IN THE SUPREME COURT OF NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT,

Appellant,

vs.

NATIONSTAR MORTGAGE LLC,

Respondent.

Case No. 82449

APPEAL
from the Eighth Judicial District Court, Department XIV
The Honorable Adriana Escobar, District Judge
District Court Case No. A-13-689240-C

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

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

Nationstar Mortgage LLC dba Mr. Cooper Group Inc.

Nationstar Sub1 LLC

Nationstar Sub2 LLC

Nationstar Mortgage Holdings Inc.

KKR Wand Investors Corporation, a Cayman Islands corporation.

Akerman LLP

Federal Home Loan Mortgage Corporation

DATED this 13th day of August, 2021.

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JURISDICTIONAL STATEMENT

Respondent Nationstar Mortgage LLC (**Nationstar**) agrees that this Court has jurisdiction under NRAP 3A(b)(1). *See* Appellant's Opening Br. (**AOB**) at xii. The Notice of Entry of Order Granting Nationstar's Motion for Summary Judgment was served on January 5, 2021. 13 Appellant's Appendix (**AA**) at 001874-76. Appellant Saticoy Bay LLC Series 4641 Viareggio Ct (**Saticoy Bay**) timely filed its appeal on February 3, 2021. *See* NRAP 4(a)(1) (notice of appeal must be filed "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served"); 13 AA001891-96.

ROUTING STATEMENT

Although "Rule 17 does not list quiet title matters as one of the cases retained by the Supreme Court," *see* AOB xii, the Rule does not specify quiet-title actions as one of the types of cases presumptively assigned to the Court of Appeals either, *see* NRAP 17(b). This appeal is presumptively retained by this Court because it raises a question of statewide public importance. *See* NRAP 17(a)(12).

Saticoy Bay asserts that it "believes this appeal should be assigned to the Court of Appeals." AOB xii. That position is incongruous with its assertion in other Federal Foreclosure Bar litigation that the arguments it routinely advances on appeal are not "'frivolous' until the Nevada Supreme Court issues a precedential opinion" that specifically forecloses them. *See* Appellant's Resp. to Order at 4, *Nationstar*

Mortg. LLC v. Saticoy Bay LLC Series 9229 Millikan Ave., No. 19-17043 (9th Cir. 2021) (ECF No. 56). The Court should not countenance Saticoy Bay's self-serving position that (1) only the Nevada Supreme Court can definitively resolve issues presented in this appeal, but (2) the case should not be assigned to that Court.

INTRODUCTION

This appeal involves a fact pattern familiar to the Court: A purchaser of property sold at a homeowners' association foreclosure sale (the **HOA Sale**) contends that it acquired free-and-clear title because, under NRS 116.3116 (the **State Foreclosure Statute**), the HOA Sale purportedly extinguished a deed of trust encumbering the property at the time of the foreclosure.

But because the Federal Home Loan Mortgage Corporation (**Freddie Mac**) owned the deed of trust (**Deed of Trust**) at the time of the HOA Sale, a federal statute precludes that result here. Specifically, the Housing and Economic Recovery Act of 2008 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq*.), provides that property, including lien interests, of Freddie Mac and the Federal National Mortgage Association (**Fannie Mae**) (together, the **Enterprises**) cannot be extinguished by any foreclosure process without the consent of the Federal Housing Finance Agency (**FHFA** or the **Conservator**) while the Enterprises are under FHFA's conservatorship. 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**). Thus, the Federal Foreclosure Bar incorporates three elements: (1) Freddie Mac had to be under FHFA's conservatorship at the time of the HOA Sale; (2) Freddie Mac had to have a cognizable interest in the property under Nevada law; and (3) FHFA cannot have consented to the extinguishment of Freddie Mac's property interest. *See id.*.

The district court found all three elements were established, concluding that Freddie Mac has been in FHFA conservatorship since 2008, that Freddie Mac owned the Deed of Trust at the time of the HOA Sale, and that FHFA did not consent to the Deed of Trust's extinguishment. 13 AA001865-71. Because Nationstar's evidence established that the Federal Foreclosure Bar applied, the district court correctly ruled that "the HOA Sale did not extinguish the Deed of Trust" and entered summary judgment in favor of Nationstar. *See* 13 AA001870-71.

In this appeal, Saticoy Bay argues that (1) Nationstar's evidence was insufficient to support entry of summary judgment in Nationstar's favor; (2) the publicly recorded documents did not reflect Freddie Mac's interest in the Deed of Trust; and (3) Freddie Mac's acquisition of the promissory note and Deed of Trust did not comply with the statute of frauds. Saticoy Bay also argues that it did not need to obtain FHFA's consent to extinguish the Deed of Trust. Finally, Saticoy Bay contends that it is entitled to free-and-clear title as a bona fide purchaser.

Saticoy Bay has offered these unsupported arguments before; the Court has rejected them each time and should do so again here. Saticoy Bay's approach to Federal Foreclosure Bar-related appeals is consistent with an incentive to prolong the litigation, as it may continue to collect rent on the property at issue until there is a final judgment. The Federal Foreclosure Bar protected Freddie Mac's Deed of

Trust from extinguishment through the HOA Sale, and the district court properly granted Nationstar's motion for summary judgment. This Court should affirm.

ISSUES PRESENTED

I. The Federal Foreclosure Bar's Elements.

A. Freddie Mac's Property Interest.

1. *Sufficiency of the Evidence.* Whether the district court correctly concluded that the evidence Nationstar proffered was admissible and sufficient to establish Freddie Mac's ownership of the Deed of Trust at the time of the HOA Sale.

2. *Deed of Trust Owner v. Beneficiary*. Whether, at the time of the HOA Sale, Freddie Mac maintained a valid property interest while its servicer, Nationstar, served as the Deed of Trust's record beneficiary.

3. *Statute of Frauds*. Whether Freddie Mac's acquisition of the loan—a transaction that closed without objection long ago, and to which Saticoy Bay was a complete outsider—withstands Saticoy Bay's statute-of-frauds challenge.

B. FHFA's Consent. Whether FHFA's consent was required to allow for the extinguishment of the Deed of Trust.

II. Bona Fide Purchaser. Whether the Federal Foreclosure Bar preserved Freddie Mac's interest notwithstanding Nevada's bona fide purchaser statutes.

STATEMENT OF THE CASE

The district court found that Freddie Mac owned the promissory note and Deed of Trust on the subject property that secured repayment of the note, and that FHFA did not consent to the extinguishment of the Deed of Trust through the HOA Sale. Applying the same reasoning this Court has endorsed in several decisions—including *Daisy Trust v. Wells Fargo Bank, N.A.*, 445 P.3d 846 (Nev. 2019) (en banc), and *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018)—the district court held that because the Federal Foreclosure Bar protected Freddie Mac's Deed of Trust from extinguishment, Saticoy Bay took title subject to the Deed of Trust. *See* 13 AA1864-71.

This appeal followed.

STATEMENT OF FACTS

I. The Secondary Mortgage Market

Congress created Freddie Mac to support a nationwide secondary mortgage market. S*ee City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Under its charter, Freddie Mac's business is investing in secured residential mortgage loans. *See* 12 U.S.C. §§ 1451(d), 1454. But Freddie Mac does not directly manage many practical aspects of mortgage relationships, such as handling day-to-day borrower interactions.

Instead, Freddie Mac contracts with servicers to act on its behalf. In that role, servicers often appear as record beneficiaries of deeds of trust. *See Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 396 P.3d 754, 757-58 (Nev. 2017) (acknowledging servicers' role); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011) (describing servicers' role); Restatement (Third) of Property: Mortgages § 5.4 cmt. c (discussing the common practice where investors in the secondary mortgage market designate their servicer to be assignee of the mortgage); Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide") (discussing Freddie Mac's relationship with servicers).[1] In such situations, the note owner remains a secured creditor with a property interest in the collateral, even if the recorded deed of trust names only the loan servicer. *See, e.g., In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015) (en banc); *Daisy Trust*, 445 P.3d at 849.

[1] Relevant portions of the Guide were submitted with Nationstar's motion for summary judgment. *See* 9 AA001502-99. This Court may also take judicial notice of the Guide. *E.g.*, *Daisy Trust*, 445 P.3d at 849 n.3 (taking judicial notice of Freddie Mac's servicing guide on appeal). The Guide is "generally known," especially by members of the mortgage lending and servicing industry in Nevada, and "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS 47.130(2). An interactive version of the Guide is available on Freddie Mac's website at https://guide.freddiemac.com/app/guide/. A static, PDF copy of the current Guide is available at https://guide.freddiemac.com/ci/okcsFattach/get/1002095_2, and archived prior versions of the Guide are available at https://guide.freddiemac.com/app/guide/segment/Seller%2FServicer%20Relationship. While some sections of the Guide have been amended over the course of Freddie Mac's ownership of the loan at issue, none of these amendments have materially changed the relevant sections.

Freddie Mac and its servicers also work with Mortgage Electronic Registration Systems, Inc. (**MERS**), which is "a subscription-based service that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential properties." *Perez v. MERS*, 959 F.3d 334, 336 n.1 (9th Cir. 2020). While "MERS, as the 'nominee' of the lender and of any assignee of the lender," is "recorded as the beneficiary under the deed of trust," the lender (or its successor or assignee) remains owner of the promissory note and corresponding deed of trust. *See In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 776 (9th Cir. 2014); *Daisy Trust*, 445 P.3d at 849; *Cervantes*, 656 F.3d at 1039.

II. Statutory Background

HERA established FHFA as the Enterprises' regulator, authorized FHFA to place the Enterprises into conservatorships in certain circumstances, and enumerated the powers, privileges, and exemptions FHFA possesses as Conservator. In September 2008—at the height of the financial crisis—FHFA's Director placed the Enterprises into conservatorships, where they remain today. *See Nationstar*, 396 P.3d at 755.

The Federal Foreclosure Bar—a broad statutory "exemption," captioned "Property protection," within HERA's conservatorship provision—mandates that when the Enterprises are under FHFA conservatorship, "[n]o property of the Agency shall be subject to … foreclosure … without the consent of the Agency …." 12

U.S.C. § 4617(j)(3). Another HERA provision mandates that upon the inception of conservatorship, FHFA succeeds immediately and by operation of law to "all rights, titles, powers, and privileges" of the entity in conservatorship "with respect to [its] assets," thereby making all conservatorship assets "property of the Agency" for the duration of the conservatorship. *See* 12 U.S.C. §§ 4617(b)(2)(A), (j)(3).

III. Facts Specific to the Property at Issue

This case involves a Deed of Trust securing a $258,400 promissory note (the **Note**) (together with the Deed of Trust, the **Loan**) on property located at 4641 Viareggio Court in Las Vegas (the **Property**). 10 AA001601–11 AA001627. The Deed of Trust, recorded on January 25, 2007, lists Monique Guillory as the borrower, First Magnus Financial Corporation as the lender (**Lender**), and MERS as beneficiary "acting solely as a nominee for Lender and Lender's successors and assigns." 9 AA001601-02. Freddie Mac purchased the Loan in March 2007, thereby acquiring ownership of the Deed of Trust. 9 AA001482-83 ¶ 5(d)-(f); 9 AA001488-1490. On February 11, 2011, MERS recorded an assignment of the Deed of Trust assigning the Deed of Trust to Aurora Loan Services LLC (**Aurora**). 9 AA001483 ¶ 5(g); 12 AA001629-30. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust assigning the Deed of Trust to Nationstar, which was servicing the Loan for Freddie Mac at the time of that assignment and subsequently at the time of the HOA Sale. 9 AA001483 ¶ 5(i)-(j); 12 AA001632.

According to a Foreclosure Deed recorded on September 6, 2013, Saticoy Bay purchased the Property at the HOA Sale on August 22, 2013 for $5,563. 12 AA001648-50. At that time, Freddie Mac owned the Loan and Nationstar served as record beneficiary of the Deed of Trust in its capacity as Freddie Mac's servicer. *See* 9 AA001482-3 ¶ 5(d)-(f), (i)-(j); 12 AA001632. Nationstar currently services the Loan for Freddie Mac and serves as record beneficiary of the Deed of Trust in that capacity. 9 AA001484 ¶ 5(j). Since Saticoy Bay purchased the Property, at least five notices of claims of lien for solid waste service have been recorded against the Property for failure to pay the charges, fees, and penalties in connection with solid waste collection. *See* Ex. A (recorded notices).[2]

At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Deed of Trust. To the contrary, FHFA has publicly stated that it "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens." 12 AA001652 (FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr.

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[2] This Court may also take judicial notice of the recorded liens on appeal. *E.g.*, *Daisy Trust*, 445 P.3d at 849 n.3 (taking judicial notice on appeal); *Niles v. Nat'l Default Servicing Corp.*, No. 54758, 2010 WL 5550640, at *2 (Nev. Dec. 20, 2010) (unpublished disposition) ("[A] court may take judicial notice of matters of public record," including notices recorded with the county recorder's office) (internal quotations omitted).

21, 2015), https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

IV. Relevant Procedural History

In September 2013, Saticoy Bay filed a complaint seeking quiet title and declaratory relief, imposition of an injunction prohibiting Nationstar from foreclosing on the Property, and a writ of restitution restoring possession of the Property to Saticoy Bay. *See* 1 AA000002-06. Nationstar pleaded the Federal Foreclosure Bar as an affirmative defense. 1 AA000020. In December 2018, the district court granted Saticoy Bay's motion for summary judgment, concluding that because Freddie Mac's property interest was not recorded, the Federal Foreclosure Bar did not apply. 12 AA001659-64.

Nationstar appealed the district court's decision. *See* 12 AA001666-68. The Nevada Court of Appeals vacated the district court's decision and remanded the case, holding that the district court "erred in concluding that Freddie Mac's interest needed to be recorded in order for the Federal Foreclosure Bar to apply," noting that the district court "did not have the benefit of the [*Daisy Trust* decision]" in reaching a contrary conclusion. 12 AA001667-68.

Following remand, Nationstar moved for summary judgment. 9 AA001460-78. The district court entered summary judgment in Nationstar's favor, finding that the Deed of Trust "was not extinguished by the [HOA Sale]" and that it "continues

to be a valid, secured, and enforceable lien on the Property." 13 AA001871. The notice of the entry of the order granting Nationstar's motion for summary judgment was served on January 5, 2021. 13 AA001874-76. Saticoy Bay timely filed its appeal on February 3, 2021. 13 AA001891-96.

STANDARD OF REVIEW

"This [C]ourt reviews a district court's grant of summary judgment de novo." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029 (2005). A motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Id.*; NRCP 56(c).

SUMMARY OF ARGUMENT

The district court correctly held that the Federal Foreclosure Bar protected Freddie Mac's Deed of Trust from extinguishment through the HOA Sale.

Each of Saticoy Bay's challenges to Freddie Mac's property interest—that (1) the type and amount of evidence Nationstar proffered did not suffice to establish Freddie Mac's ownership interest; (2) Freddie Mac did not hold a valid interest in the Deed of Trust because Nationstar served as record beneficiary of that instrument; and (3) Freddie Mac's acquisition of the Loan purportedly did not comply with the statute of frauds—fails. Saticoy Bay's contention that FHFA's consent was not necessary to extinguish the Deed of Trust is also incorrect. This Court has rejected

each of these arguments in cases similar to this one, or in precedential decisions arising in other contexts.

Nor does Saticoy Bay qualify as a bona fide purchaser under Nevada law. Even if it did, the Federal Foreclosure Bar would preempt that doctrine to the extent it would otherwise allow for the extinguishment of Freddie Mac's Deed of Trust.

This Court should affirm.[3]

ARGUMENT

I. The District Court Correctly Concluded That the Federal Foreclosure Bar Protected Freddie Mac's Deed of Trust from Extinguishment.

A. The Evidence and Case Law Establish That the Federal Foreclosure Bar Applies Here.

Saticoy Bay argues that the Federal Foreclosure Bar did not protect the Deed of Trust because Nationstar failed to establish that Freddie Mac had a valid property interest under Nevada law (both as an evidentiary and as a legal matter), and because FHFA's consent to extinguish the Deed of Trust was not required. *See generally* AOB 14-38.[4] These arguments lack merit. The district court properly concluded

[3] Nationstar reserves the right to seek sanctions in cases in which an opposing party presents arguments that this Court has previously foreclosed by published precedent, where (as here) the party makes no effort to argue for reversal or modification of that precedent.

[4] To the extent Saticoy Bay contends that the Deed of Trust was extinguished under *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), AOB 11-12, that is wrong; that decision did not address HERA, and subsequent

Footnote continues on next page.

that the Federal Foreclosure Bar preserved the Deed of Trust because Freddie Mac owned the Loan at the time of the HOA Sale and FHFA did not waive the Federal Foreclosure Bar's protection. 13 AA001868-71.

Saticoy Bay's arguments contravene many decisions of this Court[5] and the Ninth Circuit[6] holding that an HOA foreclosure sale cannot extinguish an Enterprise's property interests while it is in conservatorship, that an Enterprise's authenticated business records and Guide excerpts establish an Enterprise's loan ownership, and that FHFA must affirmatively consent to the extinguishment of conservatorship property. In fact, in a similar appeal the Ninth Circuit found that Saticoy Bay LLC, Series 9229 Millikan Avenue and its attorney (Mr. Bohn) "presented at least a dozen arguments … [that were] either squarely foreclosed by on-point Ninth Circuit and Nevada Supreme Court precedent or are wholly without merit" and issued an order to show cause why they "should not be sanctioned and/or ordered to pay the attorneys' fees and costs incurred by appellee in defending against [Saticoy Bay's] meritless claims." *See* Order at 2-3, *Nationstar Mortg. LLC v.*

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cases have confirmed that the Federal Foreclosure Bar preempts NRS 116.3116. *See Daisy Trust*, 445 P.3d at 847.

5 *See, e.g.*, *Daisy Trust*, 445 P.3d at 847; *Christine View*, 417 P.3d at 368.

6 *See, e.g.*, *Nationstar Mortg. LLC v. Saticoy Bay LLC, Series 9229 Millikan Ave.*, 996 F.3d 950, 954 (9th Cir. 2021); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136, 1149 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1618 (2019); *Berezovsky v. Moniz*, 869 F.3d 923, 929-31 (9th Cir. 2017).

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Saticoy Bay LLC, Series 9229 Millikan Ave., No. 19-17043 (9th Cir. May 5, 2021) (ECF No. 55).[7] Saticoy Bay raises many of those same arguments here. And before that Order issued, Saticoy Bay and Mr. Bohn had been twice admonished for "advancing these same, explicitly rejected arguments … [in] non-meritorious appeals." *Alessi & Koenig, LLC v. Saticoy Bay LLC Series 10250 Sun Dusk Lane*, 804 F. App'x 475, 477-78 (9th Cir. 2020); *Ditech Fin. LLC v. Saticoy Bay LLC Series 829 Cornwall Glen*, 794 F. App'x 667, 668-69 (9th Cir. 2020) (warning Saticoy Bay's counsel against "taking positions that are irreconcilable with published, on-point decisions," and warning them "not to raise such meritless arguments in the future.").

Saticoy Bay's approach to this appeal may be motivated by its incentive to prolong this litigation. Any delay in a final judgment accrues to Saticoy Bay's benefit; having acquired the Property at far less than fair market value, Saticoy Bay may reap substantial profits by renting it out at market rates. Meanwhile, Freddie Mac—which made a substantially larger, market-priced investment in the now-defaulted loan secured by the Property—receives no return whatsoever. In substance, until this case is resolved, Saticoy Bay will reap an improper return on Freddie Mac's capital investment. Moreover, at least five notices of claims of lien

[7] Briefing ordered by the Ninth Circuit in response to the Order to Show Cause is complete. No ruling has issued.

for solid waste service have been recorded against the Property since November 2018 for Saticoy Bay's failure to pay the amount of the charges, fees, and penalties in connection with solid waste collection. *See* Ex. A. Perhaps in recognition of the futility of its arguments and the eventuality of losing title, Saticoy Bay appears to be milking the property for current income while attempting to foist responsibility for current expenses onto the next owner.

1. Freddie Mac Has and Had at the Time of the HOA Sale a Valid Property Interest.

a. Nationstar's Evidence Established Freddie Mac's Loan Ownership.

The district court correctly found that the evidence established Freddie Mac's ownership of the Loan and its relationship with Nationstar at the time of the HOA Sale. *See* 13 AA001868-71. The district court based its findings on Freddie Mac's business records, declaration testimony from a Freddie Mac employee, and relevant Guide excerpts. *Id.* Saticoy Bay provided no evidence to contradict or call into question the reliability or accuracy of Freddie Mac's records.

Freddie Mac provided business records supported by an employee declaration describing and authenticating the records. *See* 9 AA001487-1500. As explained in Freddie Mac's employee declaration, the data from Freddie Mac's business records state that Freddie Mac acquired ownership of the Loan in March 2007 and continued to own the Loan at the time of the HOA Sale in August 2013. *See* 9 AA001482-83

¶ 5(d)-(f), (n); 9 AA001488-1490. That evidence also states that at the time of the HOA Sale, Nationstar served as the Deed of Trust's record beneficiary in its capacity as Freddie Mac's servicer. *See* 9 AA001482-83 ¶ 5(d)-(f), (i)-(j); 12 AA001632. Freddie Mac's declaration confirms that the relationship between Freddie Mac and its servicers, including Nationstar, is governed by the Guide. 9 AA001485-86 ¶5(l).

This Court has repeatedly held that the same type of uncontroverted evidence submitted here is admissible and establishes an Enterprise's acquisition and ownership of a loan. *See Daisy Trust*, 445 P.3d at 850-51; *Citimortgage, Inc. v. River Glider Ave. Tr.*, No. 75294, 2020 WL 3415781, at *1 (Nev. June 19, 2020) (unpublished disposition); *JP Morgan Chase Bank, N.A. v. Guberland LLC-Series 2* (*Guberland II*), No. 73196, 2019 WL 2339537, at *2 (Nev. May 31, 2019) (unpublished disposition). The Ninth Circuit has repeatedly reached the same conclusion. *E.g.*, *Berezovsky*, 869 F.3d at 932-33 & n.8; *Millikan*, 996 F.3d at 956-57. Nationstar's evidence proves Freddie Mac's ownership of the Loan.

Saticoy Bay suggests that Nationstar's evidence is insufficient because Freddie Mac's employee declaration says only that "Freddie Mac acquired ownership of the Loan, which specifically includes both the Note and the Deed of Trust, on or about March 29, 2007, and has owned it ever since," AOB 16 (quoting 9 AA001482-83 ¶ 5(d)), but does *not* "state that the 'conveyance in writing' to Freddie Mac' … existed for the [Loan]," *id.* This Court has not required the

production of any written conveyance to prove Freddie Mac's loan ownership where Freddie Mac's business records and declaration establish that fact. Indeed, although in *Daisy Trust* the servicer did not "produce a signed writing" of the sort Saticoy Bay references, *see* Appellant's Opening Br. at 12, *Daisy Trust*, 445 P.3d 846 (Nev. 2019) (No. 72747), the absence of that evidence did not give the Court pause. The Court instead held that Freddie Mac's and its servicer's business records and declarations were admissible and "probative" of Freddie Mac's acquisition of the loan. 445 P.3d at 850.

Nor is Saticoy Bay entitled to the benefit of either the presumption under NRS 47.240(2), which entitles a party to rely on "the truth of the fact recited, from the recital in a written instrument between the parties ….", or NRS 47.240(3), which provides that when "a party has … intentionally and deliberately led another to believe a particular thing true and to act upon such belief, the party cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it." *See* AOB 24. Neither presumption applies here, let alone suggests that any entity other than Freddie Mac owns the Deed of Trust. This Court has already rejected a similar argument regarding NRS 47.240's conclusive presumptions as "unconvincing." *Nationstar Mortg., LLC v. BDJ Invs., LLC*, No. 75480, 2019 WL 6208548, at *1 n.3 (Nev. Nov. 20, 2019) (unpublished disposition).

NRS 47.240(2) applies only in a dispute "between the parties" to a written instrument. *Flangas v. State*, 104 Nev. 379, 381 (1988). As the Ninth Circuit concluded, Saticoy Bay "cannot invoke the presumption in [NRS 47.240(2)]" because it "was not party either to the deed of trust or its subsequent transfer to [the Enterprise]." *Fannie Mae v. Saticoy Bay LLC Series 6671 W. Tropicana 103*, 839 F. App'x 45, 48 n.2 (9th Cir. 2020); *see also Nationstar Mortg., LLC v. Eldorado Neighborhood Second Homeowners Ass'n*, No. 2:15-cv-00064-JAD-BNW, 2019 WL 4120797, *5 (D. Nev. Aug. 29, 2019). The Ninth Circuit has also held that NRS 47.240(2) "is inapplicable" because "Nevada law permits [an Enterprise] to record its property interest" with its contractually authorized representative as its deed of trust beneficiary. *Tropicana*, 839 F. App'x at 48 n.2.

Nor does NRS 47.240(3) apply, because there was no "intentional[] and deliberate[]" attempt to mislead Saticoy Bay into believing Nationstar owned the Loan or to otherwise "falsify" the Deed of Trust. *See* NRS 47.240(3); AOB 24. The Ninth Circuit has held that NRS 47.240(3) did not apply in similar circumstances because, as here, "there's no evidence [the Enterprise] intentionally misled Saticoy Bay (or anyone) and falsified the deed." *Tropicana*, 839 F. App'x at 48 n.2.[8] Indeed, the Deed of Trust does not identify the entity that owned it. Freddie Mac followed

[8] In *Tropicana*, the Ninth Circuit cited to NRS 47.240(2) in its discussion, but presumably intended to cite NRS 47.240(3), given that only NRS 47.240(3) describes "falsif[ication]" and "intentionally" misleading another entity.

Nevada law in recording the Deed of Trust in the name of its contractually authorized servicer. *Daisy Trust*, 445 P.3d at 849; *infra*, at 23-25.

b. Freddie Mac Owns the Deed of Trust While Nationstar Serves as Record Beneficiary.

Saticoy Bay claims that "Freddie Mac did not comply with Nevada law to hold any interest in the [Deed of Trust]" on the date of the HOA Sale. *See* AOB 14; *see generally id.* at 14-24.[9] That argument is frivolous, as it directly contradicts the law of this case and precedent from this Court and the Ninth Circuit.[10] At the time of the HOA Sale, Freddie Mac's ownership interest in the Deed of Trust was valid under Nevada law because the recorded assignment named Freddie Mac's Loan servicer as beneficiary.

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[9] Contrary to what Saticoy Bay's brief suggests, AOB 12-14, 45, Nationstar does not dispute that Nevada law determines Freddie Mac's property interest here. Rather, Nationstar argues that Freddie Mac maintained ownership of the Deed of Trust while Nationstar served as record beneficiary. Nor does Nationstar suggest that Freddie Mac could or did "contract around" Nevada law by permitting Nationstar to serve as record beneficiary of the Deed of Trust. *See* AOB 23.

[10] Saticoy Bay's emphasis on the non-binding nature of Ninth Circuit cases, AOB 20-21, is inconsequential. *Berezovsky* and cases citing it are persuasive because they rely on the principles enunciated in *Montierth*. *See* 869 F.3d at 932-33; AOB 13 (acknowledging that *Berezovsky* looked to Nevada law in assessing Freddie Mac's property interest). This Court has approvingly cited *Berezovsky* in holding that "Nevada law does not require the deed of trust to name the note owner." *Guberland II*, 2019 WL 2339537, at *2, and often cites to Ninth Circuit decisions in cases implicating the Federal Foreclosure Bar, *e.g.*, *JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, 475 P.3d 52, 56-57 (Nev. 2020) (citing several Ninth Circuit cases).

(i) Law-of-the-Case Doctrine Precludes Saticoy Bay's Recordation-Based Arguments Questioning Freddie Mac's Property Interest.

Saticoy Bay offers various iterations of the argument that Freddie Mac lacked a valid property interest because it did not appear as the Deed of Trust's record beneficiary at the time of the HOA Sale. *See, e.g.*, AOB 15-19. But that issue was already decided against Saticoy Bay in a prior appeal in this case. Specifically, the Nevada Court of Appeals held that "the district court erred in concluding that Freddie Mac's interest needed to be recorded [in its own name] in order for the Federal Foreclosure Bar to apply." 12 AA001667.

Under the law-of-the-case doctrine, this Court should not re-address the issue of whether Freddie Mac owned the Loan at the time of the HOA Sale because the Nevada Court of Appeals has already decided it.[11] "The law-of-the-case doctrine 'refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases." *Reconstrust Co. v. Zhang*, 317 P.3d 814, 818 (Nev. 2014) (citing *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)). Law-of-the case "doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same

[11] An unpublished disposition of the Nevada Court of Appeals may be cited to "establish mandatory precedent" and "law of the case" "in a subsequent stage of a case in which the unpublished disposition was entered." NRAP 36(c)(2).

issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983).

Because the Nevada Court of Appeals already concluded in this case that Freddie Mac's interest did not need to be recorded in its own name, this Court should not re-visit the same issue.

(ii) *Montierth* and *Daisy Trust* Control This Case.

Saticoy Bay's arguments lack substantive merit in any event. *Montierth* established that a foreclosure on a deed of trust can proceed when a note owner is not the beneficiary named in the recorded deed of trust, so long as the named beneficiary had authority to foreclose on the noteholder's behalf. 354 P.3d at 650-51. In *Daisy Trust,* the Court confirmed that *Montierth*'s holding applies in cases like this one, rejecting any claim that an Enterprise must appear in the land records to maintain a property interest under Nevada law. 445 P.3d at 847-49. The Court made two key holdings that control here: (1) Nevada's recording statutes (NRS 106.210 and 111.325) did not require "that any assignment to Freddie Mac needed to be recorded"; and (2) under *Montierth* and *Edelstein v. Bank of N.Y. Mellon,* 286 P.3d 249 (Nev. 2012), "the deed of trust did not have to be 'assigned' or 'conveyed' to Freddie Mac in order for Freddie Mac to own the secured loan." 455 P.3d at 849; *see also River Glider,* 2020 WL 3415781, at *1.

(iii) Saticoy Bay Cannot Avoid or Distinguish *Montierth* or *Daisy Trust*.

Saticoy Bay makes a variety of arguments as to why *Montierth*, *Daisy Trust*, and similar decisions are inapposite and should not control the outcome of this case. *See* AOB 15, 17-22, 25-30. None of those arguments is persuasive.

First, Saticoy Bay's efforts to distinguish *Daisy Trust* fail. Saticoy Bay claims that *Daisy Trust* does not control here because the Court "focused on the amendment made to NRS 106.210 that became effective on July 1, 2011," and allegedly did not address the other statutes upon which Saticoy Bay relies—NRS 111.205(1), 111.315, and 111.325. AOB 17, 19. That argument misses the mark. This Court did indeed address NRS 111.325, finding that "neither NRS 106.210 nor NRS 111.325 was implicated." 455 P.3d at 849. Moreover, that the Court did not enumerate each recordation statute under Nevada law does not undercut the Court's conclusion that an Enterprise need not record a deed of trust it owns under its own name. In fact, the appellant in *Daisy Trust*—like Saticoy Bay here—invoked NRS 111.205(1) in arguing that Nevada law required proof of a written, recorded assignment to an Enterprise. *See* Appellant's Opening Br. at 11-13, *Daisy Trust*, 445 P.3d 846 (Nev. 2019) (No. 72747). And while the *Daisy Trust* appellant did not specifically cite NRS 111.315 in its opening brief, *see* AOB 19, 28-29, the appellant *did* raise the broader argument that "Defendant's claim that Freddie Mac held an unrecorded and unwritten ownership of the subject deed of trust violates …

Nevada's recording laws in NRS Chapter 111"—which includes NRS 111.315.[12] *See* Appellant's Opening Br. at *15, *Daisy Tr. v. Wells Fargo Bank, N.A.*, 445 P.3d 846 (Nev. 2019). The Court rejected those arguments categorically, holding that Nevada's "recording statutes did not require [an Enterprise] to publicly record its ownership interest as a prerequisite for establishing that interest." *Daisy Trust*, 445 P.3d at 849. There was no reason for the Court to enumerate every conceivable recording statute in its decision. Saticoy Bay's argument that a particular statute *did* require Freddie Mac to record its ownership interest is, therefore, foreclosed by *Daisy Trust*.[13]

Second, Saticoy Bay attempts to distinguish *Montierth* by arguing that *Montierth*'s holding was limited to whether recordation of an assignment to the note holder would violate the automatic stay imposed under the Bankruptcy Code. AOB 27. Saticoy Bay likewise contends that *Montierth* is distinguishable because MERS

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[12] Saticoy's citation to *Powell v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 672 n.3 (Nev. 2011) for the proposition that *Montierth* and *Daisy Trust* did not decide the arguments it raises here because those statutes were not cited in the appellants' opening brief is misleading. *See* AOB 19, 30. *Powell* does not support the notion that a binding legal rule can be disregarded because the litigants did not raise in their briefing a specific statute covered by that rule.

[13] Saticoy Bay's argument that *Christine View* is inapposite because the deed of trust at issue in that case was assigned to Fannie Mae before the HOA sale, AOB 18, is foreclosed by *Daisy Trust*, which confirms that an Enterprise has a valid property interest in a deed of trust even if it was never assigned to the Enterprise. *See* 445 P.3d at 849.

recorded an assignment of the deed of trust to the loan owner, it did not involve a bona fide purchaser, and there was no question whether a superpriority lien foreclosure extinguished a deed of trust. *See* AOB 27-29.

These arguments cannot stand in light of *Daisy Trust*, which confirmed that *Montierth* applies where, as here, an Enterprise owns a loan while its servicer is record beneficiary of the deed of trust, and the servicer asserts the Federal Foreclosure Bar's protection on the Enterprise's behalf. In such circumstances, and "consistent with … *Montierth*," the Enterprise maintains a property interest in the deed of trust, and the Federal Foreclosure Bar applies. 455 P.3d at 849, 851.[14] And even if Saticoy Bay were a bona fide purchaser—and it is not, *see infra*, at 37-43—that would not impact *Montierth*'s application. *Daisy Trust* held that Nevada's bona fide purchaser laws are not implicated when an Enterprise's deed of trust is properly recorded in the name of its contractually authorized servicer. 445 P.3d at 849.

Third, Saticoy Bay cites *Leyva* and *Occhiuto*—decisions that pre-date *Daisy Trust*—to support its contention that Freddie Mac lacked an enforceable property interest because Nationstar did not produce a "properly executed written instrument"

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[14] Saticoy Bay misrepresents Nationstar's position, asserting that Nationstar claims that Freddie Mac's ownership of the Loan "removed the HOA's ability to foreclose its superpriority lien rights without first obtaining FHFA's consent." AOB 28. The Federal Foreclosure Bar does *not* prevent an HOA from foreclosing on the HOA's super-priority lien; rather, it prevents Enterprise liens from being extinguished through any such foreclosure. *See* 12 U.S.C. § 4617(j)(3).

consistent with Nevada law. AOB 15 (citing *Leyva v. Nat'l Default Servicing Corp.*, 255 P.3d 1275, 1279 (Nev. 2011) and quoting *Occhiuto v. Occhiuto*, 625 P.3d 568, 570 (Nev. 1981)). But *Daisy Trust* foreclosed that argument by applying *Montierth* to virtually identical circumstances and holding that Freddie Mac did not need to record its interest to own the Loan or produce any such writing to prevail on summary judgment. *See* 445 P.3d at 849. While *Daisy Trust* does not discuss *Leyva*, the appellant in *Daisy Trust* likewise invoked *Leyva* to argue that Nevada law required proof of a written, recorded assignment to an Enterprise. *See* Appellant's Opening Br. at 11-13, *Daisy Trust*, 445 P.3d 846 (Nev. 2019) (No. 72747); Appellant's Reply Br. at 5, 14, 26, *Daisy Trust*, 445 P.3d 846 (Nev. 2019) (No. 72747). This Court nevertheless concluded that "Nevada's recording statutes did not require [Freddie Mac] to publicly record its ownership interest as a prerequisite for establishing that interest." *Daisy Trust*, 445 P.3d at 849. Nor does *Occhiuto* undermine *Daisy Trust*. *Occhiuto* assessed the validity of an oral conveyance of real property, not the acquisition or recordation of a deed of trust under Nevada law. 625 P.3d at 568, 570.

Fourth, the Restatement (Third) of Prop.: Mortgages § 5.4 (1997) does not support Saticoy Bay's theory that it is entitled to assume that a deed of trust's record beneficiary owns the loan unless the deed of trust or recorded assignment says otherwise. *See* AOB 23, 25-26. To the contrary, the *Montierth* decision *endorses*

Restatement § 5.4 in holding that a loan owner's interest in collateral property is secured by a recorded deed of trust naming its contractually authorized representative. *See* 354 P.3d at 651. That section also encourages courts to "be vigorous in seeking to find such a relationship" where the record beneficiary of the deed of trust and the note owner are different entities, rather than assuming that the recorded deed of trust reflects the owner of the loan.

Nor does Comment b to Restatement § 5.4 support Saticoy Bay's suggestion that the assignments of the deed of trust from MERS to Aurora and then from Aurora to Nationstar "transfer[red] the obligation the mortgage secures." *See* AOB 25-26 (quoting Restatement § 5.4 cmt. b). That argument is based on the faulty premise that MERS had the authority to transfer ownership of the Deed of Trust (and with it, the Note). It did not. Under the principle of *nemo dat quod non habet—i.e.*, one cannot give what one does not have—the use of assignment language could not have enlarged the limited rights MERS, as nominee for the Lender or the Lender's successors and assigns (here, Freddie Mac) and beneficiary of record of the Deed of Trust, could transfer to Aurora, and that Aurora could then transfer to Nationstar. *See Mitchell v. Hawle*y, 83 U.S. 544, 550 (1872). For good reason, this Court has rejected the argument that a loan servicer had authority to transfer ownership of an Enterprise's note and deed of trust under similar circumstances. *J&K USA, Inc. v. Bank of America, Inc.*, No. 75555, 2019 WL 4390761,*1 n.2 (Nev. Sept. 12, 2019)

(unpublished disposition) ("MERS lacked authority to transfer the promissory note, and the language in the assignment purporting to do so had no effect.").

(iv) Freddie Mac's Property Interest Complied with Nevada's Recording Laws.

Saticoy Bay repeatedly contends that Nevada's recording statutes required Freddie Mac's ownership of the Loan to be reflected in the public records. *See* AOB 14-30 (citing NRS 111.010, 111.205, and 111.315).[15] Specifically, Saticoy Bay argues that the creation of Freddie Mac's interest was required to be recorded under NRS 111.205(1) in order to be enforceable against third parties (like Saticoy Bay) under NRS 111.315.[16] *See, e.g.*, AOB 16.

This Court has rejected Saticoy Bay's interpretation of Nevada law, holding that there is "no requirement that any assignment to [an Enterprise] be recorded" in order for a note to be fully secured by the corresponding deed of trust. *Daisy Trust*, 445 P.3d at 849. The HOA sale purchaser in *Daisy Trust* similarly argued that when

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[15] Saticoy Bay also mentions NRS 111.325—Nevada's bona fide purchaser statute—in its argument about Nevada's recording requirements. NRS 111.325 does not state whether and when a document must be recorded, but rather discusses the effects of recording. Nationstar discusses that statute *infra*, at Section I.B.

[16] Saticoy Bay also cites to NRS 116.1108, proclaiming that Freddie Mac must comply with the "law of real property" and that Freddie Mac could not otherwise "enforce that unrecorded interest against [it]." AOB 26. But Freddie Mac's recordation complied with the general principles of Nevada's law of real property, and Freddie Mac is not seeking to enforce the deed of trust through this litigation. *Daisy Trust*, 445 P.3d at 849-50; *infra*, at 26-29.

an Enterprise acquires a loan, it is a "conveyance" of land under the definition of NRS 111.010(1) and so must be recorded to be valid. Appellant's Opening Br. at 11-12, *Daisy Trust*, 445 P.3d 846 (Nev. 2019) (No. 72747). The Court nevertheless concluded that neither NRS 106.210 nor 111.325 required Freddie Mac to record the Deed of Trust in its own name for that interest to be valid against third parties. *Daisy Trust*, 445 P.3d at 849. Although the Court did not cite NRS 111.315, its holding was clear: there was "no requirement that any assignment to Freddie Mac needed to be recorded." Because Freddie Mac's interest was properly recorded, it would have "operate[d] as notice to third persons" of that interest under NRS 111.315 (to the extent that statute applies).[17] *Id.* Since *Daisy Trust*, this Court has rejected "any argument that Nevada law requires [an Enterprise] to publicly record its ownership interest in the subject loan." *River Glider*, 2020 WL 3415781, at *1; *see also DMVH, LLC v. JPMorgan Chase Bank, N.A.*, No. 76928, 2020 WL 403671, at *1 (Nev. Jan. 23, 2020) (unpublished disposition) (same). Freddie Mac's interest was thus

[17] Saticoy Bay also argues that the cases from this Court and Ninth Circuit decisions Nationstar cited in district court briefing are unpersuasive because they "did not discuss the mandatory language in NRS 111.205(1), NRS 111.315, and NRS 111.325" or the holdings in *Leyva* or *Occhiuto*. AOB 20; *see also id.* at 21-22, 36, 40, 45-46. But as discussed herein, *Daisy Trust* confirms that those statutes do not undermine an Enterprise's interest under the facts presented here and in similar cases. And Nationstar's citation to *M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854 (9th Cir. 2020) in its briefing below is not undermined by the decision's focus on a separate HERA provision. *See* AOB 21. Nationstar cited that case because it confirms that HERA preempts NRS 116.3116. *See* 9 AA001461.

properly recorded; this is not a case where Nationstar is purporting to "treat an 'unrecorded' interest that is 'void' under state law as [Freddie Mac's] 'asset.'" AOB 23.

Saticoy Bay also suggests that because Freddie Mac purportedly did not have a properly recorded interest in the Property, FHFA did not succeed to any interest Freddie Mac may have had when FHFA placed Freddie Mac into conservatorship. *See* AOB 23-24, 39-40. That is incorrect. When Freddie Mac purchased the Loan in 2007, the Deed of Trust became Freddie Mac's asset. The Deed of Trust properly listed MERS as record beneficiary in its capacity as Freddie Mac's nominee and, therefore, Freddie Mac had a valid and enforceable property interest under Nevada law. *See Daisy Trust*, 445 P.3d at 849. When Freddie Mac was placed into conservatorship in 2008, FHFA succeeded to all "rights, titles, powers, and privileges" of Freddie Mac's assets, including the Deed of Trust. 12 U.S.C. § 4617(b)(2)(A).

Saticoy Bay also contends that the "very purpose" of Nevada's recording statutes is to provide notice to subsequent purchasers, and that Freddie Mac's recordation failed to provide that notice. *See* AOB 34. Saticoy Bay misses the point: The publicly recorded instruments provided it with notice of the identity of the entity that served as the Deed of Trust's beneficiary—here, MERS, then Aurora, and Nationstar, 10 AA001601-02, 12 AA001629-32—and thus which entity it could

contact to make inquiries about the underlying loan. *Daisy Trust* and other similar decisions thus comport with the general purpose that Nevada's recording statutes provide notice to subsequent purchasers. In any event, any policy behind the recording statutes was not frustrated because the Deed of Trust was *already* recorded when Saticoy Bay purchased the Property, and Saticoy Bay could and should have anticipated that there was a significant chance that a property previously sold at an HOA sale was encumbered by an Enterprise lien. *Infra*, at 37-41.

c. The Statute of Frauds Does Not Invalidate Freddie Mac's Ownership of the Loan.

Saticoy Bay asserts that the Federal Foreclosure Bar did not protect the Deed of Trust from extinguishment through the HOA Sale because Nationstar did not provide a "signed writing" proving that Freddie Mac had an interest in the Property, purportedly in violation of the statute of frauds. AOB 16; *see also, e.g.*, AOB 14-17, 22-23, 32-38(citing NRS 111.205(1)). But the statute of frauds has no bearing on any analysis of Freddie Mac's Loan ownership because no party to the Loan-purchase transaction has ever disputed its validity, and because that transaction closed in 2007.

(i) Saticoy Bay Lacks Standing to Assert the Statute of Frauds Defense.

Contrary to Saticoy Bay's arguments, *see* AOB 32-38, Saticoy Bay lacks standing to raise a statute-of-frauds defense because it was not party to the

transaction through which Freddie Mac acquired the Loan. Generally "[o]nly parties to a contract and their transferees and successors can take advantage of the Statute of Frauds." Restatement (Second) of Contracts § 144 (2019 Update). This Court has confirmed that "[t]he defense of the statute of frauds is … available only to contracting parties or their successors in interest." *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 377 P.2d 622, 628 (Nev. 1963); *see also Easton Bus. Opportunities, Inc. v. Town Exec. Suites*, 230 P.3d 827, 832 n.4 (Nev. 2010); *see also In re Circle K Corp.*, 127 F.3d 904, 908 (9th Cir. 1997). A "stranger to [an] alleged agreement" cannot challenge the legal sufficiency of the writings making up that agreement. *Harmon*, 377 P.2d at 628.

The Ninth Circuit has rejected a similar statute of frauds argument on standing grounds. In *Millikan*, the Ninth Circuit relied on Nevada precedent in holding that "the defense of the statute of frauds is personal, and available only to the contracting parties or their successors in interest," and thus cannot be "asserted by third persons." 996 F.3d at 957 (citing *Harmon* and *Easton*; internal quotation marks omitted). "Given that Saticoy was not a party to the underlying loan agreement pursuant to which Fannie Mae acquired the loan," the Ninth Circuit explained, "[it] cannot raise the statute of frauds." *Id.*; *see also Cornwall Glen*, 794 F. App'x at 668 (finding arguments that Freddie Mac did not have a valid property interest under Nevada's statute of frauds "unavailing," citing *Easton* for the proposition that statute of frauds

provisions cannot be asserted by third persons); *Ditech Fin., LLC v. Res. Grp., LLC*, 825 F. App'x 414, 414 (9th Cir. 2020) (holding that because the HOA sale purchaser "was [not] a party to the underlying loan agreement," it could not raise the statute of frauds); *Tropicana*, 893 F. App'x at 47 (similar).

Courts have routinely found that those principles are applicable to cases involving real property, regardless of whether the statute at issue expressly incorporates a standing requirement. *See, e.g., Bayview Loan Servicing, LLC v. Shadow Springs Cmty. Ass'n*, 425 F. Supp. 1275, 1283, n. 51 & 52 (D. Nev. 2019) (quoting *Harmon* to support holding that a purchaser of real property is not permitted to invoke the statute of frauds to preclude a Freddie Mac servicer from enforcing Freddie Mac's property interest); *United States v. Capriotti*, No. 1:11-cv-00847-SAB, 2013 WL 1563214, at *22 n. 17 (E.D. Cal. Apr. 12, 2013) (applying *In re Circle K Corp*. in context of real property dispute concerning statute of frauds). And with good reason. Statute-of-frauds doctrine traces its history back to English common law, and American courts—including the courts deciding *Harmon*, *Easton*, and *In re Circle K Corp*.—routinely apply common-law exceptions regardless of whether the specific exception is expressly set forth in the statute at issue. *See, e.g.*, *Wyo. Realty Co. v. Cook*, 872 P.2d 551, 554 (Wyo. 1994) (holding that the "common law exception [of full performance]" is a "recognized exception to the requirements delineated in the statute of frauds," and that it is therefore "appropriate to invoke this

exception with respect to any special statute of frauds as well as for our general statute of frauds"). Nothing in NRS 111.205 suggests that the legislature intended to override common-law standing principles for transfers involving an "estate or interest in land." Hence, because Saticoy Bay was not a party to Freddie Mac's acquisition of the Loan, it cannot attempt to invalidate that transaction, or the interest Freddie Mac acquired through it, on statute-of-frauds grounds.

Saticoy Bay claims that it *does* have standing to assert the statute of frauds, AOB 32-38, but it never makes an affirmative case proving that point. Instead, Saticoy Bay attempts to distinguish the cases on which Nationstar relies and cites, including *Harmon, Easton,* and *In re Circle K Corp*. AOB 32-34, 36-38. But the fact that those cases did not involve the same factual scenario or particular statute of frauds at issue does not make the common-law principles they announce any less relevant. Neither this Court nor the Nevada legislature has suggested that common-law doctrine should be ignored in applying Nevada's statute-of-frauds provisions.

To the contrary, the Court has incorporated common-law principles in applying those statutes, including NRS 111.205. For example, in *Zunino v. Paramore,* 435 P.3d 196 (Nev. 1967), the Court held that a lease for real property "was within the statute of frauds" and thus required to be in writing "unless elements are found to exist which amount to part performance to take the oral agreement out of the statute of frauds." *Id.* at 197 (citing NRS 111.205, 111.210, and 111.220).

The Court reached that holding despite the fact that *none* of those statutes provided an express exception for part performance. And in *Summa Corp. v. Greenspun*, 607 P.2d 569 (Nev. 1980), the Court concluded that although the surrender of a deed of trust was "a conveyance of land" subject to NRS 111.205(1), the oral agreement in question was "enforceable notwithstanding failure to comply with the statute of frauds" because the doctrine of part performance applied. *Id.* at 572-73. The applicable common-law doctrine at issue here—that only parties to an agreement can invoke the statute of frauds to challenge the agreement's validity—is similarly incorporated in Nevada's statute of frauds.

(ii) The Statute of Frauds Does Not Apply in Any Event, Because the Transaction Has Closed.

Even if Saticoy Bay is assumed to have standing to invoke the statute of frauds, the defense would not invalidate Freddie Mac's interest, because the writing requirement does not apply to transactions that have been fully performed by at least one party. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 923 P.2d 569, 574 (Nev. 1996) ("Full performance by one party may also remove a contract from the statute of frauds"); *Forsythe v. Brown*, No. 3:10-cv-716-RCJ-VPC, 2011 WL 5190673 (D. Nev. Oct. 27, 2011) ("[E]ven if the agreement did originally fall within the statute of frauds, it would have been taken out by Defendants' full performance"). The Ninth Circuit recently held that "[t]he fact that [an Enterprise] completed such an acquisition more than fifteen years ago further undermines the applicability of the

statute of frauds." *Millikan*, 839 F.3d at 957 (citing *Edwards*, 923 P.2d at 574); *see also Tropicana*, 839 F. App'x at 47 (similar). Other courts have recognized and adopted the concept that full performance by one or both parties is an exception to the statute of frauds, even when interpreting state statutes that are silent on the matter. *See, e.g.*, *Wyo. Realty Co.*, 872 P.2d at 554.

The reason for such a rule is simple and sound: The statute of frauds is meant to ensure that the parties to a transaction intended it to close; the transaction's closing establishes that intention conclusively. Restatement (Second) of Contracts § 145 (2019 Update) ("After [] full performance … [t]he Statute has no further function to perform."). Allowing the statute of frauds to operate as a defense when one party has partially or fully performed would in effect turn the doctrine into "an instrument of fraud." *Evans v. Lee*, 12 Nev. 393, 398 (1877). Freddie Mac's acquisition of the Loan closed in March 2007, over 13 years ago. *See* 9 AA001482 ¶ 5(d).

None of Saticoy Bay's arguments against the application of these common-law principles is persuasive. The use of the third-party or full-performance rules in cases such as this one will not render Nevada's bona fide purchaser laws "meaningless." AOB 35, 38. A bona fide purchaser is entitled to rely on recorded documents regardless of whether any prior or subsequent conveyances are later subject to challenge under the statute of frauds. *See* NRS 111.325; *Bailey v. Butner*, 176 P.2d 226, 234-35 (Nev. 1947). And the fact that only parties who purportedly

do not comply with the statute of frauds have standing to raise that defense, AOB 38, is simply another way of saying that only a party to the transaction can assert the doctrine. That is entirely consistent with the purpose of the statute of frauds—to "promote or foster certainty and preserve the integrity of contracts" and "prevent or reduce fraud, perjury or injustice," *see* 37 C.J.S. Statute of Frauds § 1.

Saticoy Bay appears to suggest that the common-law principles that apply more generally should not apply to the more specific language in NRS 111.205, relying on a federal bankruptcy court decision to argue that the more general language in NRS 111.220 does not take precedence over the more specific statute concerning the "creation of estates in land." *See* AOB 34-35 (citing *In re Faulkiner*, 594 B.R. 426, 436-47 (Bankr. D. Nev. 2018)). But a federal bankruptcy court's interpretation of Nevada's statute of frauds is not binding, and does not undermine this Court's decisions holding that the statute-of-frauds defense is available only to contracting parties, *e.g.*, *Harmon*, 377 P.2d at 628, and would not apply to a transaction that has been fully performed by at least one party, *Edwards*, 923 P.2d at 574 (Nev. 1996).

2. FHFA's Consent Was Required to Extinguish the Deed of Trust, and FHFA Did Not Consent.

Saticoy Bay argues that "FHFA[']s] consent was not required" because Freddie Mac purportedly did not properly record its interest in the Deed of Trust such that it "had a protected property interest at the time of the HOA [Sale]." AOB 31. As

explained above, *supra*, at 26-29, Freddie Mac complied with Nevada law, so "[t]he Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional protection unless or until [the FHFA] affirmatively relinquishes it.'" *Christine View*, 417 P.3d at 368 (quoting *Berezovsky*, 869 F.3d at 929); *see also River Glider*, 2020 WL 3415781, at *1 (declining to imply consent). Notably, Saticoy Bay does not contest that FHFA did not provide consent, and FHFA's Statement confirms that fact. 12 AA001652 ("FHFA confirms that it has not consented, … and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.").

Saticoy Bay alternatively contends that the Federal Foreclosure Bar "is not implicated" (and thus, consent is not required) because Freddie Mac's ownership of the Note is unaffected by the HOA Sale; as a "sold-out junior lienor," Freddie Mac could purportedly sue the borrower on the Note or take action against Nationstar for any failure to comply with the Guide. AOB 17-18, 29-30, 32 (quoting *McMillan v. United Mortg. Co.*, 437 P.2d 878, 879 (Nev. 1968)). Even if they exist, those contractual rights are irrelevant. The Federal Foreclosure Bar protects Freddie Mac's interest in the Deed of Trust regardless of whether Freddie Mac could separately enforce the borrower's personal contractual obligation on the Note or

recover from Nationstar. The statute provides that "[n]o property of the Agency shall be subject to ... foreclosure," full stop. 12 U.S.C. § 4617(j)(3).

B. Saticoy Bay Cannot Rely on Nevada's Bona Fide Purchaser Doctrine.

Saticoy Bay suggests throughout its brief that Nevada's bona fide purchaser laws, including NRS 111.325, insulate it from the Federal Foreclosure Bar's effect because Saticoy Bay purportedly had no notice of Freddie Mac's interest in the Deed of Trust. *E.g.*, AOB 18-19, 30, 39-44. Saticoy Bay also contends NRS 111.325 "does not require that [Saticoy Bay] be a 'bona fide purchaser' in order for [an Enterprise]'s unrecorded interest … to be 'void' as to [Saticoy Bay]" because the statute purportedly protects purchasers who have constructive notice of a title defect. AOB 40-42. But Saticoy Bay is not a bona fide purchaser, and Nevada's bona fide purchaser doctrine is not implicated here.

1. Saticoy Bay Is Not a Bona Fide Purchaser.

Saticoy Bay is not a bona fide purchaser because it was on actual or constructive notice that an Enterprise held an interest in the Deed of Trust encumbering the Property. This Court has held that a purchaser cannot claim that it is "protected as a bona fide purchaser from the Federal Foreclosure Bar's effect" just because the deed of trust does not list the Enterprise as record beneficiary. *Daisy Trust*, 445 P.3d at 849; *see also DMVH*, 2020 WL 403671, at *1 ("[A]n HOA foreclosure sale purchaser's putative status as a bona fide purchaser is inapposite

when the Federal Foreclosure Bar applies."). That is exactly what Saticoy Bay argues here. AOB at 39.

Saticoy Bay acknowledges that the Deed of Trust and subsequent assignments were recorded at the time of the HOA Sale, AOB 7-8, constituting "actual knowledge, constructive notice of, or reasonable cause to know that there exist[] ... adverse rights" in the Property. NRS 111.180. It is immaterial whether the state statutes render an *unrecorded* deed of trust invalid against a bona fide purchaser, because the Deed of Trust embodying Freddie Mac's interest was lawfully recorded in the name of Freddie Mac's servicer. This Court confirmed as much in *Daisy Trust*, where it stated that, "consistent with … *Montierth*, the deed of trust [does] not have to be 'assigned' or 'conveyed' to [an Enterprise] in order for [the Enterprise] to own the secured loan, *meaning that neither NRS 106.210 nor NRS 111.325 was implicated*." 445 P.3d at 849 (emphasis added).

The Ninth Circuit has confirmed that an HOA sale purchaser was "clear[ly] … not a bona fide purchaser" of a property encumbered by an Enterprise deed of trust because (1) the purchaser "had notice of an adverse interest in the property" given that "the deed of trust was recorded in the name of Fannie Mae's agent—its former servicer—at the time of the foreclosure sale" and (2) the deed of trust included a provision that "the Note (together with this Security Instrument) can be sold one or more times without prior notice to [the] Borrower." *Fannie Mae v. BFP*

Invs. 4 LLC, 812 F. App'x 522, 523 (9th Cir. 2020); *see also Daisy Trust*, 445 P.3d at 849 (an HOA sale purchaser cannot claim that it is "protected as a bona fide purchaser from the Federal Foreclosure Bar's effect.").

Here, not only did Saticoy Bay know of the Deed of Trust's existence and assignments, the Deed of Trust states that the Note, along with the Deed of Trust, "can be sold one or more times without prior notice to Borrower," indicating that the Lender or its successors or assigns could convey the Loan to another party, including an Enterprise. 10 AA001611. And this Court has held that where, as here, the Deed of Trust's language states that it is a "Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS," *see* APP000205, the Court "cannot conclude that [the HOA sale purchaser] purchased the property without notice of [an Enterprise's] potential interest in the property." *CitiMortgage, Inc. v. TRP Fund VI, LLC*, 435 P.3d 1226, 1226 (Nev. 2019) (unpublished disposition); *see also Cornwall Glen*, 794 F. App'x at 668. While those facts did not by themselves conclusively establish Freddie Mac's ownership of the Deed of Trust, *see* AOB 39, they *did* put Saticoy Bay on notice of an adverse interest potentially belonging to an Enterprise. Simply put, Saticoy Bay should have dug a little deeper.

Saticoy Bay could also have contacted FHFA to determine whether the Property was encumbered by an Enterprise-owned deed of trust. Indeed, HOA sale purchasers now routinely ask FHFA whether a property to be foreclosed on is

encumbered by an Enterprise lien and receive timely answers to their inquiries.[18] Saticoy Bay made no such inquiries, so it cannot be a bona fide purchaser.

Furthermore, Saticoy Bay could have anticipated that there was a significant chance that a property previously sold at an HOA sale was encumbered by an Enterprise lien. In 2008, the Enterprises' "mortgage portfolios had a combined value of $5 trillion and accounted for nearly half of the United States mortgage market," and they have collectively purchased over 11 million mortgages since 2012. *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017). In purchasing a Property at a steep discount at an HOA foreclosure sale, Saticoy Bay accepted a foreseeable risk that the Property was encumbered by an Enterprise lien.

Nor does Saticoy Bay's citation to *Huntington v. Mila, Inc.*, 75 P.3d 354, 356 (Nev. 2003), *see* AOB 41, support its arguments. In *Huntington,* this Court held that "[a] duty of inquiry arises when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said to have constructive notice of their existence whether he does or does not make the investigation. The authorities are unanimous in holding that he has notice

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[18] FHFA has publicly and repeatedly confirmed that, upon inquiry, it will state whether an entity in conservatorship holds an interest. *See, e.g.*, Br. of Appellees FHFA and Fannie Mae at 19 n.6, *Alessi & Koenig* v. *FHFA*, No. 18-16166 (9th Cir. 2018), 2018 WL 5621457.

of whatever the search would disclose." 75 P.3d at 356 (Nev. 2003) (internal quotation marks and citation omitted). The Court therefore unequivocally concluded that a purchaser is deemed to have constructive notice of "whatever [a] search would disclose" when facts would lead a reasonable person to investigate whether a prior unrecorded right existed, regardless of whether that investigation was actually conducted. Here, a record search would have disclosed the existence of the Deed of Trust and the name of its beneficiary; those facts would have led a reasonable HOA sale purchaser to make an investigation into the ownership of that instrument.

Saticoy Bay appears to argue that it does not bear the burden of proving that it is a bona fide purchaser. *See* AOB 43-44. Neither of the cases it cites supports that proposition, either. In *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 646 (Nev. 2017), this Court concluded that Nationstar had the burden to show that an HOA sale should be invalidated in light of the HOA sale purchaser's status as record holder. There was no discussion of Nevada's bona fide purchaser laws. And in *Wells Fargo Bank, N.A. v. Radecki*, 426 P.3d 593, 596 (Nev. 2018), the Court held that the bona-fide-purchaser doctrine "does not provide an equitable basis to invalidate an otherwise *valid* sale"; rather, it "provides an equitable remedy to protect innocent purchasers from an otherwise *defective* sale." In other words, the bona-fide-purchaser doctrine was irrelevant. Similarly, the Federal Foreclosure Bar does not invalidate an otherwise valid HOA

sale, but rather protects any existing Enterprise liens from extinguishment through foreclosure. 12 U.S.C. § 4617(j)(3).

Moreover, *Shadow Wood Homeowners Ass'n v. N.Y. Bancorp, Inc.*, 366 P.3d 1105 (2016), does not support Saticoy Bay's claim that it is a bona fide purchaser. AOB 42-43.[19] *First*, *Shadow Wood* "did not address the equitable considerations when the Federal Foreclosure Bar applies," *One West Bank FSB v. Holm Int'l Props., LLC*, No. 72933, 2018 WL 6817052, at *2 (Nev. Dec. 20, 2018) (unpublished disposition), and thus it cannot control the disposition of this case. *Second*, *Shadow Wood* did not resolve who had interests at the time of the HOA sale, instead considering whether the equities required an HOA foreclosure sale to be set aside. *See* 366 P.3d at 1114-16. *Shadow Wood*'s equitable assessment is thus irrelevant to the "determin[ation] that the deed of trust survived the foreclosure sale by operation of law (i.e., the Federal Foreclosure Bar)." *Saticoy Bay LLC Series 1083 Sterling Peak v. JPMorgan Chase Bank, N.A.*, No. 76352, 2019 WL 4390646 (Nev. Sept. 12, 2019) (unpublished disposition).

Finally, Saticoy Bay attempts to avoid contrary caselaw by differentiating between a "bona fide purchaser" under NRS 111.180 and a "subsequent purchaser" under NRS 111.325. AOB 40-42. But that is a distinction without a difference.

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[19] The purpose of Saticoy Bay's citation to *Firato v. Tuttle*, 308 P.2d 333, 335 (Cal. 1957), AOB 45, is unclear and thus unpersuasive. That decision is not binding on this Court in any event.

Indeed, this Court has referred to purchasers who qualify under NRS 111.325 as "bona fide purchasers" even though the statute does not use that term. *See, e.g.*, *Berge v. Fredericks*, 591 P.2d 246, 248 (Nev. 1979); *Shipman v. Wells Fargo Bank, NA*, No. 57950, 2012 WL 642777, at *1 (Nev. Feb. 24, 2012) (unpublished disposition). Saticoy Bay's argument must also fail in light of *Daisy Trust*; this Court certainly understood the nuances of NRS 111.325 and nevertheless concluded that it does not apply in cases such as this one. *See* 445 P.3d at 849. Moreover, in *Fannie Mae v. BFP*, the Ninth Circuit discussed cases concerning "subsequent purchaser[s]" in concluding that the HOA sale purchaser was not a bona fide purchaser. 812 F. App'x at 523 (citing *Hungtington v. Mila, Inc.* 75 P.3d 354, 356 (Nev. 2003); *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 471 P.2d 666, 668 (Nev. 1970)).

2. If Saticoy Bay Were a Bona Fide Purchaser, the Federal Foreclosure Bar Would Preempt Nevada Law.

Even if Saticoy Bay were considered a bona fide purchaser, applying state bona-fide-purchaser doctrine to extinguish Freddie Mac's federally protected interest would conflict with the Federal Foreclosure Bar.

Saticoy Bay suggests that there is no such conflict because the Federal Foreclosure Bar "does not contain a 'federal' method of holding an interest in Nevada real property" without complying with Nevada's recording statutes. AOB 47; *id.* at 46. But the fact that the Federal Foreclosure Bar does not create federal

requirements for maintaining a property interest does not preclude a conflict between the federal statute and Nevada's bona fide purchaser laws.

Indeed, this Court has recognized "authority suggesting that the Federal Foreclosure Bar would preempt Nevada's law on bona fide purchasers." *Nationstar Mortg., LLC v. Guberland LLC-Series 3*, No. 70546, 2018 WL 3025919, at *2 n.3 (Nev. June 15, 2018) (unpublished disposition) (citing *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451, 2018 WL 2023123, at *3 (D. Nev. May 1, 2018)). And, similarly, the Ninth Circuit has held that "Nevada's bona fide purchaser laws are preempted to the extent that the laws would allow for the extinguishment of [an Enterprise]'s interest without FHFA's consent." *Ditech v. Res. Grp.*, 2020 WL 4917605, at *2; *see also Freddie Mac v. T-Shack*, 806 F. App'x at 577 (an HOA sale purchaser's "alleged status as a bona fide purchaser cannot survive the Federal Foreclosure Bar, which preempts conflicting state law").

The reasoning behind these decisions is sound: Because the Federal Foreclosure Bar protects Freddie Mac's property interest regardless of whether Freddie Mac's name appears in any recorded documents, "[a]llowing Nevada's law on bona fide purchasers to control in this case would be 'an obstacle to Congress's clear and manifest goal of protecting the Agency's assets in the face of multiple potential threats, including threats arising from state foreclosure law.'" *GDS Fin.*

Servs., 2018 WL 2023123, at *3.[20] Any state statute that conflicts with the Federal Foreclosure Bar's protections must yield.

Saticoy Bay's exaggerated policy arguments are no more persuasive. *See* AOB 44. Saticoy Bay contends that allowing the "expectations of purchasers [to be] upset by [Freddie Mac's purportedly] unrecorded claims" will result in purchasers "ceas[ing] to attend foreclosure sales, and the nonjudicial foreclosure process becom[ing] useless." *Id.* Those policy concerns are completely unfounded: prospective purchasers continue to participate in HOA foreclosure sales and, as discussed above, now frequently contact FHFA to determine whether properties are encumbered by an Enterprise-owned deed of trust prior to such sales.

To the extent Saticoy Bay suggests that state law is determinative of an Enterprise's property interests *notwithstanding* the Federal Foreclosure Bar's protection, that is wrong. *See* AOB 46 (citing *United States v. View Crest Garden Apartments, Inc.*, 268 F.2d 380 (9th Cir. 1959)). To the contrary, this Court has time and again reiterated that "the Federal Foreclosure Bar preempts [the State Foreclosure Statute] and prevents an HOA foreclosure sale from extinguishing the

[20] Saticoy Bay notes that *JPMorgan v. GDS* "did not discuss the mandatory language in NRS 111.205(1), NRS 111.315, and NRS 111.325[.]" AOB 53. But the *JPMorgan v. GDS* decision was unequivocal that "Nevada's law on bona fide purchasers would be preempted for the same reasons an HOA cannot foreclose on FHFA's interests without consent." 2018 WL 2023123, at *3.

first deed of trust in those circumstances." *Daisy Trust*, 445 P.3d at 847; *Christine View*, 417 P.3d at 367-68.

Saticoy Bay's arguments that preemption is inapplicable, *see* AOB 46-47, are incorrect. The Federal Foreclosure Bar conflicts with, and thus preempts, any contrary state law. Indeed, "[t]he Federal Foreclosure Bar's declaration that '[n]o property of the Agency shall be subject to ... foreclosure' unequivocally expresses Congress's 'clear and manifest' intent to supersede *any contrary law, including state law*, that would allow foreclosure of Agency property without its consent." *Berezovsky*, 869 F.3d at 931 (emphasis added).

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CONCLUSION

Given Saticoy Bay's apparent litigation tactic to delay final judgment in this and other Federal Foreclosure Bar cases and the precedent foreclosing each of Saticoy Bay's arguments advanced here, this Court should expeditiously issue a ruling affirming the district court's decision. A prompt decision rejecting Saticoy Bay's arguments will discourage Saticoy Bay and other HOA sale litigants from continuing to offer unsupported arguments aimed at delaying final judgments.

Dated this 13th day of August 2021.

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CERTIFICATE OF COMPLIANCE

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

I FURTHER CERTIFY this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 11,494 words.

FINALLY, I CERTIFY that I have read this brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this opening brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

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I understand I may be subject to sanctions in the event the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th day of August, 2021.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on August 13, 2021, the foregoing **RESPONDENT'S ANSWERING BRIEF** 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/ Patricia Larsen
An employee of AKERMAN LLP