 7:23 & \[
28: 21 ; 29: 2,2,4,12,18
\] \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|}
\hline 22;30:20,21;31:8,20; & 20:20,22 & 21:20 & ten (1) & unable (1) \\
\hline 32:3;36:2,5;37:9; & seven (1) & stating (1) & 31:19 & \[
31: 21
\] \\
\hline 38:5 & 38:15 & 8:9 & terms (11) & unaffordable (1) \\
\hline Same (3) & Shadd (4) & status (5) & 8:9;13:21;22:12; & 23:21 \\
\hline 12:5;23:22;34:6 & 3:19;7:16;8:17; & 7:18;28:3;31:1; & 23:6,8,21,23;24:16; & unclean (1) \\
\hline satisfy (1) & 31:4 & 32:14;36:9 & 34:15;35:24;38:21 & 28:6 \\
\hline 34:14 & Shellpoint (1) & statute (2) & testimony (1) & under (12) \\
\hline saw (1) & 6:4 & 7:22;9:5 & 19:14 & 9:4;19:5;20:12; \\
\hline 13:22 & shortly (1) & statutes (1) & thereafter (3) & 21:2,2;23:2,5;24:11, \\
\hline saying (7) & 5:3 & 21:18 & 15:22;17:7,8 & 22;25:3;28:21;31:22 \\
\hline 25:16;26:19,22; & show (1) & stay (2) & thinking (1) & undisputed (2) \\
\hline 30:9;31:18;34:7; & 30:8 & 7:4;28:8 & 6:23 & 19:17;20:11 \\
\hline 38:19 & showing (2) & still (6) & third (2) & undo (4) \\
\hline schedule (2) & 24:4;37:20 & 7:18;14:3,6;22:20; & 34:20;35:11 & 23:2;24:22;28:21; \\
\hline 9:21;10:7 & sic (1) & 25:9;36:1 & though (4) & 36:2 \\
\hline Schriever (46) & 24:15 & stood (1) & 24:2,8;28:16;29:15 & undoes (1) \\
\hline 3:10,10,18;5:17, & sides (1) & 15:20 & thought (1) & 29:1 \\
\hline 17;7:12,13;12:2,2; & 38:8 & stop (5) & 8:11 & unfortunately (1) \\
\hline 13:11,12,14;14:7,7; & signed (1) & 31:20;32:3;37:9, & three (5) & 23:16 \\
\hline 15:4,4;16:11,11,13, & 19:19 & 13,13 & 5:7;23:11;26:20; & unless (2) \\
\hline 13;17:3,4;18:18; & simple (2) & subject (4) & 28:8;36:20 & 18:19;19:6 \\
\hline 27:4,4;28:15,22; & 21:11;26:7 & 20:5,5;21:16;33:15 & three-day (1) & unwound (2) \\
\hline 29:10,24;30:16;31:3; & simply (5) & substantially (1) & 17:13 & 36:5,7 \\
\hline 35:12,14,14,20;36:3, & 20:22;26:23;36:6; & 21:21 & throughout (1) & up (11) \\
\hline 17;37:4,7,16;38:13, & 37:11;38:15 & substantiate (1) & 19:3 & 6:16;12:8,9,11,13; \\
\hline 23;39:4,20,20;40:6 & single (2) & 15:15 & thrown (1) & 32:24;35:6;38:10; \\
\hline seat (1) & 15:1,13 & substitute (3) & 10:15 & 39:2;40:4,7 \\
\hline 18:23 & sit (1) & 9:22;10:21,24 & times (1) & updated (1) \\
\hline section (1) & 18:22 & substituted (2) & 18:2 & 5:2 \\
\hline 21:22 & situation (1) & 5:22,23 & title (1) & upon (3) \\
\hline security (13) & 37:22 & successful (1) & 17:15 & 9:3;24:16;26:8 \\
\hline 27:16,19,24;28:3, & slowly (1) & 30:18 & today (7) & \\
\hline 12;29:3,7;30:24; & 28:8 & sufficient (1) & 12:7;13:9,15; & V \\
\hline 32:20,24;33:17,18; & sold (2) & 24:11 & 16:22;35:2,10;39:7 & \\
\hline 36:7 & 38:11,14 & suit (2) & tried (3) & valid (3) \\
\hline seeking (2) & sole (1) & 15:2;20:5 & 22:22;23:14;27:7 & 18:11;29:13;30:22 \\
\hline 13:24;14:2 & 15:21 & summary (3) & true (4) & validity (1) \\
\hline send (1) & someone (1) & 20:11;36:23;37:3 & 26:1,14,15,16 & 26:8 \\
\hline 11:6 & 25:17 & summonses (2) & Trust (3) & value (2) \\
\hline sent (2) & sorry (2) & 5:1,2 & 6:2,3;7:24 & 37:23;38:14 \\
\hline 8:3,5 & 30:13;36:17 & supersedes (1) & trustee (6) & via (1) \\
\hline separate (1) & sort (8) & \[
22: 4
\] & 19:5;20:1;21:20; & 3:8 \\
\hline 35:23 & 14:8;27:11,14,16, & superseding (1) & 22:1,5;35:7 & view (1) \\
\hline September (2) & 16;28:10;29:7;35:3 & \[
23: 17
\] & trustee's (1) & 14:5 \\
\hline \[
24: 6 ; 25: 5
\] & sounds (1) & supplemental (3) & 31:7 & viewpoint (1) \\
\hline seqways (1) & 11:2 & 9:7;10:3,3 & try (1) & 8:8 \\
\hline 29:14 & speak (1) & Supreme (3) & 27:10 & violation (3) \\
\hline served (2) & 30:5 & 7:20;8:2,6 & trying (3) & 22:6,6;25:12 \\
\hline 6:6;17:12 & speaking (1) & sure (5) & 15:9;30:12;38:6 & void (6) \\
\hline service (7) & \[
10: 9
\] & \[
10: 10 ; 12: 18 ; 14: 11
\] & TUESDAY (1) & 18:15;21:17,23; \\
\hline 5:3,5,11,12;6:9,20;
9.23 & squatting (1) & 22:1;29:11 & 3:1 & \[
29: 2,4 ; 30: 20
\] \\
\hline 9:23
Servicing (1) & standing (1) & T & turn (2)
29:18,21 & W \\
\hline 6:4 & 7:19 & & two (6) & \\
\hline SESSION (1) & start (2) & talked (1) & 3:15;5:7;8:16; & Wade (11) \\
\hline 3:1 & 13:20;25:23 & 20:22 & 14:14;23:10;26:20 & 3:19,19;7:16,16; \\
\hline set (5) & started (1) & talking (1) & typical (1) & 8:17,17,19,22;31:4,4, \\
\hline 12:8,9,11,13;27:14 & 25:24 & 20:15 & 34:9 & 12 \\
\hline sets (1) & state (3) & telephone (6) & & wait (3) \\
\hline \[
\begin{gathered}
14: 1 \\
\text { setting (2) }
\end{gathered}
\] & \[
\begin{gathered}
\text { 6:11,12;26:11 } \\
\text { statements (1) }
\end{gathered}
\] & \[
\begin{aligned}
& 3: 5,9 ; 7: 6 ; 12: 23,24 ; \\
& 40: 4
\end{aligned}
\] & U & \begin{tabular}{l}
\[
8: 18,18 ; 13: 10
\] \\
waiting (1)
\end{tabular} \\
\hline 6:14;40:7 & statements (1)
25:16 & telephonic (1) & ultimately (3) & \[
3: 23
\] \\
\hline settlement (2) & states (1) & 7:13 & \[
18: 10 ; 29: 4 ; 30: 18
\] & waive (1) \\
\hline
\end{tabular}

ALBERT ELLIS LINCICOME,JR.AND VICENTE LINCICOME vs SABLES LLC,


John T. Steffen (4390)
Brenoch R. Wirthlin (10292)
Alex R. Velto (14961)
HUTCHISON \& STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
mschriever@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel: (702) 305-9157
Fax: (310) 730-5967
caseynelson@wedgewood-inc.com
Attorneys for Intervenor

\section*{THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA}

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,
Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50.,

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC,

Case No.: 18-CV-01332
Dept No.: II
ORDER CONCERNING:
BRECKENRIDGE PROPERTY FUND 2016,
LLC'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS

AND
PLAINTIFFS' MOTION FOR STAY PENDING APPEAL

On October 12, 2021, at 1:30 p.m., the Court held a hearing in the above-captioned matter to consider Defendant in Intervention Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Writ of Permanent Restitution and Payment of Overdue Rents and on Plaintiffs' Motion for Stay Pending Appeal. Todd W. Prall and Casey J. Nelson appeared on behalf of Defendant in Intervention Breckenridge Property Fund 2016, LLC. Michael G. Millward appeared on behalf of the Plaintiffs. Ramir M. Hernandez appeared on behalf of Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust. Paige L. Magaster appeared on behalf of Bank of America, N.A.

The Court, after hearing arguments of counsel and sworn testimony from Plaintiffs Albert Ellis Lincicome, Jr., and Vincenta Lincicome, and for good cause, enters the following Findings of Fact, Conclusions of Law, and Order.

\section*{A. Findings of Fact.}
1. On June 23, 2021, the Court entered an order denying Plaintiffs' motion for partial summary judgment and granting summary judgment in favor of Defendants Bank of American, N.A, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, N.A. as Legal Trustee (the and Fay Servicing, LLC (hereinafter the "Banks MSJ Order") and certified the judgment as final under NRCP 54(b).
2. On June 23, 2021, the Court entered a separate order granting summary judgment in favor of Breckenridge Property Fund 2016, LLC ("Breckenridge") on its First and Third Claims for Relief for Quiet Title and Writ of Possession (hereinafter, the "Breckenridge MSJ Order").
3. The Breckenridge MSJ Order and the Banks MSJ Order are collectively the MSJ Orders.
4. In the MSJ Orders, the Court made numerous findings of fact and conclusions of law which are adopted herein by reference.
5. In granting summary judgment in favor of Breckenridge, the Court found that Breckenridge purchased the Property at a properly noticed foreclosure sale and is therefore entitled to both title to and possession of the real property at issue in this case, which is located at 70 Riverside Drive, Dayton, Nevada 89403 (the "Property").
6. On July 23, 2021, Plaintiffs filed a Notice of Appeal, which sought review of both the MSJ Orders, among other things.
7. On September 9, 2021, Breckenridge filed a Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents (the "Motion for Permanent Writ of Restitution")
8. On or about September 14, 2021, Plaintiffs served their Motion for Stay Pending Appeal (the "Motion for Stay").
9. On or about September 22, 2021, Plaintiffs served an opposition to the Motion for Writ of Permanent Restitution in which Plaintiffs simply incorporated the Motion for Stay as their opposition.
10. On October 1, 2021, Breckenridge filed an opposition to the Motion for Stay.
11. On October 6,2021, Breckenridge filed a Reply in Support of the Motion for Permanent Writ of Restitution.
12. On September 28, 2021, the Court entered an Order Granting Ex Parte Application for Order shortening Time for Hearing on Breckenridge's Motion for Permanent Writ of Restitution, which set a hearing on Breckenridge's motion for October 13, 2021 at 1:30 p.m.
13. Breckenridge purchased the Property at a properly noticed foreclosure sale on January 4, 2019 for \(\$ 294,000.00\). A Three-Day Notice to vacate the Property was served on the Plaintiffs on January 28, 2019.
14. Plaintiffs have continued to live in the Property from February 1, 2021 to the present, which is a total of 32 months through the end of September 2021.
15. Based on the current rental market and the evidence provided by Breckenridge, the Court finds that a fair market rental value for the Property is \(\$ 2,500\) per month.
16. Plaintiffs testified concerning their assets at the hearing on October 13, 2021. Plaintiffs testified that they have a rental property that is secured by a trust deed located Carson City, Nevada. The debt secured by the deed of trust is somewhere between \(\$ 225,000\) and \(\$ 250,000\), with a potential market value of around \(\$ 325,000\). The rental income they receive from the property is only a few hundred dollars more than the mortgage payment each month.
17. Plaintiffs testified that they have a retirement account with approximately \(\$ 125,000.00\) and that they live on approximately \(\$ 3,000.00\) per month in social security income.
18. Plaintiffs testified that they have a significant amount of medical bills.
19. Plaintiffs testified that they did not believe they could make a monthly rental payment for the Property in the amount of \(\$ 2,500\).

\section*{B. Conclusions of Law.}
20. NRS § \(40.255(1)(\mathrm{c})\) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person "where the property . . . has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person . . . , and the title under such sale has been perfected . . . "Nev. Rev. Stat. Ann. § 40.255 (West).
21. Plaintiffs' continued occupation of the Property was and is in clear violation of NRS § 40.255 and Breckenridge is entitled to permanent possession of the Property as prescribed in NRS §§ 40.290 to 40.420 . Therefore, Breckenridge is entitled to a permanent writ of restitution for the Property.
22. Plaintiffs have requested a stay of the proceedings in this Court to enforce the MSJ Orders, including Breckenridge's request for a permanent writ of restitution.
23. The Nevada Supreme Court has noted that "generally, in determining whether to issue a stay pending disposition of an appeal, [a court] considers the following factors:
(1) whether the object of the appeal will be defeated if the stay is denied,
(2) whether appellant will suffer irreparable or serious injury if the stay is denied,
(3) whether respondent will suffer irreparable or serious injury if the stay is granted, and
(4) whether appellant is likely to prevail on the merits in the appeal.

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).
24. The Nevada Supreme Court has "not indicated that any one factor carries more weight than the others" although some courts have recognized "that if one or two factors are especially strong, they may counterbalance other weak factors." Id.
25. Here, rather than focusing on these factors, the Court believes a stay is warranted under NRCP 62(d) so long as Plaintiffs meet the requirements of securing Breckenridge's interests.
26. NRCP 62(d) provides:

Stay Pending an Appeal.
(1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.
(2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.
27. The amended rule, which appears to have added subsection (2) essentially adopts the case law from Nevada and the federal courts that had recognized that the rule "allows an appellant to obtain a
stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but that courts retain the inherent power to grant a stay in the absence of a full bond." Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006) (citations omitted).
28. Here, the appeal was taken upon a certification of a final judgment pursuant to NRCP 54(b) prior to Breckenridge obtaining a final judgment. However, Breckenridge has demonstrated that it will be entitled to damages against Plaintiffs based on the fair market monthly rental value of the Property multiplied by the number of months in the Property.
29. Based on the facts presented, the Court finds that the approximately fair market monthly rental value for the Property is \(\$ 2,500.00\). The Court further finds that an adequate supersedeas bond in this case would be the amount of a judgment were it to be entered today plus another 24 months of rental payments. This amount is \(\$ 80,000.00\) ( 32 months * \(\$ 2,500.00\) ) plus \(\$ 60,000.00\) ( 24 months * \(\$ 2,500\) ), which equals \(\$ 140,000.00\).
30. Plaintiffs, however, request that the Court consider allowing Plaintiffs to provide other types of security in place of a "full judgment" bond. Specifically, Plaintiffs ask for the Court to approve the other real property owned by Plaintiffs, or the real property Plaintiffs own in Carson City that they rent out (the "Carson City Property").
31. "The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." Id. at 835, 122 P.3d at 1254 . "[T]he focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal." Id. at 835-36, 122 P.3d at 1254.
32. The Nevada Supreme Court has recognized five factors to consider in determining whether other alternative security for less than a full supersedeas bond:
(1) the complexity of the collection process;
(2) the amount of time required to obtain a judgment after it is affirmed on appeal;
(3) the degree of confidence that the district court has in the availability of funds to pay the judgment;
(4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
(5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 836,122 P.3d at 1254.
33. The Court finds that the facts and circumstances of this case do not warrant allowing an alternative security other than a supersedeas bond.
34. Because Plaintiffs only asset being submitted as alternative to a bond is the Carson City Property, which has a mortgage on it, and a retirement account, the complexity of collecting on the proposed collateral is very high.
35. Because the current appeal is based on a Rule 54(b) certification, there will be a significant amount of time between an appeal and when Breckenridge can obtain a judgment in this case. Breckenridge will be required to complete the process of obtaining a judgment.
36. The Court is not confident that there will be funds available to pay Breckenridge for any judgment. Plaintiffs testimony demonstrates that their income is such that they would not be able to pay such a judgment.
37. Finally, although Plaintiffs do not appear to be in a strong financial situation, there is no evidence indicating that requirement a full supersedeas bond would place any other creditor in an unsecure position.
38. As noted above the Court finds that that a reasonable fair market monthly rental rate for the Property is \(\$ 2,500\). The Court further finds that a reasonably expected judgment against Plaintiffs would be the amount of rent due from February 1, 2019 to the culmination of the appeal, which is anticipated to be an approximate 56 months and which would equal \(\$ 140,000.00\)
39. Based on this findings and conclusions, the Court finds that Breckenridge is entitled to a permanent write of restitution.
40. The Court further finds, however, that Plaintiffs should be granted a stay pending appeal which would become effective upon the posting of a \(\$ 140,000.00\) supersedeas bond from which Breckenridge may recover its damages should it prevail on appeal. Plaintiffs shall have until November 12,2021 to post the supersedeas bond.
41. The Court authorizes the issuance of a permanent writ of restitution effective November 15, 2021 allowing Breckenridge to remove the Plaintiffs and their belongings from the Property. Should Plaintiffs post the \(\$ 140,000.00\) supersedeas bond with the Court by \(5: 00\) p.m. on November 12, 2021, the permanent writ of restitution shall issue, but will be stayed pending the appeal.

\section*{C. Order}

IT IS SO ORDERED.
IT IS FURTHER ORDERED that Breckenridge's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the Permanent Writ of Restitution shall issue effective immediately on November 15, 2021.

IT IS FURTHER ORDERED that all other relief sought in Breckenridge's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Stay Pending Appeal is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiffs' shall be granted a stay pending appeal upon the posting of a \(\$ 140,000.00\) supersedeas bond.

IT IS FURTHER ORDERED that Plaintiffs' shall have until November 12, 2021 to post the \(\$ 140,000.00\) supersedeas bond, otherwise no stay pending appeal shall be granted and Breckenridge may proceed with execution upon the writ of restitution.

DATED this \(3^{r}\) day of NOUnber 2021.


Respectfully submitted by:
Dated this \(28^{t}\) day of \(C+t 20,2021\)
Approved as to form and content by:
Dated this \(\qquad\) day of \(\qquad\) , 2021

Refused to Sign
Michael Millward, Esq.
Nevada Bar No. 11212
1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs
Property Fund 2016, LLC

Approved as to form and content by:
Dated this 28 day of October 2021

AKERMAN LLP


Paige L. Magaster, Esq.
Nevada Bar No. 15557
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134
Attorneys for Defendant Bank of America, N.A.

Approved as to form and content by:
\(\square\) day of October, 2021

WRIGHT, FINLAY \& ZAK, LIP


7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants, Prof-2013 M4-
Legal Title Trust, by U.S. Bank, National
Association, as Legal Title Trustee, Fay
Servicing LLC, and Shellpoint Mortgage
Servicing, LLC

Case No: 18-CV-01332
202110\% 15 m M11:40
Dept.: II
The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A. 040
-••••

KATHY THOMAS
IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
\(v\).
SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust

EX PARTE MOTION FOR ADDITIONAL TIME given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,
vs.
ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, à: individual; and DOE OCCUPANTS 1-5. Counterdefendants.

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby move this Court for an ex parte order extending the time for Plaintiffs to obtain a supersedeas bond.

This motion is supported by the Memorandum of Points and Authorities attached hereto, the documents previously admitted as evidence in this Court, and the Declaration of Michael G. Millward, Esq., provided herewith.

Respectfully submitted \(12^{\text {th }}\) day of November, 2021
MILLWARD LAW, LTD.


\section*{MEMORANDUM OF POINTS AND AUTHORITIES}

A hearing upon Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Writ of Permanent Restitution and Payment of Overdue Rents and on Vicenta Lincome and Ellis Lincicome's Motion for Stay Pending Appeal was held on October 13, 2021.

During that proceeding, the Lincicomes' undersigned counsel represented to the Court that the Lincicomes had made inquiries of several insurance companies that issue supersedeas bonds, and that none would consider issuance of a bond in this matter, until a definite amount determined by the Court could be provided in the form of a judgment or stated amount that a bond should issue. That relief was specifically requested and the Court determined that a bond should be issued in the amount of \(\$ 140,000.00\).

The Court thereafter determined that the Lincicome be given 30 days to obtain a supersedeas bond, and that a Writ of Restitution would issue November 15, 2021, but be stayed pending the appeal upon the filing of a supersedeas bond.

Upon information and belief, the proposed Order upon the October 13, 2021 hearing, which the Court requested counsel for Breckenridge Property Fund 2016, LLC, to draft, was provided by email to the undersigned on Friday, October 22, 2021. Due to other obligations, the undersigned was aware that the proposed order had been provided and was unable to review the proposed order until October 26, 2021. No objecition to the Order was was provided to counsel for Breckenridge at the time.

As of the the date of this Ex Parte Motion, no notice of entry of a copy of any order that has been entered has been provided to the undersigned that could be forwarded with an application to an insurance agency so that a supersedeas bond me be issued. See Declaration of Michael Millward attached hereto as Exhibit 1. Plaintiffs have not had the ability to proceed to obtain a bond without a cop of an entered order being provided with sufficient time to make application and have the application considered. Id.

Accordingly, the Lincicomes request that the Court stay the effect of the Writ of Restitution to be issued on November 15, 2021 in favor of Property Fund 2016, LLC's, and that said Writ remain stayed for an additional 21 days from the date that notice of entry of the

Courts order resulting from the October 13, 2021 hearing is served upon Plaintiffs' counsel so that Plaintiffs may have an opportunity to obtain a bond before the Writ of Restitution to be issued becomes effective.

Without an order of additional time, the timeframe given by the Court at the October 13, 2021 hearing will have not served the intended purpose of providing the Lincicomes' with sufficient opportunity to obtain a supersedeas bond before a Writ of Restitution becomes effective. Accordingly, the Lincicomes respectfully request the Court provide the requested additional time.

Dated this \(12^{\text {th }}\) day of November, 2021.
MILLWARD LAW, LTD.


On the \(12^{\text {th }}\) day of November, 2021, pursuant NRCP 5(b) I, Ashely Voss, an employee of Millward Law, Ltd., caused to be deposited for delivery Plaintiffs' Ex Parte Motion for Additional Time to Obtain Supersedeas Bond and the proposed Order upon Plaintiffs' Ex Parte Motion for Additional Time to Obtain Supersedeas Bond, by placing a true copy thereof in a sealed envelope for collection and mailing by first class mail, postage prepaid, in Minden, Nevada, on said date, following ordinary business practices to:

Shadd A. Wade, Esq.
ZIEVE, BRODNAX \& STEEL
9435 W. Russel Rd., Suite 120
Las Vegas, NV 89148
Attorney for Sables, LLC
Scott R. Lachman, Esq.
Darren T. Brenner, Esq.
ACKERMAN, LLP
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Attorney for Bank of America
Matthew K. Schriever, Esq.
HUTCHINSON \& STEFFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorney for Breckenridge Property Fund 2016, LLC

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, NV 89146
Attorney for Breckenridge Property Fund 2016, LLC

Christopher A. J. Swift, Esq. Ramir M. Hernandez, Esq.
WRIGHT FINLAY \& ZAK, LLP
7785 W. Sahara Ave., Suite 200 Las Vegas, NV 89117
Attorney for Fay Servicing, LLC and US
Bank Prof-2013-M4 Legal Title Trust.

\section*{Exhibit 1}

I, Michael G. Millward, Esq., under penalty of perjury under the laws of the State of Nevada, declare that the assertions of this Declaration are true and correct and state the following:
1. That I am an attorney practicing law with the firm Millward Law, Ltd.;
2. That I represent Plaintiffs Ellis and Vicenta Lincicome concerning Third Judicial District Case No. 18-CV-01332;
3. That on October 13, 2021, I represented to the Court that a judgment amount or bond amount stated in an order was necessary for the Lincicome to obtain a supersedeas bond from an insurance provider;
4. That on October 26, 2021, I was able to review the proposed order provided by Todd W. Prall on behalf of Breckenridge Property Fund 2016, LLC, and no objection to the same was made on behalf of the Lincicomes;
5. That the Lincicomes have been unable to proceed with their applications for issuance of a supersedeas bond prior to November 11, 2021 because no order entered upon the October 13, 2021 hearing has been provided;
6. That based upon consideration of prior applications by providers, 21 additional days will provide the Lincicomes with sufficient time to submit their respective applications with the Court's order for issuance of a supersedeas bond.

Further Declarant sayeth naught.
DATED this \(11^{\text {th }}\) day of November, 2021.


John T. Steffen, Esq. (4390)
Brenoch R. Wirthlin, Esq. (10282)
Alex R. Velto, Esq. (14961)
HUTCHISON \& STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
bwirthlin@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Breckenridge, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC

\section*{THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA}

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v .
SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated \(5 / 23 / 2007\); FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.
Defendant in Intervention/Counterclaimant Breckenridge Property Fund 2016, LLC ("Breckenridge" or "Breckenridge"), by and through its attorneys of record, Hutchison \& Steffen,
submits this Opposition to Plaintiffs' Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") Improper Ex Parte Motion for Additional Time to Obtain Supersedeas Bond ("Motion") and Request for Sanctions. This Opposition is based on the following memorandum of points and authorities and all exhibits attached thereto, including the declaration of Todd W. Prall, Esq. ("Prall Declaration"), any oral argument the Court may entertain at a hearing on this matter, and all papers and pleadings on file herein.

DATED this \(16^{\text {th }}\) day of November, 2021.

\section*{HUTCHISON \& STEFFEN, PLLC}


HUTCHISON \& STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
caseynelson@wedgewood-inc.com
Attorney for Breckenridge Property Fund 2016,
LLC

\section*{MEMORANDUM OF POINTS AND AUTHORITIES}

\section*{I. STATEMENT OF FACTS}
1. On October 3, 2019, Breckenridge filed its Intervenor's Counterclaim ("Counterclaim") pursuant to which Breckenridge asserted, among other things, claims for quiet title and writ of restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada 89403 ("Property").
2. On December 31, 2018, the Court entered an order enjoining the foreclosure on the Property if the Plaintiffs timely posted of a bond in the amount of \(\$ 172,610.67\) and additional security in the amount of \(\$ 2,105.10\) per month thereafter.
3. Plaintiffs failed to post the bond and the Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Property at the NRS 107 foreclosure sale.
4. On March 18, 2021, Breckenridge filed its Motion for Summary Judgment ("Breckenridge's MSJ") seeking judgment on all counterclaims.
5. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("Order") pursuant to which it granted the Breckenridge's MSJ in its entirety.
6. In the Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.
7. On September 9, 2021, Breckenridge filed a Motion for Entry of Order Granting Permanent Restitution and Payment of Overdue Rents.
8. On September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending Appeal.
9. On October 12, 2021, at 1:30 p.m., after further briefing had been filed on the motions filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions ("Hearing").
10. Based on the evidence presented at the Hearing, the Court granted Plaintiffs' Motion for Stay Pending Appeal, but required Plaintiffs to post a supersedeas bond of \(\$ 140,000.00\) to be paid by November 12, 2021, at 5:00 p.m. for the stay to be entered.
11. The Court also granted Breckenridge's request for a permanent writ of restitution and ordered that a permanent writ of restitution should be issued that states it is effective as of November 15, 2021 if no supersedeas bond was posted by November 12, 2021.
12. Plaintiffs posted no supersedeas bond on November 12, 2021.
13. Instead, in an underhanded and attempt to further delay and deny Breckenridge its rights, on November 12, 2021, Plaintiffs filed their Motion seeking additional time in which to post a supersedeas bond.
14. Neither Plaintiffs nor their counsel advised Breckenridge of this Motion.
15. Further evidencing Plaintiffs' bad faith, they filed the Motion on an improper ex parte basis, and did not even bother to email Breckenridge's counsel a copy.
16. Rather, as Plaintiffs had intended, Breckenridge did not even receive the Motion until late in the day on Monday, November 15.
17. Breckenridge's counsel immediately prepared this Opposition.
18. Further, Plaintiffs falsely attempt to excuse their failure to obtain a bond in the time provided by the Court by claiming that Plaintiffs had not been provided with a "notice of entry of a copy of any order that has been entered" and thereby claiming that the "Plaintiffs have not had the ability to proceed to obtain a bond without a cop (sic) of an entered order being provided with sufficient time to make application and have the application considered." See Motion at p. 3 .
19. Plaintiffs' statements are false and misleading for at least three (3) reasons. First, in addition to the dubious nature of Plaintiffs' claim to be unable to obtain a bond without a notice of entry of order, Plaintiffs' counsel caused the delay at issue by failing to even respond to the proposed order provided by Breckenridge's counsel, despite numerous calls and emails. Second, neither Plaintiffs nor their counsel ever once stated to Breckenridge that any order was needed to obtain a supersedeas bond.

And third, this is yet another attempt to further delay these proceedings in what has become Plaintiffs' bad faith pattern throughout this litigation.
20. Regarding Plaintiffs' own delay of entry of what they claim is the necessary "notice of entry," Plaintiffs' delay is evidenced by the fact that on October 22, 2021, pursuant to the Court's oral ruling and direction from the Hearing held on October 13, 2021, counsel for Breckenridge Todd Prall, Esq., sent an email to all counsel in the Action attaching a proposed Order Concerning: Breckenridge Property Fund 2016, LLC’s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal ("Proposed Order") for review and approval. See Declaration of Todd Prall ("Prall Declaration"), attached as Exhibit A, at 93 .
21. The email that Mr. Prall used for Plaintiffs' counsel, Michael Millward, was michael@millwardlaw.com. Id. at \(\mathbb{1}\) 3; see October 22, 2021 email, attached as Exhibit B.
22. Mr. Prall received responses approving the Proposed Order from all counsel except for Mr. Millward on that same day, October 22, 2021. See Prall Declaration, Exhibit A, at \(\| 4\).
23. In fact, even in the Motion, Mr. Millward states that he did not even review the Proposed Order until October 26, 2021. See Motion at p. 3, lines 16-19.
24. Even then, Plaintiffs' counsel admits that " \([\mathrm{n}] \mathrm{o}\) objecition (sic) to the [Proposed] Order was was (sic) provided to counsel for Breckenridge at the time." Id.
25. Yet, despite Plaintiffs' conveniently - and only currently - claimed need for a notice of entry of order to obtain a bond, at no time did Mr. Millward reach out to Breckenridge's counsel to express this purported need. See Prall Decl., at \(\| 9\).
26. Not only did Mr. Millward not provide any objection to Breckenridge's counsel on October 26, he conveniently leaves out the fact that he did not even respond to Breckenridge's counsel at that time. In fact, Mr. Millward never responded to the Proposed Order. Id. at \(\mathbb{\|} 8\).
27. Thus, on October 27, 2021, as Mr. Prall still had not heard anything from Mr. Millward regarding the Proposed Order, he sent two additional emails to Mr. Millward informing him that he (Mr. Prall) had not yet received any response from Mr. Millward regarding the Proposed Order, and requested
that Mr. Millward provide a response to the Proposed Order as soon as possible. See Prall Declaration, Exhibit A, at \({ }^{\mathbf{4}} 5\).
28. Initially, Mr. Prall gave Mr. Millward until the end of the business day on October 28, 2021, to provide a response regarding the Proposed Order. However, because the following day, Friday, October 29, 2021, was Nevada Day, Mr. Prall sent Mr. Millward a later email informing him that Mr. Prall needed to hear from him by noon on October 28, 2021, or Mr. Prall would submit the Proposed Order. Id.; see Emails to Mr. Millward dated October 27, 2021, attached as Exhibit C.
29. Moreover, in an attempt to move the process along more quickly, and due to Mr . Millward's unresponsiveness, after sending these emails, Mr. Prall also called Mr. Millward's office and spoke to Becky, who is Mr. Millward's paralegal. She requested that Mr. Prall send the proposed order to her email address at becky@milwardlaw.com. See Prall Declaration, Exhibit A, at ๆ 6. Mr. Prall then forwarded the Proposed Order to Becky's email address, and also forwarded the emails that he had sent to Mr. Millward earlier that day. Id. at ๆ 7; see Emails sent to Becky, dated October 27, 2021, attached as Exhibit D.
30. Despite Mr. Prall's numerous emails and call to Mr. Millward regarding the Proposed Order, Mr. Prall never received a phone call, email or any other correspondence whatsoever from Mr. Millward regarding the Proposed Order. See Prall Declaration, Exhibit A, at \(\mathbb{T} 8\).
31. Accordingly, the Proposed Order was submitted to the Court without Mr. Millward's signature on the afternoon of October 28, 2021. Id. at q 8.
32. Mr. Prall's office received the file-stamped order back from the Court on November 9, 2021. The notice of entry was submitted November 15, 2021. Id. at ¢ 10.

\section*{II. ARGUMENT}
A. Plaintiffs should not be permitted to benefit from their own wrong, including their deliberate delay of entry of the Proposed Order and meritless claim that they did not have time to obtain the required bond.

It is axiomatic under Nevada law that "one may not profit through his own wrong." See Choate v. Ransom, 74 Nev. 100, 103, 323 P.2d 700, 702 (1958) ("The reason, and the only reason, for this rule is that to permit a recovery in which the negligent spouse would have a community interest would violate the rule that one may not profit through his own wrong."); Steen v. Gass, \(85 \mathrm{Nev} .249,253,454\) P.2d 94, 96 (1969) ("a principle that one may profit by his own wrong - a theory obnoxious to both law and equity."). Here the Plaintiffs' bad faith and clear delay is obvious. Plaintiffs claim they did not have time to obtain a supersedeas bond, yet Plaintiffs' counsel fails to mention that he deliberately failed to respond to numerous attempts to obtain his comments and approval for the submission of the Proposed Order, which Plaintiffs themselves claim they needed to obtain the required bond. Plaintiffs cannot deliberately delay the entry of the order they claim they need, then complain that the order was not entered in time. This is simply a pattern of delay by Plaintiffs as evidenced by the fact that the Court previously entered an order enjoining foreclosure if the required bond was posted; Plaintiffs never filed the required bond in that instance either.

Further, aside from a request for an order shortening time, ex parte motions are generally disfavored, as the District of Nevada has clearly recognized:

Courts do not deviate from the adversarial system without very good reason for doing so. Ex parte requests for relief are disfavored. See, e.g., United States \(v\). Thompson, 827 F.2d 1254, 1257 (9th Cir.1987). "Given the value our system places on the adversarial process, it is not surprising that the opportunities for legitimate ex parte applications are extremely limited." In re Intermagnetics America, Inc., 101 B.R. 191, 193 (C.D.Cal.1989). The Local Rules for this District make clear that ex parte motions are only permitted when the movant establishes "compelling reasons" for not providing notice to the opposing party. See Local Rule 7-5(c). This "compelling reasons" standard is a stringent one that is not easily met. Generally speaking, meeting the "compelling reasons" standard requires a showing that either (1) providing notice to the opposing party would enable it to frustrate the movant's ability to obtain relief or (2) the temporal urgency of the matter is such that immediate and irreparable harm would occur if there is any delay in obtaining relief. See, e.g., Mission Power Eng'g Co. v. Continental Cas. Co., 883 F.Supp.

488, 490 (C.D.Cal.1995). Such circumstances must be shown with particularized detail concurrently with the filing of the ex parte request, and a certification should generally be made through a declaration specifying the reasons why notice to the opposing party is not possible.

Maxson v. Mosaic Sales Sols. U.S. Operating Co., LLC, No. 2:14-CV-02116-APG, 2015 WL 4661981, at *1 (D. Nev. July 29, 2015) (emphasis added). In this case, the Motion provides no reason that proper notice and communication could not have been provided to the other parties to the case, including Breckenridge. Further, the Motion provides no specific evidence that indicates the signed final order was required for Plaintiffs to submit applications for supersedeas bond. Indeed, knowing that time it takes to get an order entered where counsel for all the parties have offices in different parts of Nevada, Plaintiffs did not mention this issue at the hearing when the Court stated that the supersedeas bond needed to be submitted within 30 days. The reason is evident: the Plaintiffs' Motion is an unfortunate, and improper, attempt to deliberately and continuously delay and deny Breckenridge its rights. This inappropriate gamesmanship by Plaintiffs should not be permitted. Accordingly, the Motion should be denied.

\section*{III. COUNTER-MOTION FOR SANCTIONS}

In this instance, sanctions against Plaintiffs are warranted. The Motion is brought in bad faith with no reasonable basis and without citation to a single case or statute supporting the relief warranted. Worse yet, the Motion is an obvious attempt to further Plaintiffs' unlawful pattern of delay and deprivation of Breckenridge's rights as ordered by this Court. Accordingly, Breckenridge requests sanctions in the amount of \(\$ 1,617.50\). against Plaintiffs as attorney fees for needing to respond to the instant frivolous and bad faith Motion. \({ }^{1}\)

III

\footnotetext{
\({ }^{1}\) Regarding the requested sanction, in Brunzell the Court determined that factors considered in awarding attorney fees at the conclusion of a matter - as was the case in Brunzell - include "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived." Brunzell v. Golden Gate Nat. Bank, \(85 \mathrm{Nev} .345,349,455\) P.2d 31, 33 (1969). Here the factors are met as the attorneys of Hutchison \& Steffen are highly rated and experienced attorneys, the result at issue is the order granting the writ of restitution, the work performed by the lawyers at issue involved a necessary response to Plaintiffs' improper Motion including 2.9 hours at Brenoch Wirthlin's hourly rate of \(\$ 395 /\) hour, and 2.1 hours at Todd Prall's hourly rate of \(\$ 225 /\) hour. Breckenridge anticipates a favorable result.
}

\section*{IV. CONCLUSION}

For all these reasons, Breckenridge respectfully requests that this Court deny Plaintiffs' Motion in its entirety, issue the writ of permanent restitution which Breckenridge has requested - and to which it is now entitled due to lack of posting of the required bond - and grant such and further relief as the Court deems appropriate.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person

DATED this \(16^{\text {th }}\) day of November, 2021.

\section*{HUTCHISON \& STEFFEN, PLLC}


Brenoch R. Wirthlin (10282)
Alex R. Velto, Esq. (14961)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com
Wedgewood, LLC
Office of the General Counsel
Casey J. Nelson, Esq. (12259)
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
E-mail: caseynelson@wedgewood-inc.com
Attorneys for Breckenridge Property Fund 2016, LLC

\section*{CERTIFICATE OF SERVICE}

I hereby certify that on the date indicated below, I served a true and correct copy of the

\section*{BRECKENRIDGE PROPERTY FUND 2016'S OPPOSITION TO PLAINTIFFS' IMPROPER}

EX PARTE MOTION FOR ADDITIONAL TIME TO OBTAIN SUPERSEDEAS BOND AND COUNTERMOTION FOR SANCTIONS via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs
Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq. WRIGHT FINLAY \& ZAK, LLP
7785 W. Sahara Avenue, \#200
Las Vegas, NV 89117
Attorney for Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust

DATED this \(16^{\text {th }}\) day of November, 2021.

\section*{INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY}

\section*{EXHIBIT A}
\(\xrightarrow[\text { HUTCHISON \& STEFFEN }]{\text { Nectamen }}\)

John T. Steffen (4390)
Brenoch R. Wirthlin (10292)
Alex R. Velto (14961)
HUTCHISON \& STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
mschriever@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel: (702) 305-9157
Fax: (310) 730-5967
caseynelson@wedgewood-inc.com
Attorneys for Intervenor

\section*{THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA}

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

> Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC, PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50.,

Defendants.
BRECKENRIDGE PROPERTY FUND 2016, LLC,

Case No.: 18-CV-01332
Dept No.: II
DECLARATION OF TODD W. PRALL IN
SUPPORT OF OPPOSITION TO EX PARTE MOTION FOR ADDITIONAL TIME TO OBTAIN SUPERSEDEAS BOND
1. I am an attorney for Defendant and Counter-claimant Breckenridge Property Fund 2016, LLC ("Breckenridge") in the case entitled Lincicome 1. Sables, LLC et al. Case No. 18-CV-01332, currently pending in the Third Judicial District Court of the State of Nevada (the "Action"), and I have personal knowledge of the facts set forth herein.
2. I make this declaration in support of Breckenridge's Opposition to the Ex Parte Motion for Additional Time to Obtain Supersedeas Bond (the "Opposition").
3. October 22, 2021, pursuant to the Court's oral ruling and direction from the hearing held on October 13, 2021, I sent an email to all counsel in the Action attaching a proposed Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal for review and approval. The email I used for Mr. Milward was michael@millwardlaw.com. A true and correct copy of the October 22, 2021 email is attached to the Opposition as Exhibit.B.
4. I received responses approving the proposed order from all counsel except for Mr . Millward on that same day, October 22, 2021.
5. On October 27, 2021, I still had not heard anything from Mr. Millward. I sent two emails to Mr. Millward informing him that I have yet received any response from him concerning the proposed order and requested that he provide a response to me as soon as possible. Initially, I gave him until end of business day on the following day, October 28,2021 , to provide me with a response. However, because the following day, Friday, October 29, 2021, was Nevada Day, an observed state holiday, I sent him a later email informing him that I needed to hear from him by noon on October 28, 2021, or I would submit the proposed order. A true and correct copy of the emails sent on October 27, 2021 to Mr. Millward are attached to the Opposition as Exhibit C.
6. After sending these emails, I also called Mr. Millward's office. I spoke to Becky, who is Mr. Millward's paralegal. She requested that I send the proposed order to her email address at becky@milwardlaw.com.
7. I forwarded the proposed order I had previously sent to Mr. Millward to Becky's email address. I also forwarded the emails I had sent to Mr. Millward earlier that day to Becky's email
address. True and correct copies of the emails I sent to Becky are attached to the Opposition as Exhibit D.
8. I never received a phone call, email or any other correspondence from Mr. Millward. Therefore, the proposed order was submitted to the Court without his signature on the afternoon of October 28, 2021.
9. Neither I nor anyone at my officer received any correspondence or communications from Mr. Millward at all since the hearing on October 13, 2021 through the time we received the improper ex parte Motion.
10. This office did not receive the filed-stamped order back from the Court until November 9, 2021. The Notice of Entry of the proposed order was submitted to the Court on November 15, 2021.
11. I declare the forgoing under the penaty of perjury for the laws of the State of Nevada. Dated: 16 Nov 2021


\section*{INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY}

\section*{EXHIBIT B}

\section*{\(\underline{\text { HUTCHISON \& STEFFEN }}\)}

Danielle Kelley
\begin{tabular}{ll} 
From: & Todd W. Prall \\
Sent: & Friday, October 22, 20219:34 AM \\
To: & paige.magaster@akerman.com; michael@millwardlaw.com; \\
& rhernandez@wrightlegal.net; scott.lachman@akerman.com; \\
& melanie.morgan@akerman.com; jclouser@clouserlaw.com; dbrenner@wrightlegal.net; \\
& swade@zbslaw.com \\
Cc: & Danielle Kelley; Brenoch R. Wirthlin \\
Subject: & Lincecome v. Bank of America et al. - Proposed Order \\
Attachments: & Order re Motion for permanent writ of posession and order on motion for stay FINAL \\
& .docx
\end{tabular}

Counsel,
Please find attached a proposed order on the hearing last week for your review. Please let me know if you approve. Also, I have not yet put on signature blocks for all of the other parties. I am not sure if the court requires it or not. If you can affirm what the practice has been in this case and confirm who represents which parties so we can insert that information in as necessary.

Thank you.

\section*{INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY}

\section*{EXHIBIT C}

\section*{\(\underline{\text { HUTCHISON \& STEFFEN }}\)}

\section*{From:}

\section*{Sent:}

To:

Cc:
Subject:

Todd W. Prall
Wednesday, October 27, 2021 1:53 PM
Ramir M. Hernandez; paige.magaster@akerman.com; michael@millwardlaw.com; scott.lachman@akerman.com; melanie.morgan@akerman.com; jclouser@clouserlaw.com; Darren T. Brenner; swade@zbslaw.com
Danielle Kelley; Brenoch R. Wirthlin; Lisa Cox
RE: Lincecome v. Bank of America et al. - Proposed Order

Michael,
Because of how long we have waited, I need a response by noon tomorrow. I expect to submit everything to the Court if I do not hear from you by noon.

Thank you.

\section*{From: Todd W. Prall}

Sent: Wednesday, October 27, 2021 1:47 PM
To: Ramir M. Hernandez <rhernandez@wrightlegal.net>; paige.magaster@akerman.com; michael@millwardlaw.com; scott.lachman@akerman.com; melanie.morgan@akerman.com; jclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox <lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order
Michael,
I need to get this submitted to the Court. I have not heard anything from you as to whether you will approve or not. If I do not hear from you by end of business tomorrow, we will finalize and send out to the Court under a cover stating that the proposed order was sent to you and you have not responded.

Thank you for your immediate attention to this matter.

From: Ramir M. Hernandez <rhernandez@wrightlegal.net>
Sent: Friday, October 22, 2021 10:34 AM
To: Todd W. Prall <TPrall@hutchlegal.com>; paige.magaster@akerman.com; michael@millwardlaw.com;
scott.lachman@akerman.com; melanie.morgan@akerman.com; iclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox <lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order
Hi Todd,
We approve. I've revised with the appropriate signature block for all parties. I believe we still need wet ink signatures in the third judicial district, so I will print the order and mail it to you today with our signature.

Thanks,
Rami

\section*{Ramir M. Hernandez, Esq.}

Attorney

\section*{W WRIGHTFINLAY\&ZAK"' \\ FZ \\ attorneys at law}

7785 W. Sahara Ave., Suite 200
Las Vegas, NV, 89117
(702) 983-5142 Direct
(818) 606-6791 Cell
(702) 946-1345 Fax
(702) 475-7964 Main Ext. 7008
rhernandez@wrightlegal.net

Wright, Finlay \& Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, Utah, Idaho, Wyoming, Hawaii, South Dakota, and Texas

\author{
For escalated communications on matters, please contact the associate's supervising attorney, Darren T. Brenner dbrenner@wrightlegal.net and (702) 608-1871. \\ PLEASE BE ADVISED THAT THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. \\ Confidentiality Note: The information contained in this email is privileged and confidential and is intended only for the use of the individual or entity named If the reader of this email is not the intended recipient, you are hereby notified that any distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify the sender by telephone immediately at (702) 4757964 and arrangements will be made for the return of this material. Thank You.
}

\section*{From: Todd W. Prall <TPrall@hutchlegal.com>}

Sent: Friday, October 22, 2021 9:34 AM
To: paige.magaster@akerman.com; michael@millwardlaw.com; Ramir M. Hernandez <rhernandez@wrightlegal.net>; scott.lachman@akerman.com; melanie.morgan@akerman.com; iclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>
Subject: Lincecome v. Bank of America et al. - Proposed Order
Counsel,
Please find attached a proposed order on the hearing last week for your review. Please let me know if you approve. Also, I have not yet put on signature blocks for all of the other parties. I am not sure if the court requires it or
not. If you can affirm what the practice has been in this case and confirm who represents which parties so we can insert that information in as necessary.

Thank you.

Todd W. Prall
Senior Counsel
\begin{tabular}{|l|}
\hline \\
HUTCHISON \& STEFFEN, PLLC
\end{tabular}
(702) 385-2500
hutchlegal.com
Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.
[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

\section*{INTENTIONALLY LEFT BLANK EXHIBIT PAGE ONLY}

\section*{EXHIBIT D}

\section*{Hutchison \& Steffen \\ A Professional lle}

\author{
From: \\ Sent: \\ To: \\ Subject: \\ Todd W. Prall \\ Wednesday, October 27, 2021 2:03 PM \\ becky@millwardlaw.com \\ FW: Lincecome v. Bank of America et al. - Proposed Order
}

Here are the emails I sent today. I really want to get this out tomorrow and would like to hear back from him.

\section*{From: Todd W. Prall}

Sent: Wednesday, October 27, 2021 1:53 PM
To: Ramir M. Hernandez <rhernandez@wrightlegal.net>; paige.magaster@akerman.com; michael@millwardlaw.com;
scott.lachman@akerman.com; melanie.morgan@akerman.com; jclouser@clouserlaw.com; Darren T. Brenner
<dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox
<lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order
Michael,

Because of how long we have waited, I need a response by noon tomorrow. I expect to submit everything to the Court if I do not hear from you by noon.

Thank you.

\section*{From: Todd W. Prall}

Sent: Wednesday, October 27, 2021 1:47 PM
To: Ramir M. Hernandez <rhernandez@wrightlegal.net>; paige.magaster@akerman.com; michael@millwardlaw.com; scott.lachman@akerman.com; melanie.morgan@akerman.com; iclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox
<lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order
Michael,
I need to get this submitted to the Court. I have not heard anything from you as to whether you will approve or not. If I do not hear from you by end of business tomorrow, we will finalize and send out to the Court under a cover stating that the proposed order was sent to you and you have not responded.

Thank you for your immediate attention to this matter.

From: Ramir M. Hernandez <rhernandez@wrightlegal.net>
Sent: Friday, October 22, 2021 10:34 AM
To: Todd W. Prall <TPrall@hutchlegal.com>; paige.magaster@akerman.com; michael@millwardlaw.com; scott.lachman@akerman.com; melanie.morgan@akerman.com; iclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox
<lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order

Hi Todd,
We approve. I've revised with the appropriate signature block for all parties. I believe we still need wet ink signatures in the third judicial district, so I will print the order and mail it to you today with our signature.

Thanks,
Rami

Ramir M. Hernandez, Esq.
Attorney


7785 W. Sahara Ave., Suite 200
Las Vegas, NV, 89117
(702) 983-5142 Direct
(818) 606-6791 Cell
(702) 946-1345 Fax
(702) 475-7964 Main Ext. 7008
rhernandez@wrightlegal.net
Wright, Finlay \& Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, Utah, Idaho, Wyoming, Hawaii, South Dakota, and Texas

For escalated communications on matters, please contact the associate's supervising attorney, Darren T. Brenner dbrenner@wrightlegal.net and (702) 608-1871.

PLEASE BE ADVISED THAT THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Confidentiality Note: The information contained in this email is privileged and confidential and is intended only for the use of the individual or entity named If the reader of this email is not the intended recipient, you are hereby notified that any distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify the sender by telephone immediately at (702) 475 -
7964 and arrangements will be made for the return of this material.
Thank You.

From: Todd W. Prall <TPrall@hutchlegal.com>
Sent: Friday, October 22, 2021 9:34 AM

To: paige.magaster@akerman.com; michael@millwardlaw.com; Ramir M. Hernandez <rhernandez@wrightlegal.net>; scott.lachman@akerman.com; melanie.morgan@akerman.com; iclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>
Subject: Lincecome v. Bank of America et al. - Proposed Order
Counsel,
Please find attached a proposed order on the hearing last week for your review. Please let me know if you approve. Also, I have not yet put on signature blocks for all of the other parties. I am not sure if the court requires it or not. If you can affirm what the practice has been in this case and confirm who represents which parties so we can insert that information in as necessary.

Thank you.

Todd W. Prall
Senior Counsel
\(\square\)
HUTCHISON \& STEFFEN, PLLC
(702) 385-2500
hutchlegal.com
Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.
[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]
\begin{tabular}{ll} 
From: & Todd W. Prall \\
Sent: & Wednesday, October 27, 2021 2:01 PM \\
To: & becky@millwardlaw.com \\
Cc: & michael@millwardlaw.com \\
Subject: & FW: Lincecome v. Bank of America et al. - Proposed Order \\
Attachments: & Order re Motion for permanent writ of posession and order on motion for stay \\
& FINAL_rmh revisions.docx
\end{tabular}

Here is the order.

From: Ramir M. Hernandez <rhernandez@wrightlegal.net>
Sent: Friday, October 22, 2021 10:34 AM
To: Todd W. Prall <TPrall@hutchlegal.com>; paige.magaster@akerman.com; michael@millwardlaw.com; scott.lachman@akerman.com; melanie.morgan@akerman.com; jclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com
Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; Lisa Cox <lcox@wrightlegal.net>
Subject: RE: Lincecome v. Bank of America et al. - Proposed Order

Hi Todd,

We approve. I've revised with the appropriate signature block for all parties. I believe we still need wet ink signatures in the third judicial district, so I will print the order and mail it to you today with our signature.

Thanks,
Rami

Ramir M. Hernandez, Esq.
Attorney

7785 W. Sahara Ave., Suite 200
Las Vegas, NV, 89117
(702) 983-5142 Direct
(818) 606-6791 Cell
(702) 946-1345 Fax
(702) 475-7964 Main Ext. 7008
rhernandez@wrightlegal.net
Wright, Finlay \& Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, Utah, Idaho, Wyoming, Hawaii, South Dakota, and Texas

NAMWOLF
LAW FIRM MEMBER

For escalated communications on matters, please contact the associate's supervising attorney, Darren T. Brenner dbrenner@wrightlegal.net and (702) 608-1871.

PLEASE BE ADVISED THAT THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Confidentiality Note: The information contained in this email is privileged and confidential and is intended only for the use of the individual or entity named if the reader of this email is not the intended recipient, you are hereby notified that any distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify the sender by telephone immediately at (702) 475 7964 and arrangements will be made for the return of this material. Thank You.

From: Todd W. Prall <TPrall@hutchlegal.com>
Sent: Friday, October 22, 2021 9:34 AM
To: paige.magaster@akerman.com; michael@millwardlaw.com; Ramir M. Hernandez <rhernandez@wrightlegal.net>; scott.lachman@akerman.com; melanie.morgan@akerman.com; jclouser@clouserlaw.com; Darren T. Brenner <dbrenner@wrightlegal.net>; swade@zbslaw.com Cc: Danielle Kelley <dkelley@hutchlegal.com>; Brenoch R. Wirthlin <bwirthlin@hutchlegal.com> Subject: Lincecome v. Bank of America et al. - Proposed Order

Counsel,

Please find attached a proposed order on the hearing last week for your review. Please let me know if you approve. Also, I have not yet put on signature blocks for all of the other parties. I am not sure if the court requires it or not. If you can affirm what the practice has been in this case and confirm who represents which parties so we can insert that information in as necessary.

Thank you.

Todd W. Prall
Senior Counsel
\(\square\)
HUTCHISON \& STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.
[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

\section*{FILED}

Case No.: 18-CV-01332

Dept. No.: II
?O21 NOY 17 AM 9:14


KATHY THOMAS

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,
vs.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING,

\section*{ORDER DENYING EX} PARTE MOTION LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@,
substituted in for DOE 3; and DOES 4-10.
Defendants.

On November 15, 2021, the Plaintiffs filed an Ex Parte Motion for Additional Time. The Court has reviewed the Motion and finds no support for the relief requested.

Therefore, good cause appearing, IT IS HEREBY ORDERED that the Motion is DENIED.

DATED: This 17th day of November, 2021.


\section*{Certificate of Mailing}

I hereby certify that I, Hied Andersen , am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Midden, NV 89423
Scott R. Lachman, Esq. Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
Casey J. Nelson, Esq. Wedgewood, LLC
2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Shad A. Wade
Zieve, Brodnax \& Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148
Matthew K. Schriever, Esq.
Hutchinson \& Steffen, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145
Ramir M. Hernandez, Esq.
Wright, Finlay \& Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This \(\qquad\) day of \(\qquad\) , 2021.


John T. Steffen, Esq. (4390)
Brenoch R. Wirthlin, Esq. (10282)
Alex R. Velto, Esq. (14961)
HUTCHISON \& STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
bwirthlin@hutchlegal.com
Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC

\section*{THIRD JUDICIAL DISTRICT COURT} LYON COUNTY, NEVADA
ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,
v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.
AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II
PERMANENT WRIT OF RESTITUTION

THE STATE OF NEVADA TO THE SHERIFF OR CONSTABLE OF LYON COUNT, GREETING.
WHEREAS on October 3, 2019, Defendant in Intervention/Counterclaimant Breckenridge Property Fund 2016, LLC ("Counterclaimant") filed its Intervenor's Counterclaim ("Counterclaim") pursuant to which Counterclaimant asserted, among other things, claims for quiet title and writ of restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada 89403 ("Property");

WHEREAS on March 18, 2021, Counterclaimant filed its Motion for Summary Judgment ("Counterclaimant's MSJ") seeking judgment on all counterclaims;

WHEREAS on June 23, 2021, this Court entered its Order on Breckenridge Motion for Summary Judgment ("Order") pursuant to which it granted the Counterclaimant's MSJ in its entirety;

WHEREAS in the Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Counterclaimant purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome;

WHEREAS on September 9, 2021, Counterclaimant filed a Motion for Entry of Order Granting Permanent Restitution and Payment of Overdue Rents.

WHEREAS on September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending Appeal.

WHEREAS on October 12,2021, at 1:30 p.m., after further briefing had been filed on the motions filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions.

WHEREAS based on the evidence presented, the Court granted Plaintiff's Motion for Stay Pending Appeal, but required Plaintiffs to post a supersedeas bond of \(\$ 140,000.00\) to be paid by November 12, 2021, at 5:00 p.m. in order for the stay to be entered.

WHEREAS the court also granted Counterclaimant's request for a permanent writ of restitution and ordered that a permanent writ of restitution should be issued that states it is effective as of November 15, 2021 if no supersedeas bond was posted by November 12, 2021.

WHEREAS pursuant to the Order Counterclaimant should have permanent restitution of the Property effective as of November 15, 2021.

WHEREAS, so long as this writ is delivered to you on or after November 15, 2021 and there has been no supersedeas bond posted with the Court:

YOU ARE THEREFORE COMMANDED to take with you the force of the County, if necessary, and cause the said Albert Ellis Lincicome, Jr. and Vicenta Lincicome and any tenants or sub-tenants to be removed from the Property on November 16, 2021 at 9:00 a.m. or as soon as reasonably possible thereafter and allow the Counterclaimant to have permanent peaceable restitution of the same.

GIVEN UNDER MY HAND this \(T^{\frac{t h}{h}}\) day of NOUnbar, 2021.


DISTRICT COURT JUDGE

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person

Respectfully Submitted: HUTCHISON \& STEFFEN, PLLC


Brenoch R. Withlin (10282)
Alex R. Velto (14961)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
bwirthlin@hutchlegal.com

Wedgewood, LLC
Office of the General Counsel
Casey J. Nelson, Esq. (12259)
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
E-mail: caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC```


[^0]:    
    (page 5 or 13 pages)

[^1]:    Instroment whether or not the sums are then due
    Loan No: 0000479436
    Loan No: 0000 Form $30291 / 01$ (pugc of 83 pagas)
    NBVADA=Single Fbmily-Fannit MadFredde Ma
    NBAW MERS NV CVT DT 8 WPF (0101DOCSLDEEDSICVLNV_MRRS CVL)

[^2]:    ${ }^{2}$ Plaintiffs did not dispute this amount when proffered as part of Breckenridge's motion requesting Plaintiff's post rental payments with the Court.

[^3]:    
    Loan No: 0000479436 DRAW MITRS NV CVL DT II WPF (0101DOCSIDEEDSICVLNV_MERS CVL)

    Fotm 3029 ע/01
    (pagc 11 ar ( 3 p pges)

[^4]:    Sintbrbst one addendum to abrugtable ratr ribgr sh Libor arm - mintistatb
    VRAW MX CVL GMM IO ADNDM RDDER : WTE (OLOLDOCSRIDERSICVLWMXOADN RID)

[^5]:    ‘‘"ヶ"

