

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Appellants,

vs.

SABLES, LLC, AS TRUSTEE OF THE
DEED OF TRUST GIVEN BY
VICENTA LINCICOME AND DATED
5/23/2007; FAY SERVICING, 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, LLC; NEWREZ, LLC, D/B/A
SHELLPOINT MORTGAGE
SERVICING, LLC; 1900 CAPITAL
TRUST II, BY U.S. BANK TRUST
NATIONAL ASSOCIATION; AND
MCM-2018-NPL2

Respondents.

Supreme Court No. 83261
District Court Case No. 18-cv-01332
Electronically Filed
Dec 30 2021 10:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**PROF-2013 M4-LEGAL TITLE
TRUST, BY U.S. BANK,
NATIONAL ASSOCIATION, AS
LEGAL TITLE TRUSTEE'S, NEW
REZ, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING, LLC,
AND FAY SERVICING LLC'S
JOINDER TO BANK OF
AMERICA, N.A.'S LIMITED
OPPOSITION TO
BRECKENRIDGE PROPERTY
FUND 2016, LLC'S MOTION TO
DISMISS APPEAL**

Respondents, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee ("U.S. Bank Trust"), NewRez LLC, d/b/a Shellpoint Mortgage Servicing, LLC ("Shellpoint"), and Fay Servicing LLC ("Fay") by and through their attorneys of record, Darren T. Brenner, Esq., and Ramir M. Hernandez, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby joins in all arguments as asserted by Bank of America N.A.'s ("BANA") Limited Opposition

to Breckenridge Property Fund 2016, LLC's Motion to Dismiss Appeal. In addition to those arguments, Respondents add the following:

The Summary Judgment Order at issue (Order Denying Plaintiffs' Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, U.S. Bank and Fay Servicing LLC, hereafter "BANA Summary Judgment Order") disposed of all claims between Appellants and U.S. Bank Trust, Shellpoint, and Fay. In fact, the District Court granted NRCP 54(b) certification as to those parties with no reservations.¹ Because the judgment left no outstanding claims as to Appellants, BANA, U.S. Bank Trust, Shellpoint, and Fay; the District Court appropriately granted Rule 54(b) certification.² Appellants included the BANA Summary Judgment Order in their Notice of Appeal.

However, the Notice of Appeal also included the Order on Breckenridge's Motion for Summary Judgment and the Order granting Sables Non-Monetary Trustee Status pursuant to NRS 107.029. Unlike the BANA Summary Judgment Order, the District Court did not grant these orders 54(b) designation. As such, these

¹ See Exhibit H to BANA's Motion at 17.

² See, *Loomis v. Whitehead*, 124 Nev. 65, 67 n.3, 183 P.3d 890, 891 (2008) ('Because the district court's partial summary judgment pertained only to Loomis and Shanahan's claims and the other plaintiffs' claims remained pending, the district court certified its judgment final as to Loomis and Shanahan under NRCP 54(b), which provides that the court may expressly direct the entry of a final judgment when it completely removes parties from an action that remains pending with respect to others if it finds that there is no just reason for delay.')

orders are not subject to appeal because a final judgment has not been entered in the matter regarding Breckenridge's counter-claim against Appellants filed on or about October 21, 2019,³ and the Crossclaim filed against U.S. Bank Trust filed on October 2, 2020.⁴ Thus, without 54(b) certification all orders, except for the BANA Summary Judgment Order, are ineligible for appeal at this time and Appellants should not have included these two orders in their Notice of Appeal⁵

As such, Breckenridge's requested relief is improper to the extent that it seeks dismissal of the entire appeal, including the BANA Summary Judgment Order. Rather than wholesale dismissal, the appropriate remedy would be for this Court to dismiss the appeal as to the Order on Breckenridge's Motion for Summary Judgment and the Order granting Sables non-monetary status, while not dismissing the appeal on the BANA Summary Judgment Order.

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³ See **Exhibit A**, Intervenor's Counterclaim.

⁴ See **Exhibit B**, Breckenridge Property Fund 2016, LLCs Crossclaim against Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee.

⁵ See, *Bowyer v. Davidson*, 94 Nev. 718, 720 n.1, 584 P.2d 686, 687 (1978) ("Since the summary judgment entered July 28, 1976, did not contain the certification provided by NRCP 54(b), it was interlocutory in nature and not immediately appealable.").

As a result, U.S. Bank Trust, Shellpoint, and Fay, respectfully request that the Court deny Breckenridge's Motion to the Extent that it seeks dismissal of the BANA Summary Judgment Order and grant any other relief it deems appropriate.

DATED this 30th day of December, 2021.

WRIGHT, FINLAY & ZAK, LLP

/s/ Ramir M. Hernandez, Esq.

Darren T. Brenner

Nevada Bar No. 8386

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

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Las Vegas, NV 89117

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

CERTIFICATE OF SERVICE

I certify that I electronically filed on December 30, 2021, the foregoing **PROF-2013 M4-LEGAL TITLE TRUST, BY U.S. BANK, NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE'S, NEW REZ, LLC D/B/A SHELLPOINT MORTGAGE SERVICING, LLC, AND FAY SERVICING LLC'S JOINDER TO BANK OF AMERICA, N.A.'S LIMITED OPPOSITION TO BRECKENRIDGE PROPERTY FUND 2016, LLC'S MOTION TO DISMISS APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Lisa Cox

An employee of Wright, Finlay & Zak, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

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10 *Attorney for Defendant in Intervention / Counterclaimant*

11 **THIRD JUDICIAL DISTRICT COURT**
12 **LYON COUNTY, NEVADA**

13 ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

14 Plaintiff,

15 v.

16 SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust
17 given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a
18 Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
19 2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
20 BANK OF AMERICA, N.A.; and DOES 1-
50.,

21 Defendants.

22 BRECKENRIDGE PROPERTY FUND
23 2016, LLC,

24 Defendant in Intervention.

Case No.: 18-CV-01332

Dept No.: II

INTERVENOR'S COUNTERCLAIM

Caption continued on next page.

1 BRECKENRIDGE PROPERTY FUND
2016, LLC,

2 Counterclaimant,

3 vs.

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

7 Counterdefendants.

8 COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC
9 (“Counterclaimant”), by and through its counsel of record, HUTCHISON & STEFFEN,
10 PLLC and WEDGEWOOD, LLC, and hereby files this Counterclaim against ALBERT
11 ELLIS LINCICOME, JR., VICENTA LINCICOME, and DOE OCCUPANTS 1-5
12 (collectively “Counterdefendants”) as follows:

13 **JURISDICTION AND VENUE**

14 1. This court has subject matter jurisdiction over this action under § 6, Article
15 6 of the Nevada Constitution.

16 2. This Court has subject matter jurisdiction over this matter.

17 3. Defendants has sufficient minimum contacts with Nevada so as to allow
18 this Court to exercise jurisdiction over it.

19 4. Venue is proper in this Judicial District under NRS § 13.010 and 13.040.

20 **PARTIES**

21 5. The following are real parties in interest pursuant to NRCP 17.

22 6. ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME are
23 individual residents of Lyon County, Nevada residing at the property located at 70
24 Riverside Drive, Dayton, Nevada 89403 (“Subject Property”).

7. The Defendants DOE OCCUPANTS 1-5 are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure, are all unknown persons or business entities currently unknown to Counterclaimant who have wrongfully remained in the Subject Property, and who are believed to be responsible for the events and happening referred to in this Complaint, causing injuries and damages to Counterclaimant. At such time when the names of said DOE OCCUPANTS 1-5 have been ascertained, Counterclaimant will request leave from the Court to insert their true names and capacities and join them in this action.

FACTUAL ALLEGATIONS

8. On October 12, 2018, Sables, LLC recorded a Notice of Trustee's Sale ("NOS") setting a foreclosure sale date for the Subject Property because the Counterdefendants were in default of loan obligations.

9. Counterdefendants subsequently filed the underlying Complaint in this action and recorded a Lis Pendens with the county recorder on November 8, 2018 at Document No. 588549, seeking to postpone or cancel the scheduled foreclosure sale.

10. On December 31, 2018, this Court entered an Order enjoining Sables, LLC from foreclosing on the Subject Property on the condition that Counterdefendants post a bond in the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per month thereafter. (Exhibit #1).

11. The Counterdefendants failed to post the required bond and security, which resulted in the foreclosure sale proceeding forward on January 4, 2019. (*Id.*).

12. Counterclaimant purchased the Subject Property at the NRS 107 foreclosure sale for \$294,000.01 and took title thereto. (Exhibit #2).

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1 13. Despite Counterclaimant's sole and superior ownership interest in the
2 Subject Property, the Lis Pendens remains a cloud on title and negatively affects
3 Counterclaimant's interests in the Subject Property.

4 14. The Counterdefendants were in possession of the Subject Property at the
5 time Counterclaimant purchased the Subject Property and have been in possession since
6 that date.

7 15. On or about January 28, 2019, Counterclaimant served a Three-Day Notice
8 to Quit to the Counterdefendants. (Exhibit #3).

9 16. Notwithstanding the Three-Day Notice to Quit, the Counterdefendants have
10 remained in possession of the Subject Property up to and including the present time.

11 17. The Counterclaimant has made repeated demand on the Counterdefendants
12 to vacate the Subject Property, but the Counterdefendants, without cause or reason, have
13 refused to vacate the Subject Property.

14 18. The Counterdefendants continue in possession of the Subject Property
15 notwithstanding the termination of the tenancy by service of the aforesaid Three-Day
16 Notice.

17 19. The Counterdefendants' actions are in violation of NRS 40.250-255 and the
18 Counterclaimant is entitled to possession of the Subject Property as prescribed in NRS
19 40.290-420.

20 20. Pursuant to NRS 40.360, Counterclaimant is further entitled to treble
21 damages occasioned by Counterdefendants' unlawful detainer, including, but not limited
22 to, the reasonable rental value of the Subject Property as the Counterdefendants have been
23 in possession from January 4, 2019 until the time that Counterdefendants vacate the
24 Subject Property.

21. As a result of the Counterdefendants' actions, the Counterclaimant has suffered damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

22. It has become necessary for the Counterclaimant to retain the services of counsel to prosecute these claims and Counterclaimant is entitled to any and all costs incurred herein including, without limitation, any and all attorneys fees.

FIRST CAUSE OF ACTION
(Quiet Title)

23. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 22 inclusively and incorporates them by reference as if fully set forth herein.

24. Counterclaimant owns in fee simple title to the Subject Property.

25. Counterdefendants' claim, or may have claimed, an interest in the Subject Property adverse to Counterclaimant; Counterclaimant' claims are without any right, estate, title, lien, or interest in the Subject Property or any part thereof.

26. Counterclaimants' claim of any interest, estate, right, title or lien in or to the Subject Property is adverse to Counterclaimant and such claim or claims constitute a cloud on Counterclaimant's Property.

27. Counterclaimant is entitled to a judgment from this Court pursuant to NRS 40.010, *et seq.*, quieting title to the Subject Property in Counterclaimant's favor and declaring that the Counterdefendants do not have any estate, right, title, lien or interest in or to the Subject Property.

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1 **SECOND CAUSE OF ACTION**

2 **(Slander of Title)**

3 28. Counterclaimant repeats and realleges each and every allegation contained
4 in paragraphs 1 through 27 inclusively and incorporates them by reference as if fully set
5 forth herein.

6 29. Counterdefendants, by allowing the November 8, 2018 Lis Pendens to
7 remain recorded against the Subject Property, has made false and malicious
8 communications disparaging to Counterclaimant's title in the Subject Property.

9 30. Counterclaimant has been damaged by the conduct of the
10 Counterdefendants in an amount in excess of \$15,000.00, which amount will be proven at
11 the time of trial of this matter.

12 31. The conduct of the Counterdefendants has been fraudulent and malicious
13 entitling the Counterclaimant to punitive damages against the Counterdefendants in an
14 amount sufficient to punish the Counterdefendants and to deter similar conduct in those
15 similarly situated.

16 **THIRD CAUSE OF ACTION**

17 **(Writ of Restitution)**

18 32. Counterclaimant repeats and realleges each and every allegation contained
19 in paragraphs 1 through 31 inclusively and incorporates them by reference as if fully set
20 forth herein.

21 33. The Counterclaimant is entitled to a Writ of Restitution for the Subject
22 Property pending the outcome of this matter.

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24 ///

1 34. The Counterdefendants should be required to pay reasonable rents for the
2 period of time from service of the Three-Day Notice until such time as the
3 Counterdefendants vacate the Subject Property.

4 **FOURTH CAUSE OF ACTION**
5 **(Unjust Enrichment)**

6 35. Counterclaimant repeats and realleges each and every allegation contained
7 in paragraphs 1 through 34 inclusively and incorporates them by reference as if fully set
8 forth herein.

9 36. On or about January 4, 2019, the Counterclaimant became the owner of the
10 Subject Property.

11 37. Counterclaimant is entitled to sole use and possession of the Subject
12 Property.

13 38. The Counterdefendants have unjustly retained possession of the Subject
14 Property, rightfully owned by the Counterclaimant, against the fundamental principles of
15 justice, equity, and good conscience.

16 39. Despite repeated demands to vacate the Subject Property, the
17 Counterdefendants have remained in possession of the Subject Property up to and
18 including the present time without cause or reason and refused to vacate the Subject
19 Property and give Counterclaimant peaceable restitution of the Subject Property.

20 40. The Counterdefendants have not paid any rents or monies to
21 Counterclaimant for possession of the Subject Property from the time the Counterclaimant
22 became the owner of it.

23 ///

24 ///

41. The Counterdefendants have benefited from the possession of the Subject Property, without cause or reason, to the inequitable and unjust detriment of the Counterclaimant.

42. The Counterdefendants have been unjustly enriched to the detriment of the Counterclaimant. The Counterdefendants continual possession of the Subject Property, despite Counterclaimant's repeated demands that the Counterdefendants vacate the Subject Property, has resulted in the Counterclaimant suffering damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

FIFTH CAUSE OF ACTION

(Rent or Monies for Possession of the Subject Property)

43. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 42 inclusively and incorporates them by reference as if fully set forth herein.

44. On or about January 4, 2019, the Counterclaimant became the owner of the Subject Property.

45. The Counterclaimant is entitled to use and possession of the Subject Property.

46. The Counterdefendants have retained possession of the Subject Property, rightly owned by the Counterclaimant.

47. Despite repeated demands to vacate the Subject Property, the Counterdefendants have remained in possession of the Subject Property up to and including the present time without cause or reason, and refuses to vacate the Subject Property and give Counterclaimant peaceable restitution of same.

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48. The Counterdefendants have not paid any rents or monies to the Counterclaimant for possession of the Subject Property from the time the Counterclaimant became the owner of it.

49. The Counterdefendants have benefited from possession of the Subject Property, without cause or reason, and has not paid Counterclaimant, the rightful owner of the Subject Property, any rents or monies for possession of the Subject Property.

50. Because the Counterdefendants have received the benefit from possession of the Subject Property owned by the Counterclaimant, the Counterdefendants should be compelled to pay Counterclaimant rents or monies for possession of the Subject Property in an amount that will be determined at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants as follows:

1. For damages against the Counterdefendants in an amount in excess of \$15,000.00;
2. For restitution and possession of the Subject Property;
3. For a Writ of Restitution without bond;
4. For the Court to quiet title to the Subject Property in favor of Counterclaimant;
5. For the Court to declare that title in the Subject Property is vested in the Counterclaimant free and clear of all other liens, Lis Pendens', and encumbrances and that the Counterdefendants herein have no estate, right, title or interest in the Subject Property.

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6. For an award of attorney's fees and litigation costs incurred; and

7. Such other and further relief as may be deemed just and proper under the circumstances.

DATED this 30 day of October, 2019.

~~HUTCHISON & STEFFEN, PLLC~~

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*Attorney for Defendant in Intervention /
Counterclaimant*

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 **INTERVENOR'S COUNTERCLAIM** via U.S. Mail to the parties designated below.

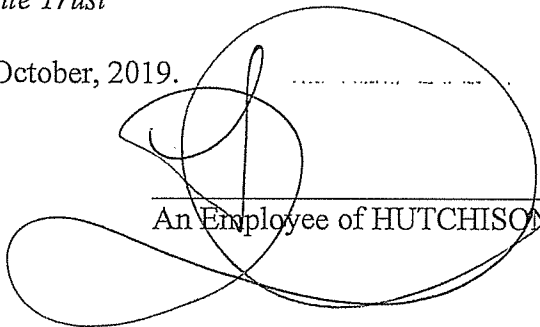
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Attorney for Bank of America

DATED this 3 day of October, 2019.


An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

INTERVENOR'S COUNTERCLAIM

18-CV-01332

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	Order date 12/31/2018	8
2	Deed Upon Sale	4
3	Three Day Notice to Quit	4

EXHIBIT 1

EXHIBIT 1

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANYA GEL RIVER
COURT ADMINISTRATION
THIRD JUDICIAL DISTRICT

Andrea Andersen

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.

ORDER

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; for
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent Injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the
15 Application and Response previously filed before the Court as well as documents presented
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date
28

1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of
27 the LMA until 2017;

28 //

ORDER

PAGE 3 OF 8

1 14. That on November 26, 2014, Bank of America appeared in the Lincicomes'
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the
3 automatic stay, pursuant to 11 U.S.C. § 362;

4 15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6 16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a
7 discharge of all of their scheduled debts;

8 17. That on August 1, 2015, Bank of America transferred the servicing of the 2007
9 DOT as modified by the LMA to Fay Servicing;

10 18. That all statements provided by Fay Servicing to the Lincicomes between
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had
12 been modified by the LMA.

13 19. All statements between August 10, 2015 and October 10, 2018, reported the
14 principal balance owed, the applicable interest rate, the payment amount, the total
15 arrearage owed, as well as the total number of payments remaining due;

16 20. That on November 10, 2015, Bank of America assigned its interest in the Deed
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title
18 Trustee (hereinafter "US Bank");

19 21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.
22 572258;

23 22. That the NOD provides that the "subject Deed of Trust was modified by Loan
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25 23. That the NOD provides that all monthly installments from "9/1/2008" forward
26 are due, instead of 9/1/2009 as required by the LMA;

27 24. That the NOD provides that the principal balance owed is \$381,150.00, instead
28 of \$417,196.58 as provided in the LMA;

1 25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5 26. That under the circumstances the foreclosure of the Lincicome's residence
6 would cause them irreparable injury;

7 27. The LMA appears to be a valid modification of the 2007 DOT;

8 28. That based on the record before the Court at the hearing neither Fay Servicing
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007
10 DOT as modified by the LMA;

11 29. That based on the record before the Court at the hearing neither Fay Servicing
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under
13 the 2007 DOT as modified under the LMA;

14 30. That based on the record before the Court at the hearing neither Fay Servicing
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA
16 is paid; and

17 31. That based on the record before the Court at the hearing neither Fay Servicing
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as
19 modified under the LMA.

20 The Court hereby enters the following Conclusions of Law:

21 1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS
22 107.560 is applicable to this foreclosure matter;

23 2. That Plaintiffs established that Irreparable Injury would result if Defendant
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel
26 Number 29-401-17;

27 //

28 //

ORDER

PAGE 5 OF 8

1 3. That Plaintiffs have established that they will succeed on their claim that
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information
3 required to be provided prior to the initiation of a foreclosure; and

4 4. That Plaintiffs have established to the Court's satisfaction that they were likely
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7 THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8 1. That Sables, LLC, is hereby enjoined from selling at public auction the real
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document
11 No. 587470, until further order of the Court;

12 2. That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of
14 Bond filing;

15 3. That the Injunction shall be effective against Defendants so long as bond is
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,
17 and on the 20th day of each month thereafter with the Third Judicial District Court Clerk's
18 office;

19 4. Plaintiffs shall file a notice of compliance with the requirement to pay additional
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the
21 same upon Defendants after making payment of additional security as set forth above;

22 5. That failure of Plaintiffs to timely post a bond and provide notice of bond by
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter
27 served upon Defendants; and

28 //

ORDER

1 Reviewed, approved and submitted this 18th day of December, 2018.

2
3 

4 Ramir M. Hernandez, Esq.
5 Nevada Bar No. 13146
6 Wright, Finlay & Zak
7 7785 W. Sahara Ave., Suite 200
8 Las Vegas, NV 89117
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EXHIBIT 2

EXHIBIT 2

70 RIVERSIDE DR

Doc #: 591393

01/26/2019 09:21 AM Page: 1 of 2

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

Fee: \$38.00 RPTT: \$1,148.65

Recorded By: Inhumildad

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

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to Only Without Liability
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.65

The Grantee Herein WAS NOT the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein 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 Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

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

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official 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 having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

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

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation
Only Without Liability

Forward Tax Statements to
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

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The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein 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 Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

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

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

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This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official 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 having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt 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, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey
Neal

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

State of CALIFORNIA
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 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

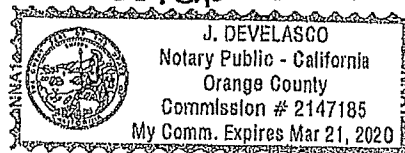
WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a) 029-401-17
b) _____
c) _____
d) _____

2. Type of Property:

- | | | | |
|-----------------------------|--------------|--|------------------|
| a) <input type="checkbox"/> | Vacant Land | b) <input checked="" type="checkbox"/> | Single Fam. Res. |
| c) <input type="checkbox"/> | Condo/Twnhse | d) <input type="checkbox"/> | 2-4 Plex |
| e) <input type="checkbox"/> | Apt. Bldg | f) <input type="checkbox"/> | Comm'l/Ind'l |
| g) <input type="checkbox"/> | Agricultural | h) <input type="checkbox"/> | Mobile Home |
| | Other _____ | | |

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property

\$ \$294,000.01

b. Deed in Lieu of Foreclosure Only (value of property)

(_____)

c. Transfer Tax Value:

\$ \$294,000.01

d. Real Property Transfer Tax Due

\$ 1148.86

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred; 100 %

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

Signature  Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Sables, LLC, a Nevada limited liability company
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Breckenridge Property Fund, 2016, LLC
Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

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

Print Name: First American Escrow #: ACCW

Address: 1000 Wynn Station

City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

EXHIBIT 3

THREE-DAY NOTICE TO QUIT

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

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

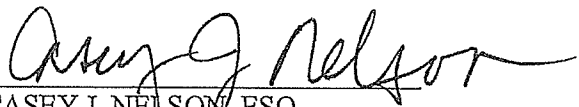
YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

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 twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC


CASEY J. NELSON, ESQ.
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*

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 avoid 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 25th day of January, 2019.

WEDGEWOOD, LLC


CASEY J. NELSON, ESQ.
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*

Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff				For Court Use Only 	
Ref. No. or File No.: 70 RIVERSIDE DR.					
Insert name of Court, and Judicial District and Branch Court:					
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case 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 copies of the Three-Day Notice to Quit, Notice to Tenant
3.
 - a. Party served: Vicenta Lincicome; Tenant and Subtenant and All Occupants
 - b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. I served the party:
 - a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
 - b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in Item 4, via Certified Mail issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
 - a. Toni Ruckman (R-052005, Washoe)
 - b. FIRST LEGAL
2920 N. Green Valley Parkway, Suite 514
Henderson, NV 89014
 - c. (702) 671-4002
 - d. The Fee for Service was:

Pursuant to NRS 53.045

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

01/29/2019

(Date)

Toni L Ruckman

(Signature)



AFFIDAVIT OF
SERVICE

3012509
(55105770)

7001 0000 2000 1005 0251

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

DAYTON, NV 89403

OFFICIAL USE

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)

\$7.80

☐ Return Receipt (electronic)

\$0.00

☐ Certified Mail Restricted Delivery

\$0.00

☐ Adult Signature Required

\$0.00

☐ Adult Signature Restricted Delivery

\$0.00

Postage \$0.55

Total Postage and Fees \$6.85

Sent To VICENTA LINCICOME

Street or TENANT/SUBTENANT/ALL OCCUPANTS

City, State 70 RIVERSIDE DR.

DAYTON, NV 89403-9055

01/28/2019

Postmark Here

55105770

SITUATIONS

EXHIBIT B

EXHIBIT B

EXHIBIT B

FILED

2020 OCT -2 PM 4:16

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Lindsey McCabe DEPUTY

1 John T. Steffen (4390)
Matthew K. Schriever (10745)
2 Alex R. Velto (14961)
HUTCHISON & STEFFEN, PLLC
3 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
4 Telephone: (702) 385-2500
5 Facsimile: (702) 385-2086
mschriever@hutchlegal.com
6

7 Casey J. Nelson (12259)
WEDGEWOOD, LLC
8 Office of the General Counsel
2320 Potosi Street, Suite 130
9 Las Vegas, Nevada 89146
Telephone: (702) 305-9157
10 Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com
11 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
12 *Breckenridge Property Fund 2016, LLC*

13 **THIRD JUDICIAL DISTRICT COURT**
14 **LYON COUNTY, NEVADA**

15 ALBERT ELLIS LINCICOME, JR., and
16 VICENTA LINCICOME,

17 Plaintiff,

18 v.

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

28 Defendants.

Case No.: 18-CV-01332

Dept No.: II

**BRECKENRIDGE PROPERTY
FUND 2016, LLC'S CROSSCLAIM
AGAINST PROF-2013-M4 LEGAL
TITLE TRUST, BY U.S. BANK
NATIONAL ASSOCIATION, AS
LEGAL TITLE TRUSTEE**

1 BRECKENRIDGE PROPERTY FUND 2016,
2 LLC,

3 Counterclaimant,

4 vs.

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

7 Counterdefendants.

8 BRECKENRIDGE PROPERTY FUND 2016,
9 LLC,

10 Cross-Plaintiff,

11 vs.

12 PROF-2013-M4 LEGAL TITLE TRUST, BY
13 U.S. BANK NATIONAL ASSOCIATION, AS
14 LEGAL TITLE TRUSTEE,

15 Cross-Defendant.

16 COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC ("Cross-
17 Plaintiff"), by and through its counsel of record, HUTCHISON & STEFFEN, PLLC and
18 WEDGEWOOD, LLC, and hereby files this Crossclaim against PROF-2013-M4 LEGAL
19 TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE
20 TRUSTEE ("Cross-Defendant") as follows:

21 **JURISDICTION AND VENUE**

22 1. This court has subject matter jurisdiction over this action under § 6, Article
23 6 of the Nevada Constitution.

24 2. This Court has subject matter jurisdiction over this matter.

25 3. Cross-Defendant has sufficient minimum contacts with Nevada so as to
26 allow this Court to exercise jurisdiction over it.

27 4. Venue is proper in this Judicial District under NRS § 13.010 and 13.040.

28 ///

1 **PARTIES**

2 5. The following are real parties in interest pursuant to NRCP 17.

3 6. Cross-Plaintiff is a limited liability company authorized to do business and
4 doing business in Lyon County, Nevada and is the lawful title holder of the real property
5 located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property").

6 7. Cross-Defendant is, and at all times pertinent hereto was, a national
7 banking association authorized to do business and doing business in Lyon County,
8 Nevada.

9 **FACTUAL ALLEGATIONS**

10 8. In May 2007, Albert and Vicente Lincicome ("Lincicome's") obtained a
11 loan from Sierra Pacific ("Sierra Loan") to finance their purchase of the Subject Property.

12 9. As security for repayment of the Sierra Loan, the Lincicome's executed a
13 first priority Deed of Trust against the Subject Property ("Deed of Trust"), which was
14 recorded with the Lyon County Recorder's Office on or about May 25, 2007.

15 10. Thereafter, the Deed of Trust was eventually assigned to PROF-2013-M4
16 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("Cross-
17 Defendant") through a Nevada Assignment of Deed of Trust, which was recorded with the
18 Lyon County Recorder's Office on or about November 25, 2015.

19 11. Cross-Plaintiff is informed and believes, and on that basis alleges, that
20 during the Lincicome's ownership of the Subject Property, they became delinquent in the
21 payment of the Sierra Loan.

22 12. As a result of that delinquency, Cross-Defendant caused its foreclosure
23 agent and/or trustee to record a Notice of Default and Election with the Lyon County
24 Recorder's Office on or about November 3, 2017.

25 13. Thereafter, Cross-Defendant caused its foreclosure agent and/or trustee to
26 record a Notice of Trustee's Sale with the Lyon County Recorder's Office.

27 14. The Lincicome's subsequently filed the underlying Complaint in this
28 action, seeking to postpone or cancel the scheduled foreclosure sale.

1 15. On December 31, 2018, this Court entered an Order enjoining the
2 foreclosure on the Subject Property on the condition that the Lincicome's post a bond in
3 the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per month
4 thereafter.

5 16. The Lincicome's failed to post the required bond and security, which
6 resulted in the foreclosure sale proceeding forward on January 4, 2019.

7 17. Counterclaimant purchased the Subject Property at the NRS 107
8 foreclosure sale for \$294,000.01 and took title thereto.

9 18. The acquisition of the Subject Property by Cross-Plaintiff was: (i) at or
10 above fair market value for the Subject Property; (ii) made in good faith and for valuable
11 consideration; and (iii) made without knowledge of any adverse legal or equitable claim to
12 the Subject Property.

13 19. Cross-Plaintiff filed a Counterclaim against the Lincicome's on October 3,
14 2019 through which it claims ownership to the Subject Property, seeks to quiet title in its
15 favor, seeks possession of the Subject Property, and seeks other monetary damages

16 20. On December 20, 2019, the Lincicome's filed their Second Amended
17 Complaint through which it claims ownership to the Subject Property, seeks to quiet title
18 in its favor, seeks to set aside Cross-Defendant's foreclosure sale, and seeks other
19 monetary damages.

20 21. In the event the Lincicome's claims to set aside the foreclosure sale are
21 sustained, then Cross-Plaintiff is entitled to damages against Cross-Defendant for its
22 wrongful foreclosure sale of the Subject Property.

23 22. It has become necessary for the Cross-Plaintiff to retain the services of
24 counsel to prosecute these claims and Cross-Plaintiff is entitled to any and all costs
25 incurred herein including, without limitation, any and all attorney fees.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 (Wrongful Foreclosure/Rescission and Restitution)

3 23. Cross-Plaintiff repeats and realleges the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 24. Cross-Plaintiff properly acquired title and ownership of the Subject
6 Property in exchange for good and valuable consideration paid.

7 25. In the event the Lincicome's claims to set aside the foreclosure sale are
8 sustained, then Cross-Defendant's sale of the Subject Property to Cross-Plaintiff was
9 wrongful, null, void, and of no effect.

10 26. If Cross-Defendant's foreclosure sale was wrongful, null, void, and of no
11 effect, then it would be unjust for Cross-Defendant to retain the benefit of its invalid
12 foreclosure sale. Thus, the sale must be rescinded and the funds paid by Cross-Plaintiff's
13 invalid foreclosure sale must be returned.

14 27. As a direct, legal, and proximate result of Cross-Defendant's actions,
15 Cross-Plaintiff has been damaged by suffering a loss of equity, loss of rental income,
16 unavailability of credit, and increased costs of credit in an amount in excess of Fifteen
17 Thousand Dollars (\$15,000.00).

18 WHEREFORE, Cross-Plaintiff prays for the following:

19 1. In the event the Court does not order, declare, and determine that Cross-
20 Plaintiff has free and clear title to the Subject Property as prayed for in Cross-Plaintiff's
21 counterclaim against the Lincicome's, then the Court must order, declare, and determine
22 that Cross-Defendant's foreclosure sale and deed to Cross-Plaintiff was wrongful, null,
23 void, and of no effect; that the foreclosure sale must be rescinded; and that the funds paid
24 by Cross-Plaintiff be returned;

25 2. For an award of damages and losses against Cross-Defendant in an amount
26 in excess of \$15,000.00 to be proven at trial;

27 3. For an award of reasonable attorney's fees and costs incurred in this action;
28 and;

4. For such other and further relief as the Court may deem proper.

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 2 day of October, 2020.

HUTCHISON & STEFFEN, PLLC

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*Attorney for Defendant, Counterclaimant,
and Cross-Plaintiff,
Breckenridge Property Fund 2016, LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Hutchison & Steffen, and that on the date
3 indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY**
4 **FUND 2016, LLC'S CROSSCLAIM AGAINST PROF-2013-M4 LEGAL TITLE**
5 **TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE**
6 **TRUSTEE** via U.S. Mail to the parties designated below.

7 Michael G. Millward, Esq.
8 MILLWARD LAW, LTD.
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Attorney for Plaintiffs

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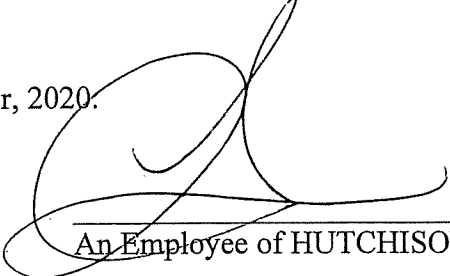
Attorney for Sables, LLC

15 *Attorney for Prof-2013-M4 Legal Title*
16 *Trust by US. Bank, National Association*
17 *as Legal Title Trustee; Fay Servicing,*
18 *LLC, and Shellpoint Mortgage Servicing,*
19 *LLC*

20 Darren T. Brenner, Esq.
21 Scott R. Lachman, Esq.
22 ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134

Attorney for Bank of America

23 DATED this 21 day of October, 2020.

24 
25 An Employee of HUTCHISON & STEFFEN
26
27
28