

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., and THE
BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2006
J-8, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-J,

Appellants,

v.

NV EAGLES, LLC,

Respondent.

Case No. 81239

Electronically Filed
Jul 01 2020 02:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department XXII
County Clark Judge Rob Bare
District Ct. Case No. A-13-685203-C

2. Attorney filing this docketing statement:

Attorney Ariel E. Stern
Jamie K. Combs . Telephone 702-634-5000
Firm Akerman LLP
Address 1635 Village Center Circle
Suite 200
Las Vegas, NV 89134
Client(s) Bank of America, N.A. (BANA) and The Bank of New York Mellon FKA The Bank of
New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust
2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8 (BoNYM) (jointly the
appellants).

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Joseph Y. Hong Telephone: 702-870-1777
Firm Hong & Hong Law Office
Address 1980 Festival Drive, Suite 650
Las Vegas, NV 89135
Client(s) NV Eagles, LLC

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Eighth Judicial District Court, Clark County, Nevada, No. A-13-690944-C

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case concerns quiet title claims brought by NV Eagles, LLC (**NV Eagles**) arising out of an HOA foreclosure sale. NV Eagles sought a holding that it possesses title free and clear to real property located at 2184 Pont National Drive, Henderson, Nevada 89044 (**the property**) arising from an HOA foreclosure sale conducted by Madeira Canyon Homeowners Association (the **HOA**) under NRS 116. The HOA had foreclosed on its lien and sold the property on June 7, 2013, to Underwood Partners, LLC. NV Eagles was subsequently conveyed the property in a deed dated September 18, 2013.

On December 21, 2010, Nevada Association Services, Inc. (**NAS**), as the agent for the HOA, recorded a notice of default and election to sell. At the time, BANA serviced the loan secured by the deed of trust. In response to the notice of default, BANA retained to pay off any superpriority portion of an HOA's lien. BANA's attorneys sent a letter to NAS that offered to pay the superpriority portion of the HOA's lien and requested a payoff ledger. Based on the ledger provided, BANA's attorneys sent a check for nine months of delinquent assessments.

After a bench trial, the court entered an order ruling in favor of NV Eagles, holding that the deed of trust was extinguished by the foreclosure sale. This appeal followed.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether BANA made a sufficient tender of the superpriority portion because it submitted a payment equal to three quarterly assessments as indicated in the payoff ledger provided by the HOA's trustee NAS.

(2) Alternatively, whether the superpriority portion of the HOA's lien was discharged under the doctrine of excuse of tender because the evidence established that the HOA's trustee had a known policy of rejecting all tenders for anything less than the full lien amount (both the subpriority and superpriority portions).

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is not presumptively retained under either court. However, as it concerns the application of well-settled law, it should be referred to the Court of Appeals.

14. Trial. If this action proceeded to trial, how many days did the trial last? 2 days

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 30, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served April 30, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev.____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal filed

May 28, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRAP 3A(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The judgment below is a final order following a bench trial.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Melissa Lieberman (**Lieberman**)

Bank of America, N.A. (**BANA**)

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8 (**BoNYM**)

Cogburn Law Offices (**Cogburn**)

Lawyer's Title of Nevada, Inc. (**Lawyer's Title**)

Madeira Canyon Homeowners Association (**HOA**)

Nevada Association Services, Inc. (**NAS**)

Norman Teran (**Teran**)

Pulte Mortgage, LLC (**Pulte**)

Resurgent Capital Services, LP (**Resurgent**)

Underwood Partners, LLC (**Underwood**)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The district court dismissed Pulte on October 30, 2013

Teran and Cogburn were dismissed on January 9, 2014.

Claims against Underwood were dismissed in part and stayed in part on January 21, 2014.

The district court dismissed NAS and the HOA on February 14, 2014.

The district court dismissed Lawyer's Title on November 4, 2015.

Resurgent was voluntarily dismissed on November 21, 2018.

Lieberman did not appear at trial and has remaining claims that were not resolved by an order.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Lieberman asserted claims for wrongful foreclosure, quiet title, breach of contract, breach of implied duty of good faith, deceptive or unfair trade practices, and abuse of process that were disposed of: as to Underwood, on January 21, 2014; as to the HOA and NAS, on February 14, 2014; and as to Resurgent, on November 21, 2018.

BANA and BoNYM asserted claims for quiet title and declaratory relief against NV Eagles that were disposed of in the April 30, 2020 order.

NAS asserted claims for negligence, indemnity and contribution, and interpleader that were disposed of in the February 10, 2014 order of dismissal.

NV Eagles asserted claims for quiet title, declaratory relief, injunctive relief, and unjust enrichment that were disposed of in the April 30, 2020 order.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Lieberman's claims against BANA and Underwood.

(b) Specify the parties remaining below:

Lieberman and Underwood.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Bank of America, N.A. and The Bank of
New Mellon fka The Bank of New York
Name of Appellant

Jamie K. Combs, Esq.
Name of counsel of record

July 1, 2020
Date

/s/ Jamie K. Combs
Signature of Counsel of Record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of July, 2020, I served a copy of this completed docketing statement upon all counsel of record:

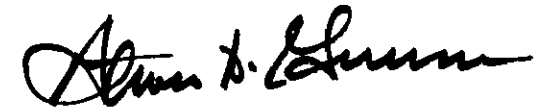
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Joseph Hong, Esq. Hong & Hong Law Office 1980 Festival Plaza Dr., Ste. 650 Las Vegas, NV 89135 <i>Attorney for Respondent</i>	
--	--

Dated this 1st day of July, 2020

/s/ Carla Llarena
Signature



CLERK OF THE COURT

ACOM
COGBURN LAW OFFICES
JAMIE S. COGBURN, ESQ.
Nevada Bar No. 8409
Jsc@cogburnlaw.com
RYAN H. DEVINE, ESQ.
Nevada Bar No. 12953
rdevine@cogburnlaw.com
2879 St. Rose Parkway, Suite 200
Las Vegas, Nevada 89052
Tel: (702) 384-3616
Fax: (702) 943-1936
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

Plaintiff,

vs.

MADEIRA CANYON HOMEOWNERS'
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation, BANK
OF AMERICA, N.A., a federal savings bank,
RESURGENT CAPITAL SERVICES, LP, a
national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business entity,
and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendant.

Case No: A - 13 - 685203 - C

Dept. No.: XXXII

**FIRST AMENDED COMPLAINT FOR
QUIET TITLE**

FIRST AMENDED COMPLAINT

Plaintiff, Melissa Lieberman, by and through her counsel of record Cogburn Law Offices, hereby files her First Amended Complaint against Madeira Canyon Homeowners' Association ("Madeira"), a Nevada corporation, Nevada Association Services, Inc. (individually as "NAS"), a Nevada corporation, Bank of America, N.A. (individually as "BoFA"), a national association as successor in interest to Resurgent Mortgage Servicing (individually as "Resurgent") (collectively as "Defendants"), a national corporation, and Underwood Partners, LLC (individually as "Underwood"), an unknown business entity, and allege as follows:

THE PARTIES, JURISDICTION, & VENUE

1. Plaintiff was, at all relevant times, a resident of Clark County, Nevada.

2. Madeira was, at all relevant times, a Nevada homeowners association conducting business in Clark County, Nevada.

3. NAS was, at all relevant times, a Nevada corporation conducting business in Clark County, Nevada.

4. BofA was, at all relevant times, a national association conducting business in Clark County, Nevada. Plaintiff is informed and believes that this Defendant is an indispensable party and therefore sues this party as a nominal defendant.

5. Resurgent Capital Services was, at all relevant times, a national corporation conducting business in Clark County, Nevada. Plaintiff is informed and believes that this Defendant is an indispensable party and therefore sues this party as a nominal defendant.

6. Underwood Partners, LLC was, at all relevant times, an unknown entity conducting business in Clark County, Nevada.

7. DOE Defendants I through X, inclusive, and ROE Corporations I through X, inclusive, are persons, corporations or business entities who are or which may also be responsible for or who directed or assisted in the wrongful actions of the named Defendants. The true identities of the DOE and ROE defendants are unknown to Plaintiff at this time. Plaintiff therefore alleges that DOE and ROE defendants may be responsible in part for damages suffered by Plaintiff as a result of their own wrongful actions and/or those of their agents and/or employees. Plaintiff will seek leave to amend this Complaint as soon as the true identities of the DOE and ROE defendants are revealed.

8. The Court has jurisdiction over the instant dispute and venue is proper as well as a result of Defendants' acts and/or omissions occurred in Clark County, Nevada.

GENERAL ALLEGATIONS

9. Plaintiff's home is located at 2184 Pont National Dr., Henderson, Clark County, NV 89044; APN No. 190-20-311-033 ("subject property").

10. Plaintiff had a mortgage for the subject property serviced by BofA.

11. BofA has recently sold the servicing rights of the loan to Resurgent.

12. Plaintiff was making payments pursuant to the terms and conditions of her mortgage, but due to financial burdens, she sought to modify her mortgage pursuant to the Making Homes Affordable ("MHA") Guidelines and Directives.

13. On March 28, 2013, Plaintiff became aware of the Foreclosure Sale set for April 26, 2013 citing an \$8,505.07 unpaid balance for HOA fees.

14. In response, Plaintiff paid \$250.00 to NAS in order to set up a payment plan for the unpaid balance.

15. NAS never provided to Plaintiff or her representatives a payment plan in response to her \$250.00 as promised.

16. On June 7, 2013, NAS foreclosed on the subject property, selling the property to Underwood.

17. Defendants, specifically NAS, did not record the Notice of Sale with the Clark County Recorder's Office before the foreclosure sale of the subject property.

18. Underwood was not a bona fide purchaser because it was on notice by the fact the Notice of Sale was not recorded with the Clark County Recorder's Office before the sale.

19. On July 3, 2013, a new Deed of Trust indicating a new owner was recorded on the subject property with the Clark County Recorder's Office.

20. As a direct consequence of Defendants' acts and/or omissions, Plaintiff suffered the loss of legal title to the subject property.

21. As a direct consequence of Defendants' acts and/or omissions, Plaintiff has been forced to incur the services of an attorney and is entitled to attorneys' fees and costs.

FIRST CLAIM FOR RELIEF

(Violation of N.R.S. 107.080 *et seq.* Wrongful Foreclosure against Madeira and NAS)

22. Plaintiff repeats and realleges the allegations the above allegations as if fully set forth herein.

23. Defendants are subject to N.R.S. 107.080 *et seq.* regarding

1 foreclosure sales.

2 24. Defendants failed to comply with N.R.S. 107.080 *et seq.* as a result of the acts
3 and/or omissions set forth herein.

4 25. Defendants failed to record a Notice of Sale with the Clark County Recorder's
5 Office.

6 26. Defendants, therefore, are in violation of N.R.S. 107.080 *et seq.*

7 27. As a direct and proximate result of Defendants act and/or omissions, Plaintiff has
8 sustained damages.

9 28. Further, as a direct and proximate result of Defendants act and/or omissions,
10 Plaintiff has been forced to retain the services of counsel.

11 **SECOND CLAIM FOR RELIEF**
12 **(Quiet Title against All Defendants)**

13 29. Plaintiff reincorporates by reference and realleges each and every allegation set
14 forth above as if set forth fully herein.

15 30. Plaintiff was had a valid mortgage with their lender, BofA.

16 31. Defendants failed to properly foreclose on the subject property under NRS 107, *et*
17 *seq.*

18 32. Defendants' wrongful foreclosure constitutes a cloud upon the title of the subject
19 property and is void.

20 33. Defendants had no reasonable basis to cloud the title of the Property.

21 34. The title of the property should be quieted in the name of the plaintiff.

22 35. Plaintiff has been forced to retain the services of an attorney to prosecute this
23 matter and is entitled to recover reasonable costs and attorneys' fees incurred herein as damages.
24

25 ///

26 ///

THIRD CLAIM FOR RELIEF
(Breach of Contract against Madeira and NAS)

36. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

37. A valid and existing contract exists between Plaintiff and Defendants regarding the subject property pursuant to the covenants, conditions, and restrictions.

38. Plaintiff performed all duties owed pursuant to the existing contract with Defendants or was excused from performance of her duties owed.

39. Defendants breached the contract based upon their acts and/or omissions set forth herein.

40. As a direct and proximate cause of Defendants' acts and/or omissions, Plaintiff has sustained damages.

41. Further, as a direct and proximate cause of Defendants' acts and/or omissions Plaintiff has been forced to retain the services of counsel to represent her in this dispute.

FOURTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing against Madeira, and NAS; Contractual)

42. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

43. Plaintiff and Defendants are parties to an existing contract pursuant to the covenants, conditions, and restrictions.

44. Defendants owed a duty of good faith to Plaintiff to perform their obligations owed to her pursuant to existing contract in a manner that would not frustrate the purpose of the contract or undermine her rights in any way pursuant to the contract.

45. Defendants breached this duty by engaging in their acts and/or omissions as set forth herein.

46. As a direct and proximate cause of Defendants' acts and/or omissions, Plaintiff has sustained damages.

47. Further, as a direct and proximate cause of Defendants' acts and/or omissions, Plaintiff has been forced to retain the services of counsel to represent her in this dispute.

///

FIFTH CLAIM FOR RELIEF**(Violation of NRS 598 *et seq.* Deceptive or Unfair Trade Practices against Underwood)**

48. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

49. NRS 598.092(8) provides that a person engages in a deceptive trade practice when in the course of their business or occupation they knowingly misrepresent the legal rights, obligations or remedies of a party to a transaction.

50. NRS 598.0923(1) provides that a person engages in a deceptive trade practice when in the course of their business or occupation they knowingly conduct the business or occupation without all required state, county or city licenses.

51. Plaintiff is clearly not a tenant, and therefore, Defendant did not have a legal right to serve a 5-day notice to pay or quit on the Plaintiff.

52. Defendant, in connection with the servicing of the 5-day notice to pay or quit, failed to disclose material facts to Plaintiff in violation of NRS 598 *et seq.*

53. Defendant, in connection with the servicing of the 5-day notice to pay or quit, made misrepresentations of material fact to Plaintiff in violation of NRS 598 *et seq.*

54. As a direct and proximate result of Defendant's actions, Plaintiff has suffered significant loss and damages, including injury to reputation, humiliation, embarrassment, mental suffering and inconvenience.

SIXTH CLAIM FOR RELIEF**(Abuse of Process against Underwood)**

55. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

56. Plaintiff is informed and believes and on that basis thereupon alleges that Defendant had an ulterior purpose by serving the Plaintiff with a 5-day notice to pay or quit, other than resolving a legal dispute by filing a complaint for unlawful detainer.

57. Plaintiff is clearly not a tenant, and therefore, Defendant had no grounds to serve a 5-day notice to pay or quit.

58. Plaintiff is informed and believes, and on the basis thereupon alleges that Defendant took one or more willful acts in the serving of the 5-day notice to pay or quit that was not proper in the regular conduct of the proceeding.

59. As a direct, foreseeable and proximate result, Plaintiff has suffered significant loss and damages, including injury to reputation, humiliation, embarrassment, mental suffering and inconvenience.

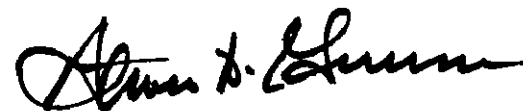
WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Quiet title to the subject property;
2. Punitive damages;
3. An award of reasonable attorneys' fees and costs; and
4. Any other relief the Court deems just and appropriate.

DATED this 5th day of August, 2013.

COGBURN LAW OFFICES

By: Ryan H. Devine
Jamie S. Cogburn, Esq.
Nevada State Bar No. 8409
Ryan H. Devine, Esq.
Nevada State Bar No. 12953
2879 St. Rose Pkwy. Suite 200
Las Vegas, Nevada 89052
Attorneys for Plaintiff



CLERK OF THE COURT

Richard Vilkin, Esq.
Nevada Bar No. 8301
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
Fax: (702) 476-3212
Email: richard@vilkinlaw.com
*Attorneys for defendant, counterclaimant
and third-party plaintiff Nevada
Association Services, Inc.*

DISTRICT COURT
CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

Plaintiff,

v.

MEDIERA CANYON COMMUNITY
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation,
BANK OF AMERICA, N.A., a federal savings
bank, RESURGENT CAPITAL SERVICES,
L.P., a national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business
entity, and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Counterclaimant,

v.

MELISSA LIEBERMAN, an individual,

Counterdefendant.

NEVADA ASSOCIATION SERVICES, INC.,

Case No. A-13-685203-C

Dept.: XXXII

THIRD PARTY COMPLAINT BY NEVADA
ASSOCIATION SERVICES, INC.

1 a Nevada corporation,

2 Third Party Complainant,

3 v.

4 COGBURN LAW OFFICES, a Nevada
5 domestic limited liability company; NORMA
6 TERAN, an individual; LAWYERS TITLE
7 OF NEVADA, INC., a Nevada corporation,
8 AS TRUSTEE FOR MORTGAGE
9 ELECTRONIC REGISTRATION SYSTEMS,
10 INC. ("MERS") AS NOMINEE FOR PULTE
11 MORTGAGE, LLC; THE BANK OF NEW
12 YORK MELLON FKA THE BANK OF NEW
13 YORK, a national bank association, AS
14 TRUSTEE FOR THE
15 CERTIFICATEHOLDERS OF CWALT, INC.
16 ALTERNATIVE LOAN TRUST 2006-J8,
17 MORTGAGE PASS THROUGH
18 CERTIFICATES SERIES 2006-J8, and DOES
19 1-25, inclusive,

20 Third party defendants.

21 COMES NOW third-party plaintiff NEVADA ASSOCIATION SERVICES, INC.
22 ("NAS"), and asserts a Third Party Complaint as follows:

23 GENERAL ALLEGATIONS

- 24 1. Third party plaintiff NEVADA ASSOCIATION SERVICES, INC. ("NAS") is a
25 Nevada corporation which, at all times material herein, was doing business in Clark
26 County, Nevada.
27 2. Third party defendant COGBURN LAW OFFICES, LLC is a Nevada domestic
28 limited liability company which, at all times material herein, was doing business in
Clark County, Nevada and is a law firm that provides legal services to clients.

- 1 3. Third-party defendant NORMA TERAN is an individual whom, on information and
2 belief, was residing at all times material herein in Clark County, Nevada, and an
3 employee of third-party defendant COGBURN LAW OFFICES, LLC.
- 4 4. Third party defendant LAWYERS TITLE OF NEVADA AS TRUSTEE FOR
5 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS
6 NOMINEE FOR PULTE MORTGAGE, LLC is a Nevada corporation which, at all
7 times material herein, was doing business in Clark County, Nevada.
- 8 5. THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS
9 TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC.
10 ALTERNATIVE LOAN TRUST 2006-J8, MORTGAGE PASS THROUGH
11 CERTIFICATES SERIES 2006-J8 is, on information and belief, a national bank
12 association which, at all times material herein, was doing business in Clark County,
13 Nevada.
- 14 6. Plaintiff is unaware currently of the true names and capacities of those defendants
15 sued herein as DOES 1-25 and therefore sues said defendants by such fictitious
16 names. Plaintiff will seek leave of court to amend this Complaint to allege the true
17 names and capacities of said defendants when the same have been ascertained.
- 18 7. Plaintiff is informed and believes, and thereon alleges, that each of the defendants
19 sued herein, including those named as DOES, are the agents, servants, employees,
20 predecessor entities, successor entities, parent entities, totally owned or controlled
21 entities, or had some other legal relationship of responsibility for, the other
22 defendants, and in doing the things herein alleged, acted within the course and scope
23 and authority of such agency, employment, ownership or other relationship and with
24 the full knowledge and consent of the other defendants, or are in some other manner
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1 legally responsible for the acts as alleged herein. Additionally, with respect to all
2 corporate entity defendants, the officers and directors of such entities ratified and
3 affirmed all contracts of its employees, agents, directors and/or officers.
4

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6 FIRST CAUSE OF ACTION

7 (Negligence – Against Third Party Defendants Cogburn Law Offices, LLC, Norma
8 Teran and DOES 1-10)

- 9 8. Paragraphs 1-7 above are reiterated and repeated herein by reference.
- 10 9. NAS is a debt collection company which works on behalf of homeowner
11 associations to collect debts secured by real property, including delinquent
12 homeowner assessments. When a property owner becomes delinquent to the
13 homeowners association, NAS is contracted to collect the debt, which at the outset
14 includes efforts to collect the debt directly from the property owner but which often
15 leads, when the property owner does not pay after a long period of time, to a non-
16 judicial foreclosure action pursuant to Nevada law.
- 17 10. NAS was contracted by the Madeira Canyon Homeowners Association (“HOA”) in
18 2010 to collect debts owed to it for unpaid homeowners assessments by plaintiff
19 Melissa Lieberman for the property located at 2184 Point National Drive,
20 Henderson, NV 89074 (“the subject property”). This effort resulted in a foreclosure
21 sale of the subject property on June 7, 2013.
- 22 11. Prior to the sale, NAS was contacted by third-party defendants COGBURN LAW
23 OFFICES, LLC and NORMA TERAN. Said third-party defendants stated orally
24 and in writing that they represented plaintiff MELISSA LIEBERMAN. Said third-
25 party defendants requested a payment plan from NAS for plaintiff. Said payment
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1 plan was provided to third-party defendants in writing. Plaintiff then breached the
2 payment plan. NAS contacted said third party defendants multiple times prior to the
3 foreclosure sale to see if something could be worked out to avoid the foreclosure
4 sale, but NAS did not hear back from said third party defendants prior to the sale.
5 Said third party defendants then filed the instant lawsuit on behalf of plaintiff
6 blaming NAS for a wrongful foreclosure and other causes of action, but NAS alleges
7 that said third party defendants undertook a duty to NAS to notify plaintiff of NAS'
8 communications concerning plaintiff's account and to inform her of the payment
9 plan and when payments were due, as well as other communications from NAS
10 concerning the impending foreclosure. On information and belief, said third party
11 defendants breached that duty by not informing plaintiff of such information and
12 communications. As a result of the negligence of third-party defendants, the
13 foreclosure sale went forward. As a result of the negligence of said third party
14 defendants, third party plaintiff NAS has suffered damages, including but not limited
15 to the damages alleged by plaintiff against NAS in her Complaint and the attorneys
16 fees and costs expended by NAS in defending the action brought by plaintiff.
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21 SECOND CAUSE OF ACTION

22 (Implied/Equitable Indemnity and Contribution – Against Third Party Defendants
23 Cogburn Law Offices, LLC, Norma Teran and DOES 1-10)

24 12. Third-party plaintiff NAS reiterates herein by reference paragraphs 1-11 above.

25 13. The conduct of third-party defendants COGBURN LAW OFFICES, LLC and
26 TERAN entitle third-party plaintiff NAS to implied/equitable indemnity because
27 either there was no negligence by NAS or such negligence was passive.
28

1 14. The conduct of third-party defendants COGBURN LAW OFFICES, LLC and
2 TERAN entitle NAS to contribution pursuant to NRS 17.225 to NRS 17.305.
3

4 THIRD CAUSE OF ACTION
5

6 (Interpleader (NRCP 22) -- Against Third Party Defendants Lawyers Title Of Nevada, Inc., A
7 Nevada Corporation, As Trustee For Mortgage Electronic Registration Systems, Inc. ("Mers")
8 As Nominee For Pulte Mortgage, Llc; The Bank Of New York Mellon Fka The Bank Of New
9 York, A National Bank Association, As Trustee For The Certificateholders Of Cwalt, Inc.
Alternative Loan Trust 2006-J8, Mortgage Pass Through Certificates Series 2006-J8); And DOES
11-25)

10 15. Plaintiff reincorporates herein by reference as stated in full all allegations as
11 contained in Paragraphs 1-10 above.

12 16. Recorded records in Clark County, Nevada state that there are numerous liens and
13 other debts secured by the subject property belonging to the third party defendants named in this
14 cause of action and possibly to counterclaimant herein Melissa Lieberman. These debts exceed
15 the amount of \$21,392.36 currently in the possession of NAS. Third-party plaintiff does not
16 know the current status of such debts, nor how the amount it currently has possession of should
17 be distributed to the various third-party defendants named in this cause of action and
18 counterdefendant Melissa Lieberman. Third-party plaintiff is therefore faced with multiple or
19 double liability. Third party plaintiff has asserted a similar cause of action for interpleader as a
20 counterclaim against Melissa Lieberman.
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23 17. Therefore, after filing this Third Party Complaint, third-party plaintiff will deposit
24 with the Clerk of the Eighth Judicial District Court the amount of \$21,392.36. Third-party
25 plaintiff will then serve the third-party defendants with this Third Party Complaint and it requests
26 that the court then determine how such funds shall be distributed amongst them and
27 counterdefendant Melissa Lieberman.
28

1 18. NAS has incurred attorneys fees and costs in preparing, filing and prosecuting the
2 interpleader portion of this action and seeks reimbursement for those attorneys fees and costs
3 from the amount deposited with the court per Nevada law, including NRS 116.31164(3)(c).

4 19. NAS requests that, after the parties have been served or at such other appropriate
5 time, that it be dismissed from the interpleader portion of this action as it has no direct interest in
6 the interpled funds, other than reimbursement of its costs and fees for bringing the instant action.
7

8
9 PRAYER

10 WHEREFORE, third-party plaintiff NAS prays for Judgment against third party
11 defendants as follows:
12

- 13 1. On the First Cause of Action for negligence, for general damages and special
14 damages consisting of attorneys fees and costs;
- 15 2. On the Second Cause of Action for Implied/Equitable Indemnity and Contribution,
16 for implied/equitable indemnity and contribution;
- 17 3. On the Third Cause of Action for Interpleader, that the court determine how the
18 deposited funds should be distributed and order distribution of said funds amongst
19 counterdefendant Lieberman and the third-party defendants named in the interpleader
20 cause of action, and that NAS be reimbursed out of said deposited funds its attorneys
21 fees and costs in bringing the interpleader cause of action; and
22
23

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1 4. For such other and further relief as the court deems just and proper.

2 Date: August 19, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

3
4 By: 

Richard Vilkin, Esq.

Nevada Bar No. 8301

1286 Crimson Sage Ave.

Henderson, NV 89012

Phone: (702) 476-3211

*Attorneys for defendant, counterclaimant
and third-party plaintiff NAS*

Certificate of Mailing

I hereby certify that on August 19, 2013, I put a copy of the THIRD PARTY COMPLAINT BY NEVADA ASSOCIATION SERVICES, INC. in a sealed envelope, postage prepaid, and deposited said envelope in the U.S. Mail, addressed as follows, to counsel in the case of *Melissa Lieberman v. Mediera Canyon Community Association et al.* (Nev. Dist. Ct. Case No. A-13-685203-C):

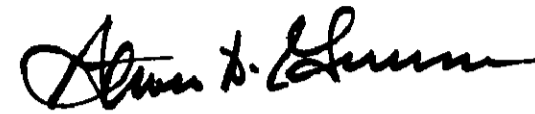
Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
Cogburn Law Offices
2879 St. Rose Parkway, Suite 200
Las Vegas, NV 89052

Executed this 19th day of August, 2013 at Henderson, NV. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.


Richard Vilkin

Richard Vilkin, Esq.
Nevada Bar No. 8301
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
Fax: (702) 476-3212
Email: richard@vilkinlaw.com
*Attorneys for defendant and counterclaimant Nevada
Association Services, Inc.*

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

Plaintiff,

v.

MEDIERA CANYON COMMUNITY
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation,
BANK OF AMERICA, N.A., a federal savings
bank, RESURGENT CAPITAL SERVICES,
L.P., a national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business
entity, and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants.

Case No. A-13-685203-C

Dept.: XXXII

ANSWER OF DEFENDANT NEVADA
ASSOCIATION SERVICES, INC.;
COUNTERCLAIMS OF
COUNTERCLAIMANT NEVADA
ASSOCIATION SERVICES

COMES NOW defendant NEVADA ASSOCIATION SERVICES, INC. ("NAS"), and
responds to the Complaint of plaintiff as follows:

1. Answering paragraphs 3, 6, 14 and 16 of the Complaint, this answering defendant
admits the factual allegations therein.

2. Answering paragraphs 2, 15, 17, 18, 20, 21, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 43, 44, 45, 46 and 57 of the Complaint, this answering defendant denies the factual allegations therein alleged against it.

3. Answering paragraphs 1, 4, 5, 7, 8, 9, 10, 11, 12, 13, 19 and 30 of the Complaint, this answering defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, or as contained therein against parties other than NAS, or finds said statements and allegations to be vague and ambiguous, and, on those bases, denies said allegations. It should be noted that none of the Exhibits which the Complaint claims were attached to the Complaint were attached to the Complaint filed in this case, nor served on this answering defendant.

4. Answering paragraphs 22, 29, 36 and 42 of the Complaint, this answering defendant repeats its responses as stated herein to each of the paragraphs of the Complaint realleged by plaintiff in paragraphs 22, 29, 36 and 42.

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state any cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The recovery sought is barred by the doctrines of waiver, unclean hands, laches and failure to do equity.

THIRD AFFIRMATIVE DEFENSE

Plaintiff was more than 50 percent negligent in and about the acts complained of in her Complaint and therefore is barred from recovery pursuant to NRS 41.141.

1
2 FOURTH AFFIRMATIVE DEFENSE

3 Plaintiff was negligent in and about the acts complained of in their Complaint and
4 therefore her claims are subject to the rules and law in Nevada governing comparative
5 negligence.
6

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8 FIFTH AFFIRMATIVE DEFENSE

9 Plaintiff should be estopped from making its claims due to her own dishonesty, illegal
10 conduct, lack of good faith and fraud.
11

12
13 SIXTH AFFIRMATIVE DEFENSE

14 The acts complained of by plaintiff, if wrongful, were committed by parties other than
15 NAS.
16

17
18 SEVENTH AFFIRMATIVE DEFENSE

19 Plaintiff failed to mitigate her damages.
20

21 EIGHTH AFFIRMATIVE DEFENSE

22 This answering defendant complied with all notice and other requirements for a non-
23 judicial foreclosure as required by NRS 116, NRS 107 and other Nevada law.
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26 NINTH AFFIRMATIVE DEFENSE

27 Plaintiff lacks standing to bring this action.
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Plaintiff's action is barred by the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

NAS is entitled to recover its attorneys fees and costs in defending this action pursuant to NRS 116.31164(c)(2) and NAC 116.470.

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged in this Answer insofar as sufficient facts were not available after reasonable inquiry prior to it being filed, and therefore, defendant hereby reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

PRAAYER

Wherefore, defendant NAS prays for Judgment as follows:

1. That plaintiff's Complaint be dismissed and that no relief be afforded plaintiff;
2. That defendant NAS be awarded its attorneys fees and costs in defending this action under Nevada law.
3. That the court award such other and further relief as is just and proper.

Date: August 19, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

By:

Richard Vilkin, Esq.
Nevada Bar No. 8301
1286 Crimson Sage Ave.
Henderson, NV 89012
Attorneys for defendant NAS

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COUNTERCLAIMS BY NAS

Comes now counterclaimant Nevada Association Services, Inc. ("NAS") and asserts the following counterclaims against counterdefendant Melissa Lieberman:

FIRST CAUSE OF ACTION

(Breach Of Contract And Failure To Pay Account Stated)

1. The contents of plaintiff's Complaint, paragraph 1, is reiterated herein on information and belief.
2. NAS was, at all times relevant herein, a Nevada corporation doing business in Clark County, Nevada and acting as a collection agent for a homeowner's association of which plaintiff was a member.
3. Plaintiff failed to pay her HOA assessments and the fees and charges incurred by NAS per plaintiff's agreements with her homeowners association through their CC&Rs and other governing documents.
4. Per plaintiff's agreements with the HOA, NAS is entitled to be paid the attorneys fees and charges incurred in an action such as this. In addition, NAS is entitled to be paid its attorneys fees and costs in prosecuting and defending this action per NRS 116.31164(c)(2) and NAC 116.470.

SECOND CAUSE OF ACTION

(Interpleader)

5. Counterclaimant reiterates herein paragraphs 1 and 2 above.
6. NAS is a debt collection company which works on behalf of homeowner associations to collect debts secured by real property, including delinquent homeowner

1 assessments. When a property owner becomes delinquent to the homeowners association, NAS
2 is contracted to collect the debt, which at the outset includes efforts to collect the debt directly
3 from the property owner but which often leads, when the property owner does not pay after a
4 long period of time, to a non-judicial foreclosure action pursuant to Nevada law.

5 7. NAS was contracted by the Madeira Canyon Homeowners Association to collect
6 debts owed to it for unpaid homeowners assessments by counterclaimant for the property located
7 at 2184 Point National Drive, Henderson, NV 89044-2006 ("the subject property"). This effort
8 resulted in a foreclosure sale of the subject property on June 7, 2013. As a result of the sale, and
9 after paying the homeowners association the money owed to it, and after paying to NAS its fees
10 and costs incurred in collecting the debt as allowed by contract and Nevada law, NAS was left
11 with an excess of \$21,392.36. NAS has no further direct interest in such funds.

12 8. Recorded records in Clark County, Nevada state that there are numerous liens and
13 other debts secured by the subject property belonging to the defendants in this action. These
14 debts exceed the amount of \$21,392.36 currently in the possession of NAS. Counterclaimant
15 does not know the current status of such debts, nor how the amount it currently has possession of
16 should be distributed to the various parties. Counterclaimant is therefore faced with multiple or
17 double liability. Counterclaimant will file as part of this case a Third-Party Complaint with an
18 interpleader cause of action naming the other parties who may be entitled to such funds as third-
19 party defendants.

20 9. Therefore, after filing this Counterclaim, counterclaimant NAS will deposit with
21 the Clerk of the Eighth Judicial District Court the amount of \$21,392.36. Counterclaimant will
22 serve the Third-Party Defendants with the Third Party Complaint and request that the court
23 determine how such funds should be distributed amongst counterdefendant Melissa Lieberman
24 and the third-party defendants.

10. NAS has incurred attorneys fees and costs in preparing, filing and prosecuting the interpleader portion of this action and seeks reimbursement for those attorneys fees and costs from the amount deposited with the court per Nevada law, including NRS 116.31164(3)(c).

11. NAS requests that, after the parties subject to the interpleader cause of action have been served or at such other appropriate time, that it be dismissed from the interpleader cause of action, asserted both by way of counterclaim and third-party complaint, as it has no direct interest in the interpled funds, other than reimbursement of its costs and fees for bringing the instant action.

PRAYER

WHEREFORE, counterclaimant NAS prays for Judgment against counterdefendant
Melissa Lieberman as follows:

1. On the First Cause of Action for Breach of Contract/Failure to Pay Account Stated, that counterclaimant NAS recover the fees and charges it incurred because of plaintiff's failure to abide by her agreements with the homeowner association herein and pursuant to NRS 116.31164(c)(2) and NAC 116.470;
2. On the Second Cause of Action for Interpleader, that the court determine how the deposited funds should be distributed and order distribution of said funds amongst counterdefendant Lieberman and the third-party defendants named in the interpleader cause of action, and that NAS be reimbursed out of said deposited funds its attorneys fees and costs in bringing the interpleader cause of action; and

/ / /

/ / /

///

1 3. For such other and further relief as the court deems just and proper.

2 Date: August 19, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

3
4 By: _____

Richard Vilkin

Nevada Bar No. 8301

1286 Crimson Sage Ave.

Henderson, NV 89012

Phone: (702) 476-3211

Attorneys for defendant and counterclaimant

Nevada Association Services, Inc.

Richard Vilkin, Esq.
Nevada Bar No. 8301
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
Fax: (702) 476-3212
Email: richard@vilkinlaw.com
*Attorneys for defendant and counterclaimant Nevada
Association Services, Inc.*

DISTRICT COURT
CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

Plaintiff,

v.

MEDIERA CANYON COMMUNITY
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation,
BANK OF AMERICA, N.A., a federal savings
bank, RESURGENT CAPITAL SERVICES,
L.P., a national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business
entity, and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants.

Case No. A-13-685203-C

Dept.: XXXII

INITIAL APPEARANCE FEE DISCLOSURE
BY DEFENDANT NEVADA
ASSOCIATION SERVICES, INC.

COMES NOW defendant Nevada Association Services, Inc., a Nevada corporation, and
provides its Initial Appearance Fee Disclosure as follows:

<u>Defendant Nevada Association Services, Inc.:</u>	<u>\$223.00</u>
---	-----------------

Total:	\$223.00
--------	----------

1 Date: August 19 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

2
3 By: 

4 Richard Vilkin, Esq.

5 Nevada Bar No. 8301

6 1286 Crimson Sage Ave.

7 Henderson, NV 89012

8 Phone: (702) 476-3211

9 Fax: (702) 476-3212

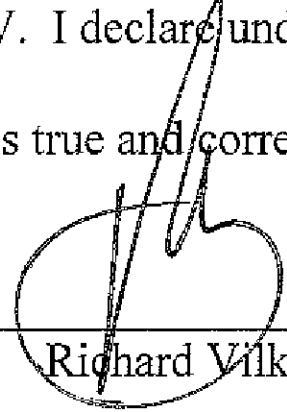
10 *Attorneys for defendant Nevada Association*
11 *Services, Inc.*

Certificate of Mailing

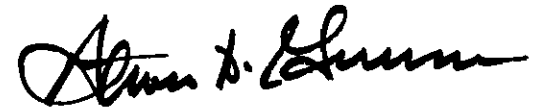
I hereby certify that on August 19, 2013, I put a copy of the ANSWER OF
DEFENDANT NEVADA ASSOCIATION SERVICES, INC.; COUNTERCLAIMS OF
COUNTERCLAIMANT NEVADA ASSOCIATION SERVICES in a sealed envelope, postage
prepaid, and deposited said envelope in the U.S. Mail, addressed as follows, to counsel in the
case of *Melissa Lieberman v. Mediera Canyon Community Association et al.* (Nev. Dist. Ct.
Case No. A-13-685203-C):

Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
Cogburn Law Offices
2879 St. Rose Parkway, Suite 200
Las Vegas, NV 89052

Executed this 19th day of August, 2013 at Henderson, NV. I declare under penalty of
perjury under the laws of the State of Nevada that the foregoing is true and correct.



Richard Vilkin



CLERK OF THE COURT

1 **ANAC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 STEVEN SHEVORSKI, ESQ.
5 Nevada Bar No. 8256
6 AKERMAN SENTERFITT LLP
7 1160 Town Center Drive, Suite 330
8 Las Vegas, Nevada 89144
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: ariel.stern@akerman.com
12 Email: steven.shevorski@akerman.com

13 *Attorneys for Bank of America, N.A. and*
14 *BNY Mellon, as Trustee*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 MELISSA LIEBERMAN,
18
19 Plaintiff,

20 v.

21 MADEIRA CANYON HOMEOWNERS'
22 ASSOCIATION; a Nevada Homeowners
23 association; NEVADA ASSOCIATION
24 SERVICES, INC.; a Nevada corporation; BANK
25 OF AMERICA, N.A., a federal savings bank;
26 RESURGENT CAPITAL SERVICES, L.P., a
27 national corporation; UNDERWOOD
28 PARTNERS, LLC, an unknown business entity;
and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants, et al.

Case No.: A-13-685203-C
Dept.: XXXII

**BANK OF AMERICA, N.A.'S ANSWER
TO PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Bank of America, N.A. (**BANA**) files its answer to plaintiff's first amended complaint
(**complaint**).

1. BANA is without sufficient knowledge or information sufficient to form a belief as to
the allegations contained in Paragraph 1 of the Plaintiff's complaint, and therefore denies each
allegation contained therein.

///

///

2. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

3. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

4. BANA admits it is a national banking association conducting business in Clark County, Nevada. BANA is without sufficient knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 4 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

5. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

6. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

7. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

8. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

GENERAL ALLEGATIONS

9. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

10. BANA admits the allegations contained in paragraph 10.

///

11-21. BANA is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11-21 of the Plaintiff's complaint, and therefore denies each allegation contained therein.

FIRST CLAIM FOR RELIEF

22. BANA repeats and realleges its answers to Paragraphs 1 through 21 of the Complaint as though stated herein in their entirety.

23-28. BANA denies the allegations contained in Paragraphs 23 through 28 of the Plaintiff's complaint.

SECOND CLAIM FOR RELIEF

29. BANA repeats and realleges its answers to Paragraphs 1 through 28 of the Complaint as though stated herein in their entirety.

30-35. BANA denies the allegations contained in Paragraphs 30 through 35 of the Plaintiff's complaint.

THIRD CLAIM FOR RELIEF

36. BANA repeats and realleges its answers to Paragraphs 1 through 35 of the Complaint as though stated herein in their entirety.

37-41. BANA denies the allegations contained in Paragraphs 30 through 41 of the Plaintiff's complaint.

FOURTH CLAIM FOR RELIEF

42. BANA repeats and realleges its answers to Paragraphs 1 through 41 of the Complaint as though stated herein in their entirety.

43-47. BANA denies the allegations contained in Paragraphs 43 through 47 of the Plaintiff's complaint.

FIFTH CLAIM FOR RELIEF

48. BANA repeats and realleges its answers to Paragraphs 1 through 47 of the Complaint as though stated herein in their entirety.

49-54. BANA denies the allegations contained in Paragraphs 49 through 54 of the Plaintiff's complaint.

SIXTH CLAIM FOR RELIEF

55. BANA repeats and realleges its answers to Paragraphs 1 through 54 of the Complaint as though stated herein in their entirety.

56-59. BANA denies the allegations contained in Paragraphs 56 through 59 of the Plaintiff's complaint.

AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE****(Failure to State a Claim)**

BANA alleges that the Plaintiff has failed to state facts sufficient to constitute any cause of action against BANA.

SECOND AFFIRMATIVE DEFENSE**(Underwood is not a Bona Fide Purchaser for Value)**

Underwood purchased the property with record notice of BNY Mellon's, as Trustee, interest as assignee/beneficiary of the deed of trust recorded against the property.

THIRD AFFIRMATIVE DEFENSE**(Violation of Procedural Due Process)**

BANA, as loan servicer, asserts that BNY Mellon, as Trustee, cannot be deprived of its interest property in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

FOURTH AFFIRMATIVE DEFENSE**(Violation of Good Faith – NEV. REV. STAT. §116.1113)**

The circumstances of sale of the property violated HOA's obligation of good faith and duty to act in a commercially reasonable manner.

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FIFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP Rule 11, BANA reserves its right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

DATED this 12th day of September, 2013.

AKERMAN SENTERFITT LLP

/s/ Steven G. Shevorski, Esq.
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
STEVEN G. SHEVORSKI, ESQ.
Nevada Bar No. 8256
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee*

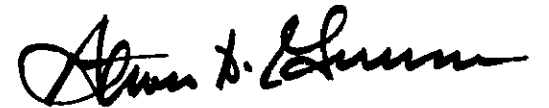
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Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
Cogburn Law Offices
2879 St. Rose Parkway, Suite 200
Henderson, NV 89052

Richard Vilkin, Esq.
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Avenue
Henderson, NV 89012

Zachary T. Ball, Esq.
The Ball Law Group LLC
7371 Prairie Falcon Road, Suite 120
Las Vegas, NV 89128

/s/ Eloisa Nuñez
An employee of AKERMAN SENTERFITT LLP



CLERK OF THE COURT

1 **ANTC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 STEVEN SHEVORSKI, ESQ.
5 Nevada Bar No. 8256
6 AKERMAN SENTERFITT LLP
7 1160 Town Center Drive, Suite 330
8 Las Vegas, Nevada 89144
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: ariel.stern@akerman.com
12 Email: steven.shevorski@akerman.com

13 *Attorneys for Bank of America, N.A. and*
14 *BNY Mellon, as Trustee*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 MELISSA LIEBERMAN,
18
19 Plaintiff,

20 v.

21 MADEIRA CANYON HOMEOWNERS'
22 ASSOCIATION; a Nevada Homeowners
23 association; NEVADA ASSOCIATION
24 SERVICES, INC.; a Nevada corporation; BANK
25 OF AMERICA, N.A., a federal savings bank;
26 RESURGENT CAPITAL SERVICES, L.P., a
27 national corporation; UNDERWOOD
28 PARTNERS, LLC, an unknown business entity;
and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants, et al.

Case No.: A-13-685203-C
Dept.: XXXII

**BNY MELLON'S, AS TRUSTEE,
ANSWER TO NEVADA ASSOCIATION
SERVICES, INC.'S THIRD PARTY
COMPLAINT**

Third party defendant The Bank of New York Mellon FKA The Bank of New York, as
Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-J8, Mortgage Pass-
Through Certificates, Series 2006-J8 (**BNY Mellon, as Trustee**) files its answer to Nevada
Association Services, Inc.'s third party complaint (**complaint**).

1. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to
form a belief as to the allegations contained in Paragraph 1 of the Third Party Plaintiff's complaint,
and therefore denies each allegation contained therein.

2. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

3. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

4. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

5. BNY Mellon, as Trustee, admits that it is a national banking association. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 5 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

6. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

7. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

FIRST CLAIM FOR RELIEF

8. BNY Mellon, as Trustee, repeats and realleges its answers to Paragraphs 1 through 7 of Third Party Plaintiff's Complaint as though stated herein in their entirety.

9-11. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9-11 of Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

///

///

///

SECOND CLAIM FOR RELIEF

12. BNY Mellon, as Trustee, repeats and realleges its answers to Paragraphs 1 through 11 of Third Party Plaintiff's complaint as though stated herein in their entirety.

13-14. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13-14 of Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

THIRD CLAIM FOR RELIEF

15. BNY Mellon, as Trustee, repeats and realleges its answers to Paragraphs 1 through 14 of the Complaint as though stated herein in their entirety.

16-19. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16-19 of Third Party Plaintiff's complaint, and therefore denies each allegation contained therein.

AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE****(Failure to State a Claim)**

BNY Mellon, as Trustee, alleges that the Third Party Plaintiff has failed to state facts sufficient to constitute any cause of action against BNY Mellon, as Trustee.

SECOND AFFIRMATIVE DEFENSE**(Underwood is not a Bona Fide Purchaser for Value)**

Underwood purchased the property with record notice of BNY Mellon's, as Trustee, interest as assignee/beneficiary of the deed of trust recorded against the property.

THIRD AFFIRMATIVE DEFENSE**(Violation of Procedural Due Process)**

BNY Mellon, as Trustee, cannot be deprived of its interest property in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

///

///

FOURTH AFFIRMATIVE DEFENSE

(Violation of Good Faith – NEV. REV. STAT. §116.1113)

The circumstances of sale of the property violated HOA's obligation of good faith and duty to act in a commercially reasonable manner.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP Rule 11, BNY Mellon, as Trustee, reserves its right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

DATED this 12th day of September, 2013.

AKERMAN SENTERFITT LLP

/s/ Steven G. Shevorski, Esq. _____
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
STEVEN G. SHEVORSKI, ESQ.
Nevada Bar No. 8256
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of September, 2013, and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **BNY MELLON'S, AS TRUSTEE, ANSWER TO NEVADA ASSOCIATION SERVICES, INC.'S THIRD PARTY COMPLAINT**, postage prepaid and addressed to:

Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
Cogburn Law Offices
2879 St. Rose Parkway, Suite 200
Henderson, NV 89052

Attorneys for Plaintiff

Richard Vilkin, Esq.
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Avenue
Henderson, NV 89012

Attorneys for Nevada Association Services, Inc.

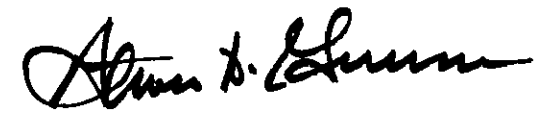
Zachary T. Ball, Esq.
The Ball Law Group LLC
7371 Prairie Falcon Road, Suite 120
Las Vegas, NV 89128

Attorneys for Underwood Partners, LLC

/s/ Eloisa Nuñez

An employee of AKERMAN SENTERFITT LLP

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CLERK OF THE COURT

1 SAO
2 COLT B. DODRILL, ESQ.
3 Nevada Bar No. 9000
4 WOLFE & WYMAN LLP
5 11811 N. Tatum, Suite 3031
6 Phoenix, Arizona 85028
7 cbdodrill@wolfewyman.com
8 Tel: (602) 953-0100
9 Fax: (602) 953-0101


Attorneys for Third Party Defendant
PULTE MORTGAGE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

11 MELISSA LIEBERMAN, an individual, on behalf
12 of itself and all others similarly situated,

Plaintiff,

13 
14 MEDIERA CANYON COMMUNITY
15 ASSOCIATION, a Nevada homeowners
16 association, NEVADA ASSOCIATION
17 SERVICES, INC., a Nevada corporation, BANK
18 OF AMERICA, N.A., a federal savings bank,
19 RESURGENT CAPITAL SERVICES, L.P., a
national corporation, UNDERWOOD PARTNERS,
LLC, an unknown business entity, and DOES I
through X, inclusive; ROE CORPORATIONS, I
through X, inclusive,

Defendants.

20 NEVADA ASSOCIATION SERVICES, INC., a
21 Nevada Corporation,

Counterclaimant,

v.

24 MELISSA LIEBERMAN, an individual,

Counterdefendant.

26 NEVADA ASSOCIATION SERVICES, INC., a
27 Nevada corporation,

Third Party Complainant.

CASE NO. A-13-685203-C

Dept.: XXXII

STIPULATION AND ORDER RE
DISMISSAL OF THIRD PARTY
DEFENDANT PULTE MORTGAGE, LLC

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

v.

COGBURN LAW OFFICES, a Nevada
domestic limited liability company; NORMA
TERAN, an individual; LAWYERS TITLE OF
NEVADA, INC., a Nevada corporation,
AS TRUSTEE FOR MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC. ("MERS") AS NOMINEE FOR PULTE
MORTGAGE, LLC; THE BANK OF NEW YORK
MELLON FKA THE BANK OF NEW
YORK, a national bank association, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.
ALTERNATIVE LOAN TRUST 2006-J8,
MORTGAGE PASS THROUGH
CERTIFICATES SERIES 2006-J8, and DOES
1-25, inclusive,

Third Party Defendants.

STIPULATION

Third Party Complainant, NEVADA ASSOCIATION SERVICES, INC., and Third Party
Defendant, PULTE MORTGAGE, LLC ("Pulte"), by and through their respective counsel of record,
hereby stipulate as follows:

IT IS STIPULATED that Pulte had an interest in the property via a Deed of Trust recorded
on November 27, 2006 as Instrument No. 200611270002922 in the official records of the Clark
County Recorder;

IT IS FURTHER STIPULATED that Pulte's interest in that Deed of Trust was assigned via
an assignment recorded on September 19, 2011 as Instrument No. 2011091900000030 in the official
records of the Clark County Recorder;

///

///

///

///

///

///

1 IT IS FURTHER STIPULATED that Pulte may be dismissed from this litigation, each party
2 to bear its own costs and fees.

3 IT IS SO STIPULATED

4
5 DATED: October 21, 2013

6 WOLFE & WYMAN LLP

7 By: 

8 COLT B. DODRILL, ESQ.

9 Nevada Bar No. 9000

10 WOLFE & WYMAN LLP

11 11811 N. Tatum, Suite 3031

12 Phoenix, Arizona 85028

13 cbdodrill@wolfewyman.com

14 Tel: (602) 953-0100

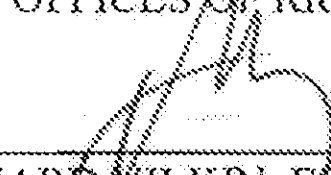
15 Fax: (602) 953-0101

16 Attorneys for Third Party Defendant

17 PULTE MORTGAGE, LLC

DATED: October 11, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

By: 

RICHARD VILKIN, ESQ.

Nevada Bar No. 8301

Law Offices of Richard Vilkin, P.C.

1286 Crimson Sage Ave.

Henderson, NV 89012

richard@vilkinlaw.com

Phone: (702) 476-3211

Fax: (702) 476-3212

Attorneys for Defendant/Counterclaimant/

and Third Party Plaintiff

NEVADA ASSOCIATION SERVICES, INC.

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

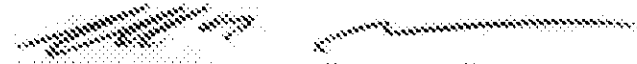
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ORDER

By stipulation of the parties and good cause appearing therefor, it is hereby ORDERED as follows:

IT IS HEREBY ORDERED that Pulte Mortgage, LLC is dismissed from the Third Party Complaint.

IT IS SO ORDERED on this 28 day of Oct, 2013.


NEVADA DISTRICT COURT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 38

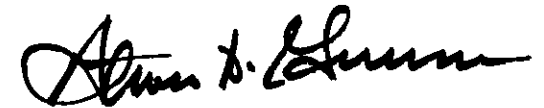
Submitted by:

WOLFE & WYMAN LLP

By: 

Colt B. Dodrill, Esq.
Nevada Bar No. 9000
11811 N. Tatum, Suite 3031
Phoenix, Arizona 85028
Attorneys for Third Party Defendant
PULTE MORTGAGE, LLC

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW



CLERK OF THE COURT

1 **NEOJ**
2 **PARKER SCHEER LAGOMARSINO**
3 **ANDRE M. LAGOMARSINO, ESQ. (#6711)**
4 9555 South Eastern Avenue, Suite 210
5 Las Vegas, Nevada 89123
6 T: (702) 383-2864
7 F: (702) 383-0065
8 *Attorney for Third-Party Defendants*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

9 MELISSA LIEBERMAN, an individual, on
10 behalf of itself and all others similarly situated,

11 Plaintiff,

12 vs.

13 **MEDIERA CANYON COMMUNITY**
14 **ASSOCIATION, a Nevada homeowners**
15 **association, NEVADA ASSOCIATION**
16 **SERVICES, INC., a Nevada corporation, BANK**
17 **OF AMERICA, N.A., a federal savings bank,**
18 **RESURGENT CAPITAL SERVICES, LP, a**
19 **national corporation, UNDERWOOD**
20 **PARTNERS, LLC, an unknown business entity,**
21 **and DOES I through X, inclusive; ROE**
22 **CORPORATIONS, I through X, inclusive,**

23 Defendant.

24 **NEVADA ASSOCIATION SERVICES, INC., a**
25 **Nevada corporation,**

26 Third Party Plaintiff,

27 vs.

28 **COGBURN LAW OFFICES, a Nevada domestic**
29 **limited liability company; and NORMA TERAN,**
30 **an individual,**

31 Third Party Defendants.

Case No: A-13-685203-C

Dept.: XXXII

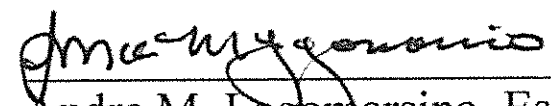
NOTICE OF ENTRY OF ORDER

1 TO: All Interested Parties and their attorneys of record;

2 PLEASE TAKE NOTICE that an Order was entered in the above-captioned matter on the
3 9th day of January, 2014 in District Court, as follows, copies of which are attached hereto and made
4 a part of hereof.

5 DATED this 9th day of January, 2014.

6 PARKER | SCHEER LAGOMARSINO

7 

8 Andre M. Lagomarsino, Esq. (#6711)
9 9555 South Eastern Avenue, Suite 210
10 Las Vegas, Nevada 89123

11 T: 702.383.2864

12 F: 702.383.0065

13 *Attorney for Third Party Defendants*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 9 day of January, 2014, I served a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** on all parties to this action by:

 Facsimile

 X Mail

Addressed as follows:

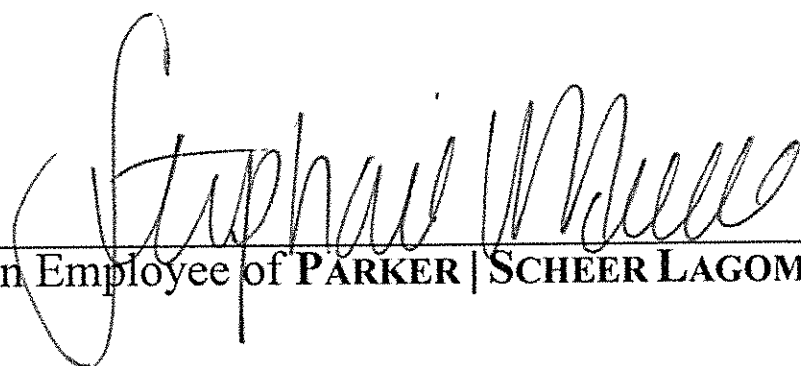
LAW OFFICES OF RICHARD VILKIN, P.C.
Richard J. Vilkin, Esq.
Nevada Bar No. 8301
1286 Crimson Sage Ave.
Henderson, Nevada 89012
T: 702.476.3211
*Attorney for Third Party Plaintiff
Nevada Association Services, Inc.; and
Defendant Nevada Association Services, Inc.*

AKERMAN SENTERFITT LLP
Attn: Ariel E. Stern, Esq.
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
*Attorney for Defendant Bank of America NA;
and Third Party Defendant Bank of New York
Mellon Formerly Known as Bank of New York*

GORDON & REES LLP
Attn: Joseph P. Hardy, Esq.
3770 Howard Hughes Pkwy., Suite 100
Las Vegas, Nevada 89169
Attorney for Mediera Canyon Community

THE BALL LAW GROUP LLC
Attn: Zachary T. Ball, Esq.
3455 Cliff Shadows Parkway, Suite 150
Las Vegas, Nevada 89129
*Attorney for Defendant Underwood Partners
LLC*

COGBURN LAW OFFICES
Attn: Jamie Cogburn, Esq.
2879 St. Rose Parkway, Suite 200
Henderson, Nevada 89052
Attorney for Plaintiff

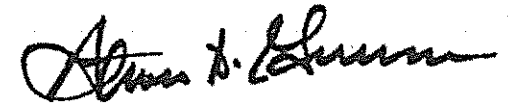

An Employee of PARKER | SCHEER LAGOMARSINO

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1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA



CLERK OF THE COURT

5
6 MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

7 Plaintiff,

8 vs.

9 MEDIERA CANYON COMMUNITY
10 ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
11 SERVICES, INC., a Nevada corporation, BANK
OF AMERICA, N.A., a federal savings bank,
12 RESURGENT CAPITAL SERVICES, LP, a
national corporation, UNDERWOOD
13 PARTNERS, LLC, an unknown business entity,
and DOES I through X, inclusive; ROE
14 CORPORATIONS, I through X, inclusive,

15 Defendant.

16
17 NEVADA ASSOCIATION SERVICES, INC., a
Nevada corporation,

18 Third Party Plaintiff,

19 vs.

20 COGBURN LAW OFFICES, a Nevada domestic
limited liability company; and NORMA TERAN,
21 an individual,

22 Third Party Defendants.

Case No: A-13-685203-C

Dept.: XXXII

Hearing Date: December 10, 2013
Hearing Time: 9:00 a.m.

23 **CONCLUSION OF LAW AND ORDER GRANTING THIRD PARTY**
24 **DEFENDANTS' MOTION TO DISMISS**

25 This Court heard arguments in regard to Third Party Defendants' Motion to Dismiss on
26 the 10th day of December, 2013. Third Party Defendants, Cogburn Law Offices and Norma
27 Teran were represented by Andre Lagomarsino, Esq. of Parker, Scheer, Lagomarsino. Third
28 Party Plaintiff, Nevada Association Services, Inc. (NAS), was represented by counsel Richard

1 Vilkin, Esq. of the Law Offices of Richard Vilkin, P.C.

2 In its Third Party Complaint, NAS claimed two causes of action against both Third Party
3 Defendants: Negligence and Implied/Equitable Indemnity and Contribution. These claims arise
4 out of the foreclosure of the real property previously owned by Melissa Lieberman ("Plaintiff")
5 located at 2184 Pont National Dr., Henderson, Clark County, NV 89044, APN No. 190-20-311-
6 033 ("subject property"), and the causes of action Plaintiff brought arising from that foreclosure.

7 Third Party Defendants' counsel moved for dismissal of both claims against Third Party
8 Defendants pursuant to NRCP 12(b)(5) and countermotion for sanctions pursuant to NRS §
9 7.085. Third Party Defendants argued they did not owe a duty to NAS that would have any
10 effect on the outcome of the foreclosure of Plaintiff's subject property. Given that there was not
11 a Special Relationship nor was there a pre-existing legal relationship, Third Party Defendants
12 argued they did not owe a duty to NAS. Thus, NAS had no standing for such causes of action
13 against Third Party Defendants. In addition under the legal principles of agency, Third Party
14 Defendant, Norma Teran, was protected from tortious claims against her while performing the
15 duties of her employment for Cogburn Law Offices.

16 Based on the evidence presented, the Court enters the following Order with Findings of
17 Fact and Conclusions of Law granting Third Party Defendants' Motion to Dismiss the Third
18 Party Complaint by NAS for the claims of Negligence and Implied/Equitable Indemnity and
19 Contribution. The Court denies Third Party Defendants' Countermotion for sanctions. The
20 Court confirmed the Interpleader cause of action within the Third Party Complaint is not
21 dismissed.

22 CONCLUSIONS OF LAW

23 **Negligence:**

24 In order for a claim of Negligence to stand, Third Party Defendants must owe a duty of
25 care to NAS, the duty must be breached, the breach must be the legal cause of NAS's injuries,
26 and NAS must have suffered actual injuries. *Scialabba v. Brandise Construction, Co.*, 112 Nev.
27 965, 921 P.2d 928 (1996). Whether a duty of care exists is a question of law. *Id.*

1 Third Party Defendants did not owe a duty of care to NAS. While Third Party
2 Defendants owed a duty of care as a law firm to their client, Plaintiff, they did not owe a duty to
3 NAS. The Court considered the arguments presented by NAS with respect to two Ninth Circuit
4 Court of Appeal cases out of California presented by NAS to argue that a Special Relationship
5 existed between Third Party Defendants and NAS: *Roberts v. Ball, Hunt, Hart, Brown &*
6 *Baerwitz*, 57 Cal.App. 3d 104, 128 Cal.Rptr. 901 (1976), and *Glenn K. Jackson v. Roe*, 273 F.3d
7 1192 (2001). The Court, however, determined these cases do not place a duty of care by a
8 Special Relationship on attorneys to a third party.

9 Therefore, the Court granted Third Party Defendants' *Motion to Dismiss* for the first
10 cause of action, negligence.

11 **Implied/Equitable Indemnity and Contribution**

12 Equitable indemnity, which "allows a defendant to seek recovery from other potential
13 tortfeasors," is generally available to remedy the situation in which the defendant, "who has
14 committed no independent wrong, is held liable for the loss of a plaintiff caused by another
15 party." *Pack v. LaTourette*, 277 P.3d 1246, 1248-50 (Nev. 2012) quoting *Rodriguez v.*
16 *Primadonna Company*, 125 Nev. 578, 589, 216 P.3d 793, 801 (2009). "[I]n order for one
17 tortfeasor to be in a position of secondary responsibility vis-a-vis another tortfeasor, and thus be
18 entitled to indemnification, there must be a preexisting legal relation between them, or some duty
19 on the part of the primary tortfeasor to protect the secondary tortfeasor." *Id.* quoting *Doctors*
20 *Company v. Vincent*, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004) (quoting *Black & Decker v.*
21 *Essex Group*, 105 Nev. 344, 346, 775 P.2d 698, 699-700 (1989)).

22 The Court determined, again, that Third Party Defendants did not owe a duty of care to
23 NAS. Third Party Defendants did not have a preexisting legal relationship with NAS. Third
24 Party Defendants had a preexisting legal relationship with Plaintiff, but not with NAS. Third
25 Party Defendants' relationship with Plaintiff did not create a legal relationship with NAS or a
26 duty owed to NAS.

1 Therefore, the Court granted Third Party Defendants' *Motion to Dismiss* for the second
2 cause of action, Implied/Equitable Indemnity and Contribution.

3 **Interpleader:**

4 The Court confirms the Interpleader cause of action within the Third Party Complaint is
5 not dismissed. This third cause of action was brought "Against Third Party Defendants Lawyers
6 Title of Nevada, Inc., A Nevada Corporation, As Trustee For Mortgage Electronic Registration
7 Systems, Inc. ("MERS") As Nominee For Pulte Mortgage, LLC; The Bank of New York Mellon
8 Fka The Bank of New York, A National Bank Association, As Trustee For the Certificateholders
9 of Cwalt, Inc. Alternative Loan Trust 2006-J8, Mortgage Pass Through Certificates Series 2006-
10 J8); And DOES 11-25" (Third Party Complaint, p. 6).

11 This cause of action was not argued as it was not directed against Third Party Defendants,
12 Cogburn Law Offices and Norma Teran. The Court confirms that this Interpleader cause of
13 action, however, is not dismissed.

14 **Countermotion for Sanctions Pursuant to NRS § 7.085**

15 Third Party Defendants filed their countermotion for sanctions pursuant to N.R.S. §
16 7.085. Pursuant to that statute, Third Party Defendants sought their fees and costs related to
17 opposing NAS's vexatious *Third Party Complaint*.

18 If a complaint is filed "unreasonably and vexatiously" to extend a "civil action", the
19 Court "shall require the attorney personally to pay the additional costs, expenses and attorneys'
20 fees reasonably incurred because of such conduct." N.R.S. § 7.085(1)(a) and (b).

21 The Court did not find the *Third Party Complaint* to be deserving of sanctions.
22 Therefore, the Court denies the Countermotion for sanctions pursuant to N.R.S. § 7.085.

23 NAS's causes of action for Negligence and Implied/Equitable Indemnity and
24 Contribution in its *TPC* are dismissed pursuant to Nev. R. Civ. P. 12(b)(5). No duty of care,
25 special relationship, or preexisting legal relationship existed between NAS and Third Party
26 Defendants.

ORDER

Accordingly, NAS is not entitled to relief for Negligence and Implied/Equitable Indemnity and Contribution. Based on the Findings of Fact set forth above, both causes of action fail to state a legal claim for which relief may be granted. Therefore, the Court GRANTS the Motion to Dismiss in favor of Third Party Defendants Cogburn Law Office and Norma Teran.

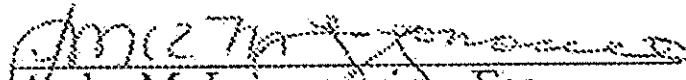
DATED this 6 day of Jan, 2018


THE HONORABLE ROB BARE
EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 10

PARKER SCHEER LAGOMARSINO


Andre M. Lagomarsino, Esq.
Nevada Bar No. 6711
9555 South Eastern Avenue, Suite 210
Las Vegas, Nevada 89123
T: 702.383.2864
Attorney for Third Party Defendants

Approved as to form and content:

LAW OFFICES OF RICHARD VILKIN, P.C.

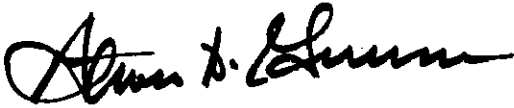
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Richard J. Vilkin, Esq.
Nevada Bar No. 8301
1286 Crimson Sage Ave.
Henderson, Nevada 89012
T: 702.476.3211
Attorney for Third Party Plaintiff, Nevada Association Services, Inc.

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1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**


CLERK OF THE COURT

5
6 MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

7 Plaintiff,

8 vs.

9 MEDIERA CANYON COMMUNITY
10 ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
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12 RESURGENT CAPITAL SERVICES, LP, a
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13 PARTNERS, LLC, an unknown business entity,
and DOES I through X, inclusive; ROE
14 CORPORATIONS, I through X, inclusive,

15 Defendant.

Case No: A-13-685203-C

Dept.: XXXII

Hearing Date: December 10, 2013

Hearing Time: 9:00 a.m.

16
17 NEVADA ASSOCIATION SERVICES, INC., a
Nevada corporation,

18 Third Party Plaintiff,

19 vs.

20 COGBURN LAW OFFICES, a Nevada domestic
21 limited liability company; and NORMA TERAN,
an individual,

22 Third Party Defendants.

23 **CONCLUSION OF LAW AND ORDER GRANTING THIRD PARTY**
24 **DEFENDANTS' MOTION TO DISMISS**

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26 the 10th day of December, 2013. Third Party Defendants, Cogburn Law Offices and Norma
27 Teran were represented by Andre Lagomarsino, Esq. of Parker, Scheer, Lagomarsino. Third
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2 In its Third Party Complaint, NAS claimed two causes of action against both Third Party
3 Defendants: Negligence and Implied/Equitable Indemnity and Contribution. These claims arise
4 out of the foreclosure of the real property previously owned by Melissa Lieberman ("Plaintiff")
5 located at 2184 Pont National Dr., Henderson, Clark County, NV 89044, APN No. 190-20-311-
6 033 ("subject property"), and the causes of action Plaintiff brought arising from that foreclosure.

7 Third Party Defendants' counsel moved for dismissal of both claims against Third Party
8 Defendants pursuant to NRCP 12(b)(5) and countermotion for sanctions pursuant to NRS §
9 7.085. Third Party Defendants argued they did not owe a duty to NAS that would have any
10 effect on the outcome of the foreclosure of Plaintiff's subject property. Given that there was not
11 a Special Relationship nor was there a pre-existing legal relationship, Third Party Defendants
12 argued they did not owe a duty to NAS. Thus, NAS had no standing for such causes of action
13 against Third Party Defendants. In addition under the legal principles of agency, Third Party
14 Defendant, Norma Teran, was protected from tortious claims against her while performing the
15 duties of her employment for Cogburn Law Offices.

16 Based on the evidence presented, the Court enters the following Order with Findings of
17 Fact and Conclusions of Law granting Third Party Defendants' Motion to Dismiss the Third
18 Party Complaint by NAS for the claims of Negligence and Implied/Equitable Indemnity and
19 Contribution. The Court denies Third Party Defendants' Countermotion for sanctions. The
20 Court confirmed the Interpleader cause of action within the Third Party Complaint is not
21 dismissed.

22 CONCLUSIONS OF LAW

23 **Negligence:**

24 In order for a claim of Negligence to stand, Third Party Defendants must owe a duty of
25 care to NAS, the duty must be breached, the breach must be the legal cause of NAS's injuries,
26 and NAS must have suffered actual injuries. *Scialabba v. Brandise Construction, Co.*, 112 Nev.
27 965, 921 P.2d 928 (1996). Whether a duty of care exists is a question of law. *Id.*

1 Third Party Defendants did not owe a duty of care to NAS. While Third Party
2 Defendants owed a duty of care as a law firm to their client, Plaintiff, they did not owe a duty to
3 NAS. The Court considered the arguments presented by NAS with respect to two Ninth Circuit
4 Court of Appeal cases out of California presented by NAS to argue that a Special Relationship
5 existed between Third Party Defendants and NAS: *Roberts v. Ball, Hunt, Hart, Brown &*
6 *Baerwitz*, 57 Cal.App. 3d 104, 128 Cal.Rptr. 901 (1976), and *Glenn K. Jackson v. Roe*, 273 F.3d
7 1192 (2001). The Court, however, determined these cases do not place a duty of care by a
8 Special Relationship on attorneys to a third party.

9 Therefore, the Court granted Third Party Defendants' *Motion to Dismiss* for the first
10 cause of action, negligence.

11 **Implied/Equitable Indemnity and Contribution**

12 Equitable indemnity, which "allows a defendant to seek recovery from other potential
13 tortfeasors," is generally available to remedy the situation in which the defendant, "who has
14 committed no independent wrong, is held liable for the loss of a plaintiff caused by another
15 party." *Pack v. LaTourette*, 277 P.3d 1246, 1248-50 (Nev. 2012) quoting *Rodriguez v.*
16 *Primadonna Company*, 125 Nev. 578, 589, 216 P.3d 793, 801 (2009). "[I]n order for one
17 tortfeasor to be in a position of secondary responsibility vis-a-vis another tortfeasor, and thus be
18 entitled to indemnification, there must be a preexisting legal relation between them, or some duty
19 on the part of the primary tortfeasor to protect the secondary tortfeasor." *Id.* quoting *Doctors*
20 *Company v. Vincent*, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004) (quoting *Black & Decker v.*
21 *Essex Group*, 105 Nev. 344, 346, 775 P.2d 698, 699-700 (1989)).

22 The Court determined, again, that Third Party Defendants did not owe a duty of care to
23 NAS. Third Party Defendants did not have a preexisting legal relationship with NAS. Third
24 Party Defendants had a preexisting legal relationship with Plaintiff, but not with NAS. Third
25 Party Defendants' relationship with Plaintiff did not create a legal relationship with NAS or a
26 duty owed to NAS.

1 Therefore, the Court granted Third Party Defendants' *Motion to Dismiss* for the second
2 cause of action, Implied/Equitable Indemnity and Contribution.

3 **Interpleader:**

4 The Court confirms the Interpleader cause of action within the Third Party Complaint is
5 not dismissed. This third cause of action was brought "Against Third Party Defendants Lawyers
6 Title of Nevada, Inc., A Nevada Corporation, As Trustee For Mortgage Electronic Registration
7 Systems, Inc. ("MERS") As Nominee For Pulte Mortgage, LLC; The Bank of New York Mellon
8 Fka The Bank of New York, A National Bank Association, As Trustee For the Certificateholders
9 of Cwalt, Inc. Alternative Loan Trust 2006-J8, Mortgage Pass Through Certificates Series 2006-
10 J8); And DOES 11-25" (Third Party Complaint, p. 6).

11 This cause of action was not argued as it was not directed against Third Party Defendants,
12 Cogburn Law Offices and Norma Teran. The Court confirms that this Interpleader cause of
13 action, however, is not dismissed.

14 **Countermotion for Sanctions Pursuant to NRS § 7.085**

15 Third Party Defendants filed their countermotion for sanctions pursuant to N.R.S. §
16 7.085. Pursuant to that statute, Third Party Defendants sought their fees and costs related to
17 opposing NAS's vexatious *Third Party Complaint*.

18 If a complaint is filed "unreasonably and vexatiously" to extend a "civil action", the
19 Court "shall require the attorney personally to pay the additional costs, expenses and attorneys'
20 fees reasonably incurred because of such conduct." N.R.S. § 7.085(1)(a) and (b).

21 The Court did not find the *Third Party Complaint* to be deserving of sanctions.
22 Therefore, the Court denies the Countermotion for sanctions pursuant to N.R.S. § 7.085.

23 NAS's causes of action for Negligence and Implied/Equitable Indemnity and
24 Contribution in its *TPC* are dismissed pursuant to Nev. R. Civ. P. 12(b)(5). No duty of care,
25 special relationship, or preexisting legal relationship existed between NAS and Third Party
26 Defendants.

ORDER

Accordingly, NAS is not entitled to relief for Negligence and Implied/Equitable Indemnity and Contribution. Based on the Findings of Fact set forth above, both causes of action fail to state a legal claim for which relief may be granted. Therefore, the Court GRANTS the Motion to Dismiss in favor of Third Party Defendants Cogburn Law Office and Norma Teran.

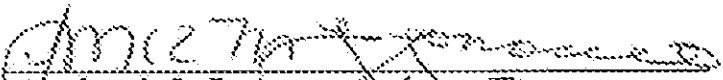
DATED this 6 day of Jan, 2018


THE HONORABLE ROB BARE
EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 08

PARKER SCHEER LAGOMARSINO


Andre M. Lagomarsino, Esq.
Nevada Bar No. 6711
9555 South Eastern Avenue, Suite 210
Las Vegas, Nevada 89123
T: 702.383.2864
Attorney for Third Party Defendants

Approved as to form and content:

LAW OFFICES OF RICHARD VILKIN, P.C.

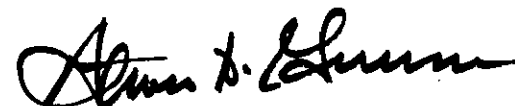
Did not approve order
Richard J. Vilkin, Esq.
Nevada Bar No. 8301
1286 Crimson Sage Ave.
Henderson, Nevada 89012
T: 702.476.3211
Attorney for Third Party Plaintiff, Nevada Association Services, Inc.

1 ODRG

2 Zachary T. Ball (SBN 8364)
3 THE BALL LAW GROUP LLC
3455 Cliff Shadows Pkwy, Ste. 150
4 Las Vegas, NV 89129
Telephone: (702) 303-8600
Email: zball@balllawgroup.com

5 Attorney for Plaintiff,
6 Nevada Title Company

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CLERK OF THE COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 MELISSA LIEBERMAN, an individual, on
11 behalf of itself and all others similarly
situated,

12 Plaintiff,

13 vs.

14 MEDIERA CANYON HOMEOWNERS'
15 ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
16 SERVICES, INC., a Nevada corporation;
BANK OF AMERICA, N.A., a federal
17 savings bank; RESURGENT CAPITAL
SERVICES, LP, a national corporation,
18 UNDERWOOD PARTNERS, LLC, an
unknown business entity; and DOES I
19 through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,
20 Defendants.

21 AND ALL RELATED ACTIONS.

Case No.: A685203

Dept. No.: XXXII

Date of Hearing: October 17, 2013

Time of Hearing: 9:00 a.m.

22 **ORDER GRANTING IN PART AND DENYING IN PART**
23 **DEFENDANT, UNDERWOOD PARTNERS, LLC'S**
24 **MOTION TO DISMISS OR, IN THE ALTERNATIVE,**
MOTION FOR SUMMARY JUDGMENT

25 Defendant, UNDERWOOD PARTNERS, LLC's ("UNDERWOOD") Motion to
26 Dismiss or, in the alternative, Motion for Summary Judgment ("Motion"), having come on for
27 hearing on the 17th day of October, 2013 at 9:00 a.m., and the Court, having reviewed the
28

1 papers and pleadings on file herein, and having considered oral argument of counsel for the
2 parties at the time of the hearing, and good cause appearing therefore,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that UNDERWOOD's
4 Motion is granted in part, thereby dismissing Plaintiff's fifth cause of action for Violation of
5 NRS 598 *et seq.* and Plaintiff's sixth cause of action for Abuse of Process.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that UNDERWOOD's
7 Motion is denied in part as to Plaintiff's second claim for relief for Quiet Title.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action is stayed
9 for ninety (90) days, or until January 15, 2013, excluding the Third Party Defendants Cogburn
10 Law Offices, LLC and Norma Teran's Motion to Dismiss Third Party Complaint by Nevada
11 Association Services and Countermotion for Sanctions, which motion is currently set for
12 hearing on December 10, 2013 at 9:00 a.m.

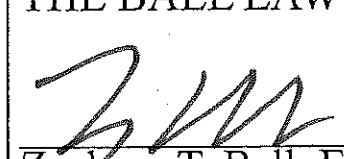
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon oral stipulation
14 between UNDERWOOD and Defendants BANK OF AMERICA, N.A. and BNY MELLON at
15 the time of the hearing, all arguments related to BANK OF AMERICA, N.A. and BNY
16 MELLON's recorded lien on 2184 Pont National Drive, Henderson, Nevada (the "Property"), as
17 stated in their Opposition to UNDERWOOD's Motion, including its priority and the related
18 application of UNDERWOOD as a bona fide purchaser of the Property, are stayed, not part of
19 the instant motion practice and not a part of this Court's ruling.

20 DATED AND DONE this 6 day of ^{Jan} November, 201¹⁴₃.

21
22
23 
DISTRICT COURT JUDGE

24 Submitted By:

25 THE BALL LAW GROUP

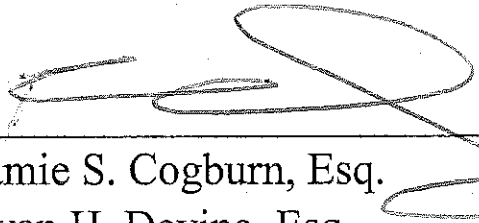
26 
27 Zachary T. Ball, Esq.
28 Nevada Bar No. 8364
Attorney for Defendant,
Underwood Partners, LLC

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

1 *Reviewed and Approved By:*

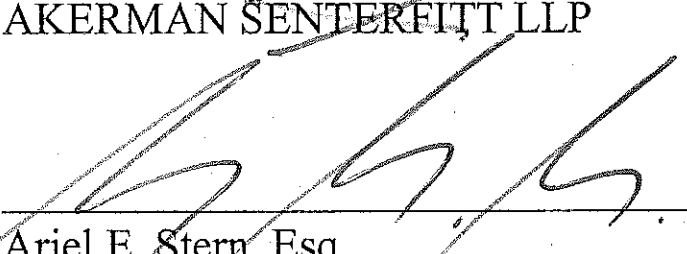
2 DATED this 18 day of November, 2013.

3 COGBURN LAW OFFICES

4 
5 _____
6 Jamie S. Cogburn, Esq.
7 Ryan H. Devine, Esq.
8 2879 St. Rose Parkway, Suite 200
9 Las Vegas, Nevada 89052
10 Attorneys for *Plaintiff*

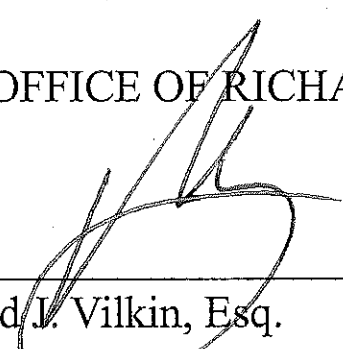
11 DATED this ____ day of November, 2013.

12 AKERMAN SENTERFITT LLP

13  #8256
14 Ariel E. Stern, Esq.
15 Steven G. Shevorski, Esq.
16 1160 Town Center Drive, Suite 330
17 Las Vegas, Nevada 89144
18 Attorneys for *Bank of America, N.A. and BNY*
19 *Mellon, as Trustee*

20 DATED this 14TH day of November, 2013.

21 LAW OFFICE OF RICHARD VILKIN, P.C.

22 
23 _____
24 Richard J. Vilkin, Esq.
25 1286 Crimson Sage Avenue
26 Henderson, Nevada 89012
27 Attorney for *Nevada Association Services*
28 *Inc.*

1 DATED this ^{December} 18 day of ~~November~~, 2013.

2 PARKER SCHEER LAGOMARSINO

3

4 
5 Andre M. Lagomarsino, Esq.

6 Daniel M. Ryan, Esq.

7 9555 South Eastern Avenue, Ste. 210

8 Henderson, Nevada 89123

9 Attorney for Nevada Association Services
10 Inc.

11

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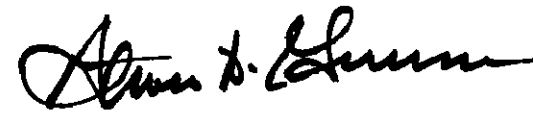
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28



CLERK OF THE COURT

Richard Vilkin, Esq.
Nevada Bar No. 8301
Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
Fax: (702) 476-3212
Email: richard@vilkinlaw.com
Attorneys for defendant and counterclaimant
Nevada Association Services, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly situated,

Plaintiff,

v.

MEDIERA CANYON COMMUNITY
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation,
BANK OF AMERICA, N.A., a federal savings
bank, RESURGENT CAPITAL SERVICES,
L.P., a national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business
entity, and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendants.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Counterclaimant,

v.

MELISSA LIEBERMAN, an individual,

Counterdefendant.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Case No. A-13-685203-C

Dept.: XXXII

ORDER GRANTING THE MOTION BY
DEFENDANT NEVADA ASSOCIATION
SERVICES, INC. TO DISMISS
PLAINTIFF'S COMPLAINT

1 Third Party Complainant,)

2 v.)

3 COGBURN LAW OFFICES, a Nevada)
4 domestic limited liability company; NORMA)
5 TERAN, an individual; LAWYERS TITLE)
6 OF NEVADA, INC., a Nevada corporation,)
7 AS TRUSTEE FOR MORTGAGE)
8 ELECTRONIC REGISTRATION SYSTEMS,)
9 INC. ("MERS") AS NOMINEE FOR PULTE)
10 MORTGAGE, LLC; THE BANK OF NEW)
11 YORK MELLON FKA THE BANK OF NEW)
12 YORK, a national bank association, AS)
13 TRUSTEE FOR THE)
14 CERTIFICATEHOLDERS OF CWALT, INC.)
15 ALTERNATIVE LOAN TRUST 2006-J8,)
16 MORTGAGE PASS THROUGH)
17 CERTIFICATES SERIES 2006-J8, and DOES)
18 1-25, inclusive,)

19 Third party defendants.)

20 On January 9, 2014, counsel for defendant Nevada Association Services, Inc. ("NAS"),
21 Richard Vilkin, and counsel for defendant Mediera Canyon Community Association ("Mediera
22 Canyon HOA"), David W. Gutke, Esq., appeared in this court on the scheduled Motion to
23 Dismiss by NAS, joined in by Mediera Canyon HOA. There was no appearance by counsel for
24 plaintiff and the motion was continued for hearing on January 23, 2014.

25 On January 23, 2014, counsel for NAS, Richard Vilkin, and counsel for Mediera Canyon
26 HOA, David W. Gutke, appeared, as did counsel for plaintiff, Jamie S. Cogburn. The motion
27 was heard by the Honorable Judge Rob Bare.

28 After considering the moving and opposition papers, and after hearing oral argument, and
good cause appearing, Judge Bare granted the motion to dismiss plaintiff's Complaint without
prejudice as to defendants NAS and Mediera Canyon HOA for plaintiff's failure to submit the

1 matter to Nevada Real Estate Division alternative dispute handling, as per NRS 38.300 et seq.
2 Judge Bare also granted the motion to dismiss as to plaintiff's cause of action for quiet title
3 against defendants NAS and Mediera Canyon HOA as per the arguments made in the motion
4 papers by NAS that such a cause of action is not properly brought against such parties because
5 they do not have a present claim to the property.
6

7 Judge Bare did not rule on that aspect of the motion that requested attorneys fees and
8 costs.

9 Plaintiff is granted leave to re-file its non-quiet title claims against these defendants in
10 this case after completing the NRED process per NRS 38.300 et seq. IT IS SO ORDERED.
11

12 Date: Feb 6, 2014


District Court Judge

13 Respectfully submitted,

14 LAW OFFICES OF RICHARD VILKIN, P.C.

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

15
16 By: 

Richard Vilkin, Esq.
Nevada Bar No. 8301
1286 Crimson Sage Ave.
Henderson, NV 89012
Phone: (702) 476-3211
*Attorneys for defendant and
counterclaimant NAS*

21
22 Approved as to form and content:

23 COGBURN LAW OFFICES

24 By: 

Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
2879 St. Rose Parkway, Suite 200
Henderson, NV 89052
Phone: (702) 384-3616
Attorneys for plaintiff

1 GORDON & REES, LLP

2 By: 

3 David W. Gutke, Esq.

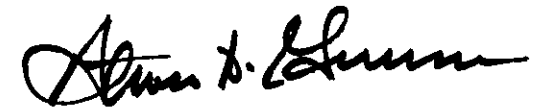
4 Nevada Bar No. 9820

5 3770 Howard Hughes Parkway, Suite 100

6 Las Vegas, NV 89169

7 Phone: (702) 577-9300

8 *Attorneys for defendant Mediera Canyon*
9 *Community Association*



CLERK OF THE COURT

1 NOEJ
2 CHRISTINA H. WANG, ESQ.
3 Nevada Bar No. 9713
4 FIDELITY NATIONAL LAW GROUP
5 2450 St. Rose Pkwy., Ste. 100
6 Henderson, Nevada 89074
7 Tel: (702) 667-3000
8 Fax: (702) 697-2020
9 Email: christina.wang@fnf.com
10 *Attorneys for Third-Party Defendant*
11 *Lawyers Title of Nevada, Inc.*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 MELISSA LIEBERMAN, individual, on behalf of)
12 itself and all others similarly situated.)

13 Plaintiffs,)

14 vs.)

15 MEDIERA CANYON COMMUNITY)
16 ASSOCIATION, a Nevada homeowners)
17 association, NEVADA ASSOCIATION)
18 SERVICES, INC., a Nevada corporation, BANK)
19 OF AMERICA, N.A., a federal savings bank,)
20 RESURGENT CAPITAL SERVICES, L.P., a)
21 national corporation, UNDERWOOD)
22 PARTNERS, LLC, an unknown business entity,)
23 and DOES I through X, inclusive; ROE)
24 CORPORATIOS, I through X inclusive)

25 Defendants.)

26 NEVADA ASSOCIATION SERVICES, INC., a)
27 Nevada corporation,)

28 Counterclaimant,)

29 vs.)

30 MELISSA LEIBERMAN, an individual)

31 Counterdefendant.)

32 NEVADA ASSOCIATION SERVICES, INC., a)
33 Nevada corporation,)

34 Third Party Complainant,)

Case No.: A-13-685203-C

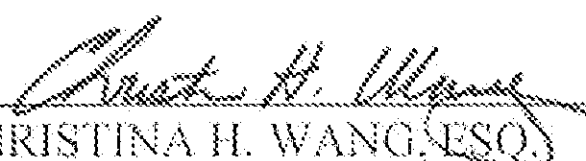
Dept. No.: XXXII

NOTICE OF ENTRY OF ORDER

1 vs.)
2 COGBURN LAW OFFICE, a Nevada domestic)
3 limited liability company; NORMA TERAN, an)
4 individual; LAWYERS TITLE OF NEVADA,)
5 INC., a Nevada corporation, AS TRUSTEE FOR)
6 MORTGAGE ELECTRONIC REGISTRATION)
7 SYSTEMS, INC. ("MERS") AS NOMINEE FOR)
8 PULTE MORTGAGE, LLC; THE BANK OF)
9 NEW YORK MELLON FKA THE BANK OF)
10 NEW YORK, a national bank association, AS)
11 TRUSTEE FOR THE CERTIFICATEHOLDERS)
12 OF CWALT, INC. ALTERNATIVE LOAN)
13 TRUST 2006-J8, MORTGAGE PASS THROUGH)
14 CERTIFICATES SERIES 2006-J8, and DOES 1-)
15 25, inclusive)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

11 PLEASE TAKE NOTICE that the Court entered an ORDER GRANTING THIRD-
12 PARTY DEFENDANT LAWYERS TITLE OF NEVADA, INC.'S MOTION TO DISMISS in
13 the above-entitled matter, a copy of which is attached hereto as Exhibit A.

14 DATED this 5th day of November, 2015. FIDELITY NATIONAL LAW GROUP

16 
17 CHRISTINA H. WANG, ESQ.
18 Nevada Bar No. 9713
19 2450 St. Rose Pkwy., Ste. 100
20 Henderson, Nevada 89074
21 *Attorneys for Third-Party Defendant*
22 *Lawyers Title of Nevada, Inc.*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: ☒ (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, ☐ (ii) via facsimile, ☐ (iii) via courier/hand delivery, ☐ (iv) via overnight mail, and/or ☒ (v) via electronic delivery through the Court's electronic filing/service system.

Richard Vilkin, Esq.
LAW OFFICES OF RICHARD VILKIN, P.C.
1286 Crimson Sage Ave.
Henderson, Nevada 89012
*Attorneys for Nevada Association Services,
Inc.*

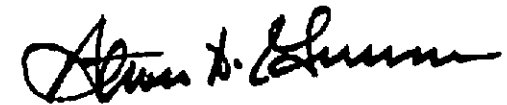
Ariel E. Stern, Esq.
Nevada Bar No. 8276
Steven Shevorski, Esq.
Nevada Bar No. 8256
AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
*Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee*

Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
COGBURN LAW OFFICES
2879 St. Rose Parkway, Suite 200
Las Vegas, Nevada 89052
*Attorneys for Cogburn Law Offices and Norma
Teran*

DATED: 11/18/15


An employee of Fidelity National Law Group

EXHIBIT A



CLERK OF THE COURT

ORDER
CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
2450 St. Rose Pkwy., Ste. 100
Henderson, Nevada 89074
Tel: (702) 667-3000
Fax: (702) 697-2020
Email: christina.wang@fnf.com
Attorneys for Third-Party Defendant
Lawyers Title of Nevada, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, individual, on behalf of)
itself and all others similarly situated.)

Plaintiffs,)

vs.)

MEDIERA CANYON COMMUNITY)
ASSOCIATION, a Nevada homeowners)
association, NEVADA ASSOCIATION)
SERVICES, INC., a Nevada corporation, BANK)
OF AMERICA, N.A., a federal savings bank,)
RESURGENT CAPITAL SERVICES, L.P., a)
national corporation, UNDERWOOD)
PARTNERS, LLC, an unknown business entity,)
and DOES I through X, inclusive; ROE)
CORPORATIOS, I through X inclusive)

Defendants.)

NEVADA ASSOCIATION SERVICES, INC., a)
Nevada corporation,)

Counterclaimant,)

vs.)

MELISSA LEIBERMAN, an individual)

Counterdefendant.)

NEVADA ASSOCIATION SERVICES, INC., a)
Nevada corporation,)

Third Party Complainant,)

Case No.: A-13-685203-C

Dept. No.: XXXII

**ORDER GRANTING THIRD-PARTY
DEFENDANT LAWYERS TITLE OF
NEVADA, INC.'S MOTION TO
DISMISS**


1 vs.
2 COGBURN LAW OFFICE, a Nevada domestic
3 limited liability company; NORMA TERAN, an
4 individual; LAWYERS TITLE OF NEVADA,
5 INC., a Nevada corporation, AS TRUSTEE FOR
6 MORTGAGE ELECTRONIC REGISTRATION
7 SYSTEMS, INC. ("MERS") AS NOMINEE FOR
8 PULTE MORTGAGE, LLC; THE BANK OF
9 NEW YORK MELLON FKA THE BANK OF
NEW YORK, a national bank association, AS
TRUSTEE FOR THE CERTIFICATEHOLDERS
OF CWALT, INC. ALTERNATIVE LOAN
TRUST 2006-J8, MORTGAGE PASS THROUGH)
CERTIFICATES SERIES 2006-J8, and DOES 1-
25, inclusive

10 Third-Party Defendant LAWYERS TITLE OF NEVADA, INC.'s Motion to Dismiss
11 NEVADA ASSOCIATION SERVICES, INC.'s Third-Party Complaint with prejudice pursuant
12 to Nevada Rule of Civil Procedure 12(b)(5) for failure to state a claim upon which relief can be
13 granted, having been filed and served on August 26, 2015; Notices of Non-Opposition having
14 been filed on September 16, 2015 and October 18, 2015; the Court having reviewed the
15 pleadings and papers on file, being fully advised in the premises, and good cause appearing
16 therefore;

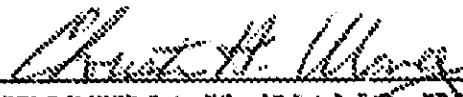
17 IT IS HEREBY ORDERED that the above-referenced Motion to Dismiss is hereby
18 GRANTED in its entirety and LAWYERS TITLE OF NEVADA, INC. is hereby dismissed
19 from this action with prejudice.

20 IT IS HEREBY FURTHER ORDERED that pursuant to EDCR 2.23, the hearing
21 scheduled for October 27, 2015 is advanced and VACATED.

22
23 DATED this 3 day of Nov, 2015.
24

25
26
27 
28 DISTRICT COURT JUDGE
JUDGE
JUDICIAL DISTRICT COURT DEPARTMENT 3

1 Respectfully submitted by:

2
3 
4 CHRISTINA H. WANG, ESQ.
5 Nevada Bar No. 9713
6 FIDELITY NATIONAL LAW GROUP
7 2450 St. Rose Pkwy., Ste. 100
8 Henderson, Nevada 89074
9 *Attorneys for Third-Party Defendant*
10 *Lawyers Title of Nevada, Inc.*

11
12
13 Approved as to form and content by:

Approved as to form and content by:

14 Richard Vilkin, Esq.
15 LAW OFFICES OF RICHARD VILKIN, P.C.
16 1286 Crimson Sage Ave.
17 Henderson, Nevada 89012
18 *Attorneys for Nevada Association Services,*
19 *Inc.*

Ariel E. Stern, Esq.
Nevada Bar No. 8276
Steven Shevorski, Esq.
Nevada Bar No. 8256
AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

20 Approved as to form and content by:

21
22
23
24 Jamie S. Cogburn, Esq.
25 Ryan H. Devine, Esq.
26 COGBURN LAW OFFICES
27 2879 St. Rose Parkway, Suite 200
28 Las Vegas, Nevada 89052
Attorneys for Cogburn Law Offices and
Norma Teran

1 Respectfully submitted by:

2

3

4 CHRISTINA H. WANG, ESQ.
5 Nevada Bar No. 9713
6 FIDELITY NATIONAL LAW GROUP
7 2450 St. Rose Pkwy., Ste. 100
8 Henderson, Nevada 89074
9 *Attorneys for Third-Party Defendant*
10 *Lawyers Title of Nevada, Inc.*

11 Approved as to form and content by:

12

13

14

15

16

17

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20

21

22

23

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27

28

Approved as to form and content by:

Richard Vilkin, Esq.
LAW OFFICES OF RICHARD VILKIN, P.C.
1286 Crimson Sage Ave.
Henderson, Nevada 89012
Attorneys for Nevada Association Services, Inc.

Approved as to form and content by:

Ariel E. Stern, Esq.
Nevada Bar No. 8276
Steven Shevorski, Esq.
Nevada Bar No. 8256
AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A. and BNY Mellon, as Trustee

Approved as to form and content by:

Jamie S. Cogburn, Esq.
Ryan H. Devine, Esq.
COGBURN LAW OFFICES
2879 St. Rose Parkway, Suite 200
Las Vegas, Nevada 89052
Attorneys for Cogburn Law Offices and Norma Teran

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9 *Attorneys for Third-Party Defendant*
10 *Lawyers Title of Nevada, Inc.*

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10

11

12

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16 Henderson, Nevada 89012
17 *Attorneys for Nevada Association Services,*
18 *Inc.*

Approved as to form and content by:



Ariel E. Stern, Esq.
Nevada Bar No. 8276
Steven Shevorski, Esq.
Nevada Bar No. 8256
AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

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Ryan H. Devine, Esq.
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2879 St. Rose Parkway, Suite 200
Las Vegas, Nevada 89052
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Norma Teran

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10 *Lawyers Title of Nevada, Inc.*

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16 Henderson, Nevada 89012
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18 *Inc.*

Ariel E. Stern, Esq.
Nevada Bar No. 8276
Steven Shevorski, Esq.
Nevada Bar No. 8256
AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

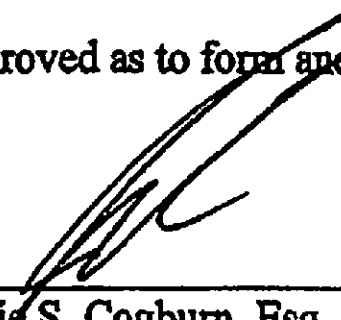
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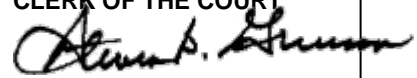
19

20 Approved as to form and content by:

21

22

23 
24 Jamie S. Cogburn, Esq.
25 Ryan H. Devine, Esq.
26 COGBURN LAW OFFICES
27 2879 St. Rose Parkway, Suite 200
28 Las Vegas, Nevada 89052
Attorneys for Cogburn Law Offices and
Norma Teran



1 **NVDP**
COGBURN LAW OFFICES
2 Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
3 jsc@cogburnlaw.com
2580 St. Rose Parkway, Suite 330
4 Henderson, Nevada 89074
Telephone: (702) 748-7777
5 Facsimile: (702) 966-3880
Attorneys for Plaintiff

6
7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly
10 situated,

11 Plaintiff,

12 vs.

13 MADEIRA CANYON HOMEOWNERS'
ASSOCIATION, a Nevada homeowners
14 association; NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation;
15 BANK OF AMERICA, N.A., a federal
savings bank; RESURGENT CAPITAL
16 SERVICES, LP, a national corporation;
UNDERWOOD PARTNERS, LLC, an
17 unknown business entity, et al.,

18 Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with A-13-690944

NOTICE OF VOLUNTARY DISMISSAL
OF PLAINTIFF'S CLAIMS AGAINST
DEFENDANT RESURGENT CAPITAL
SERVICES, LP, ONLY, WITHOUT
PREJUDICE

19 Pursuant to NRCP 41(a)(1), Plaintiff Melissa Lieberman voluntarily dismisses her claims
20 against Defendant RESURGENT CAPITAL SERVICES, LP, without prejudice. This defendant
21 has not filed an answer, motion for summary judgment, or otherwise appeared in this case. Each
22 party shall bear their own attorneys' fees and litigation costs.

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...

This matter is presently set for trial on January 7, 2019.

Dated this 21st day of November, 2018.

COGBURN LAW OFFICES

By: /s/ Jamie S. Cogburn
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF VOLUNTARY DISMISSAL OF PLAINTIFF'S CLAIMS AGAINST DEFENDANT RESURGENT CAPITAL SERVICES, LP, ONLY, WITHOUT PREJUDICE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 21st day of November, 2018.

I further certify that I served a true and correct copy of the foregoing document as follows:

☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

Law Offices of Richard Vilkin, P.C.

Richard J. Vilkin
1286 Crimson Sage Avenue
Henderson, NV 89012
*Attorneys for Nevada Association Services and Madeira Canyon
Homeowners Association*

The Wright Law Group

John Henry Wright
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
Attorneys for Underwood Partners, LLC

Akerman LLP

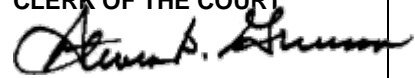
Ariel E. Stern
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Bank of America, N.A.

Gordon & Rees, LLP

Joseph P. Hardy
3770 Howard Hughes Parkway, Suite 100
Las Vegas, NV 89169
Attorneys for Madeira Canyon Homeowners Association

/s/ Amy Quach

An employee of Cogburn Law Offices



1 **ANS**

2 **DARREN T. BRENNER, ESQ.**

3 Nevada Bar No. 8386

4 **NATALIE L. WINSLOW, ESQ.**

5 Nevada Bar No. 12125

6 **AKERMAN LLP**

7 1635 Village Center Circle, Suite 200

8 Las Vegas, Nevada 89134

9 Telephone: (702) 634-5000

10 Facsimile: (702) 380-8572

11 Email: darren.brenner@akerman.com

12 Email: natalie.winslow@akerman.com

13 *Attorneys for Bank of America, N.A. and The Bank of*
14 *New York Mellon FKA The Bank of New York, as*
15 *Trustee for the Certificateholders of CWALT, Inc.,*
16 *Alternative Loan Trust 2006 J-8, Mortgage Pass-*
17 *Through Certificates, Series 2006-J8*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 **MELISSA LIEBERMAN, an individual, on**
21 **behalf of itself and all others similarly**
22 **situated;**

23 **Plaintiff,**

24 **v.**

25 **MADEIRA CANYON HOMEOWNERS'**
26 **ASSOCIATION, a Nevada homeowners**
27 **association, NEVADA ASSOCIATION**
28 **SERVICES, INC., a Nevada corporation, BANK**
OF AMERICA, N.A., a federal savings bank,
RESURGENT CAPITAL SERVICES, LP, a
national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business entity,
and DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

**BANK OF AMERICA, N.A.'S ANSWER
TO NV EAGLES, LLC'S CROSS-
CLAIMS**

29 Bank of America, N.A. (**BANA**), by and through its attorneys at AKERMAN LLP, answers the
30 cross-claims filed by NV Eagles, LLC as follows:

31 1. BANA lacks sufficient information to admit or deny the allegations in Paragraph 1, and
32 therefore denies the same.

33 ...

34 ...

1 2. BANA admits only that it conducts business in Clark County, Nevada. BANA lacks
2 sufficient information to admit or deny the remaining allegations in Paragraph 2, and therefore denies
3 the same.

4 3. BANA admits only that the foreclosure deed recorded in the Clark County Recorder's
5 Office as Instrument Number 20130703-0002523 (**foreclosure deed**) purported to convey title to the
6 property located at 2184 Pont National Drive, Henderson, Nevada 89044 (**property**) to NV Eagles'
7 predecessor-in-interest, Underwood Partners, LLC. BANA specifically denies that NV Eagles'
8 interest in the property, if any, is superior to the deed of trust recorded in the Clark County Recorder's
9 Office as Instrument Number 20061127-0002922 (**deed of trust**). BANA denies the remaining
10 allegations in Paragraph 3.

11 4. BANA admits only that the foreclosure deed purported to convey title to the property
12 to NV Eagles' predecessor-in-interest, Underwood. BANA specifically denies that NV Eagles' interest
13 in the property, if any, is superior to the deed of trust. BANA denies the remaining allegations in
14 Paragraph 4.

15 5. BANA admits only that it has serviced the loan secured by the deed of trust. BANA
16 denies the remaining allegations of Paragraph 5.

17 6. BANA lacks sufficient information to admit or deny the allegations in Paragraph 6, and
18 therefore denies the same.

19 7. BANA lacks sufficient information to admit or deny the allegations in Paragraph 7, and
20 therefore denies the same.

21 8. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 8.

22 **FIRST CLAIM FOR RELIEF**
23 **(QUIET TITLE AGAINST ALL DEFENDANTS)**

24 9. BANA adopts and incorporates by reference the preceding Paragraphs as though fully
25 set forth herein.

26 10. BANA admits only that the foreclosure deed purported to convey title to the property
27 to NV Eagles' predecessor-in-interest, Underwood. BANA specifically denies that NV Eagles' interest
28

1 in the property, if any, is superior to the deed of trust. BANA denies the remaining allegations in
2 Paragraph 10.

3 11. BANA admits only that the deed of trust remains a valid encumbrance on the property.
4 BANA denies the remaining allegations in Paragraph 11.

5 12. BANA admits only that it has serviced the loan secured by the deed of trust. BANA
6 denies the remaining allegations of Paragraph 12.

7 13. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 13.

8 14. BANA admits only that the deed of trust remains a valid encumbrance on the property.
9 BANA denies the remaining allegations in Paragraph 14.

10 15. The allegations in Paragraph 15 are legal conclusions to which no response is required.
11 To the extent a response is required, BANA denies the allegations in Paragraph 15.

12 16. Denied.

13 17. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 17.

14 **SECOND CLAIM FOR RELIEF**
15 **(CANCELLATION OF INSTRUMENTS AGAINST ALL DEFENDANTS)**

16 18. BANA adopts and incorporates by reference the preceding Paragraphs as though fully
17 set forth herein.

18 19. Denied.

19 20. Denied.

20 21. Denied.

21 22. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 22.

22 **THIRD CLAIM FOR RELIEF**
23 **(INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS)**

24 23. BANA adopts and incorporates by reference the preceding Paragraphs as though fully
25 set forth herein.

26 24. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 24.

27 25. Denied.

28 26. Denied.

27. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 27.

PRAYER FOR RELIEF

1. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 1 of the Prayer.

2. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 2 of the Prayer.

3. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 3 of the Prayer.

4. BANA denies that NV Eagles is entitled to the relief requested in Paragraph 4 of the Prayer.

AFFIRMATIVE DEFENSES

BANA asserts the following additional defenses. BANA reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. In further answer to the Cross-claims, and by way of additional defenses, BANA avers as follows:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

NV Eagles failed to state facts sufficient to constitute any cause of action against BANA.

SECOND AFFIRMATIVE DEFENSE
(Void for Vagueness)

To the extent that NV Eagles' interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116, are void for vagueness as applied to this matter.

THIRD AFFIRMATIVE DEFENSE
(NV Eagles was not a bona fide purchaser)

BANA avers that NV Eagles was not a bona fide purchaser.

...

...

FOURTH AFFIRMATIVE DEFENSE
(Tender, Estoppel, Laches, and Waiver)

The superpriority portion of the HOA's lien was satisfied prior to the HOA's foreclosure under the doctrines of tender, estoppel, laches, or waiver.

FIFTH AFFIRMATIVE DEFENSE
(Fraudulent, Oppressive, and Unfair Foreclosure Sale)

The HOA's foreclosure sale was fraudulent, unfair, and oppressive, and the circumstances of the sale violated the HOA's obligation of good faith.

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

NV Eagles' claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SEVENTH AFFIRMATIVE DEFENSE
(No Standing)

NV Eagles lacks standing to bring some or all of its claims and causes of action.

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

BANA avers the affirmative defense of unclean hands.

NINTH AFFIRMATIVE DEFENSE
(Plaintiff is Not Entitled to Relief)

BANA denies that NV Eagles is entitled to any relief for which it prays.

TENTH AFFIRMATIVE DEFENSE
(Failure to Do Equity)

BANA avers the affirmative defense of failure to do equity.

ELEVENTH AFFIRMATIVE DEFENSE
(Failure to Provide Notice)

BANA was not provided proper notice of the HOA's foreclosure sale, and any such notice provided to BANA failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

The HOA's foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

THIRTEENTH AFFIRMATIVE DEFENSE
(No Super-Priority Sale)

The deed of trust was not extinguished by the HOA's foreclosure sale because the HOA foreclosed on the subpriority portion of its lien.

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Pursuant to NRCP 11, BANA reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

Dated: July 30, 2019.

AKERMAN LLP

/s/Natalie L. Winslow

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

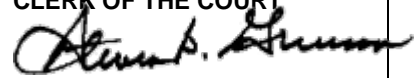
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 30th day of July, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWER TO NV EAGLES, LLC'S CROSS-CLAIMS**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Cogburn Law Offices		
	Contact	Email
	Jamie Cogburn	jsc@cogburnlaw.com
	Lisa Catanzaro	lcatanzaro@cogburnlaw.com
	Wiznet Filing	wiznet@cogburnlaw.com
Cogburn Law Offices		
	Contact	Email
	Lo Mercado	lmercado@cogburnlaw.com
Gordon & Rees LLP		
	Contact	Email
	David Gluth	dgluth@gordonrees.com
	Gayle Angulo	gangulo@gordonrees.com
	Marie Ogella	mogella@gordonrees.com
	Robert Larsen	rlarsen@gordonrees.com
The Wright Law Group, P.C.		
	Contact	Email
	Dayana	dayana@wrightlawgroupnv.com

/s/ Jill Sallade

An employee of AKERMAN LLP



ANS

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: darren.brenner@akerman.com

Email: natalie.winslow@akerman.com

*Attorneys for Bank of America, N.A. and The Bank of
New York Mellon FKA The Bank of New York, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2006 J-8, Mortgage Pass-
Through Certificates, Series 2006-J8*

DISTRICT COURT

CLARK COUNTY, NEVADA

MELISSA LIEBERMAN, an individual, on
behalf of itself and all others similarly
situated;

Plaintiff,

v.

MADEIRA CANYON HOMEOWNERS'
ASSOCIATION, a Nevada homeowners
association, NEVADA ASSOCIATION
SERVICES, INC., a Nevada corporation, BANK
OF AMERICA, N.A., a federal savings bank,
RESURGENT CAPITAL SERVICES, LP, a
national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business entity,
and DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

**THE BANK OF NEW YORK MELLON,
AS TRUSTEE'S ANSWER TO NV
EAGLES, LLC'S CROSS-CLAIMS**

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the
Certificateholders of CWALT, Inc., Alternative Loan Trust 2006 J-8, Mortgage Pass-Through
Certificates, Series 2006-J8 (**BoNYM**), by and through its attorneys at AKERMAN LLP, answers the
cross-claims filed by NV Eagles, LLC as follows:

...

...

1. BoNYM lacks sufficient information to admit or deny the allegations in Paragraph 1, and therefore denies the same.

2. BoNYM admits only that it conducts business in Clark County, Nevada. BoNYM lacks sufficient information to admit or deny the remaining allegations in Paragraph 2, and therefore denies the same.

3. BoNYM admits only that the foreclosure deed recorded in the Clark County Recorder's Office as Instrument Number 20130703-0002523 (**foreclosure deed**) purported to convey title to the property located at 2184 Pont National Drive, Henderson, Nevada 89044 (**property**) to NV Eagles' predecessor-in-interest, Underwood Partners, LLC. BoNYM specifically denies that NV Eagles' interest in the property, if any, is superior to the deed of trust recorded in the Clark County Recorder's Office as Instrument Number 20061127-0002922 (**deed of trust**). BoNYM denies the remaining allegations in Paragraph 3.

4. BoNYM admits only that the foreclosure deed purported to convey title to the property to NV Eagles' predecessor-in-interest, Underwood. BoNYM specifically denies that NV Eagles' interest in the property, if any, is superior to the deed of trust. BoNYM denies the remaining allegations in Paragraph 4.

5. BoNYM admits only that it was the beneficiary of the deed of trust at the time of the HOA's foreclosure sale. BoNYM denies the remaining allegations of Paragraph 5.

6. BoNYM lacks sufficient information to admit or deny the allegations in Paragraph 6, and therefore denies the same.

7. BoNYM lacks sufficient information to admit or deny the allegations in Paragraph 7, and therefore denies the same.

8. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 8.

**FIRST CLAIM FOR RELIEF
(QUIET TITLE AGAINST ALL DEFENDANTS)**

9. BoNYM adopts and incorporates by reference the preceding Paragraphs as though fully set forth herein.

...

10. BoNYM admits only that the foreclosure deed purported to convey title to the property to NV Eagles' predecessor-in-interest, Underwood. BoNYM specifically denies that NV Eagles' interest in the property, if any, is superior to the deed of trust. BoNYM denies the remaining allegations in Paragraph 10.

11. BoNYM admits only that the deed of trust remains a valid encumbrance on the property. BoNYM denies the remaining allegations in Paragraph 11.

12. BoNYM admits only that it is the beneficiary of the deed of trust. BoNYM denies the remaining allegations of Paragraph 12.

13. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 13.

14. BoNYM admits that it claims the deed of trust encumbers the property. BoNYM denies the remaining allegations in Paragraph 14.

15. The allegations in Paragraph 15 are legal conclusions to which no response is required. To the extent a response is required, BoNYM denies the allegations in Paragraph 15.

16. Denied.

17. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 17.

**SECOND CLAIM FOR RELIEF
(CANCELLATION OF INSTRUMENTS AGAINST ALL DEFENDANTS)**

18. BoNYM adopts and incorporates by reference the preceding Paragraphs as though fully set forth herein.

19. Denied.

20. Denied.

21. Denied.

22. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 22.

**THIRD CLAIM FOR RELIEF
(INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS)**

23. BoNYM adopts and incorporates by reference the preceding Paragraphs as though fully set forth herein.

24. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 24.

1 25. Denied.

2 26. Denied.

3 27. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 27.

4 **PRAYER FOR RELIEF**

5 1. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 1 of
6 the Prayer.

7 2. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 2 of
8 the Prayer.

9 3. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 3 of
10 the Prayer.

11 4. BoNYM denies that NV Eagles is entitled to the relief requested in Paragraph 4 of
12 the Prayer.

13 **AFFIRMATIVE DEFENSES**

14 BoNYM asserts the following additional defenses. BoNYM reserves the right to amend this
15 Answer by adding, deleting, or amending defenses as may be appropriate. In further answer to the
16 Cross-claims, and by way of additional defenses, BoNYM avers as follows:

17 **FIRST AFFIRMATIVE DEFENSE**
18 **(Failure to State a Claim)**

19 NV Eagles failed to state facts sufficient to constitute any cause of action against BoNYM.

20 **SECOND AFFIRMATIVE DEFENSE**
21 **(Void for Vagueness)**

22 To the extent that NV Eagles' interpretation of NRS 116.3116 is accurate, the statute, and
23 Chapter 116, are void for vagueness as applied to this matter.

24 **THIRD AFFIRMATIVE DEFENSE**
25 **(NV Eagles was not a bona fide purchaser)**

26 BoNYM avers that NV Eagles was not a bona fide purchaser.
27
28

FOURTH AFFIRMATIVE DEFENSE
(Tender, Estoppel, Laches, and Waiver)

The superpriority portion of the HOA's lien was satisfied prior to the HOA's foreclosure under the doctrines of tender, estoppel, laches, or waiver.

FIFTH AFFIRMATIVE DEFENSE
(Fraudulent, Oppressive, and Unfair Foreclosure Sale)

The HOA's foreclosure sale was fraudulent, unfair, and oppressive, and the circumstances of the sale violated the HOA's obligation of good faith.

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

NV Eagles' claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SEVENTH AFFIRMATIVE DEFENSE
(No Standing)

NV Eagles lacks standing to bring some or all of its claims and causes of action.

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

BoNYM avers the affirmative defense of unclean hands.

NINTH AFFIRMATIVE DEFENSE
(Plaintiff is Not Entitled to Relief)

BoNYM denies that NV Eagles is entitled to any relief for which it prays.

TENTH AFFIRMATIVE DEFENSE
(Failure to Do Equity)

BoNYM avers the affirmative defense of failure to do equity.

ELEVENTH AFFIRMATIVE DEFENSE
(Failure to Provide Notice)

BoNYM was not provided proper notice of the HOA's foreclosure sale, and any such notice provided to BoNYM failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

The HOA's foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

THIRTEENTH AFFIRMATIVE DEFENSE
(No Super-Priority Sale)

The deed of trust was not extinguished by the HOA's foreclosure sale because the HOA foreclosed on the subpriority portion of its lien.

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Pursuant to NRCF 11, BoNYM reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

Dated: July 30, 2019.

AKERMAN LLP

/s/Natalie L. Winslow

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

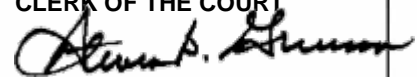
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 30th day of July, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON, AS TRUSTEE'S ANSWER TO NV EAGLES, LLC'S CROSS-CLAIMS**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Cogburn Law Offices		
	Contact	Email
	Jamie Cogburn	jsc@cogburnlaw.com
	Lisa Catanzaro	lcatanzaro@cogburnlaw.com
	Wiznet Filing	wiznet@cogburnlaw.com
Cogburn Law Offices		
	Contact	Email
	Lo Mercado	lmercado@cogburnlaw.com
Gordon & Rees LLP		
	Contact	Email
	David Gluth	dgluth@gordonrees.com
	Gayle Angulo	gangulo@gordonrees.com
	Marie Ogella	mogella@gordonrees.com
	Robert Larsen	rlarsen@gordonrees.com
The Wright Law Group, P.C.		
	Contact	Email
	Dayana	dayana@wrightlawgroupnv.com

/s/ Jill Sallade

An employee of AKERMAN LLP



1 **FFCL**
JOSEPH Y. HONG, ESQ.
2 State Bar No. 005995
HONG & HONG LAW OFFICE
3 1980 FESTIVAL PLAZA DRIVE, SUITE 650
Las Vegas, Nevada 89135
4 Telephone No.: (702) 870-1777
Facsimile No.: (702) 870-0500
5 Email: Yosuphonglaw@gmail.com
Attorney for NV Eagles, LLC

6
7
8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 MELISSA LIEBERMAN, an individual, on
behalf of herself and all others similarly situated;

12 Plaintiff,

13 vs.

14 MADEIRA CANYON COMMUNITY
ASSOCIATION, *et al.*,

15 Defendants.

16 And related claims.
17

Case No.: A-13-685203-C

Dept. No.: XXXII

18 **FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT**

19 This matter having come on for Bench Trial on January 14 and 15, 2020, and for the Court's
20 Decision hearing on February 5, 2020; the Court having considered the evidence; and good cause
21 appearing therefor, enters the following Findings of Facts, Conclusions of Law and Judgment.

22 **FINDINGS OF FACTS**

23 1. This case involves a real property commonly known as 2184 Pont National Drive,
24 Henderson, Nevada 89044, APN 190-20-311-033 ("Subject Property").
25

1 2. The Subject Property is governed by the Declaration of Covenants, Conditions and
2 Restrictions ("CC&Rs") of the Mediera Canyon Community Association *now known as* Madeira
3 Canyon Homeowners Association ("HOA"), which were recorded in the Clark County Recorder's
4 Office as Instrument No. 20050524-0002414.

5 3. On or about November 20, 2006, Melissa Lieberman ("Borrower") executed a
6 promissory note for \$511,576.00 ("Note") in favor of Pulte Mortgage, LLC.

7 4. The Note was secured by a deed of trust recorded in the Clark County Recorder's
8 Office as Instrument No. 20061127-0002922 ("DOT").

9 5. On or about September 14, 2011, the DOT was assigned to The Bank of New York
10 Mellon FKA The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc.,
11 Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8 ("BNYM"),
12 via an Assignment of DOT recorded in the Clark County Recorder's Office as Instrument No.
13 20110919-0000030.

14 6. After the Borrower defaulted on her obligations to the HOA, the HOA retained
15 Nevada Association Services, Inc. ("NAS") to collect the delinquency.

16 7. On October 27, 2010, NAS, on behalf of the HOA, recorded a Notice of Delinquent
17 Assessment Lien in the Clark County Recorder's Office as Instrument No. 20101027-0002037.

18 8. On December 21, 2010, NAS, on behalf of the HOA, recorded a Notice of Default
19 and Election to Sell Under Homeowners Association Lien ("NOD") in the Clark County Recorder's
20 Office as Instrument No. 20101221-0000548.

21 9. After it received the NOD, Bank of America, N.A. ("BANA"), who serviced the loan
22 secured by the DOT and was the predecessor to BNYM, retained Miles, Bauer, Bergstrom &
23 Winters LLP ("Miles Bauer") to obtain information from the HOA as to the association lien and the
24 superpriority amount of same.
25

1 10. On February 22, 2011, Rock Jung, Esq. ("Jung"), an attorney for Miles Bauer, sent a
2 copy of its standard letter seeking to determine the nine-month super-priority lien amount (the
3 "Miles Bauer Letter") to NAS.

4 11. NAS responded on or about March 12, 2011, providing Jung an accounting ledger
5 showing the total amount the Borrower owed the HOA broken down by categories, including
6 amounts due for "monthly assessments." *See Joint Trial Exhibit 9, bates 134* (hereinafter "HOA
7 Ledger").

8 12. On or about April 1, 2011, Miles Bauer sent a check for \$486.00 to NAS enclosed
9 with a cover letter explaining that the check was equal to "9 months worth of delinquent
10 assessments" and intended to satisfy BANA's, as the predecessor to BNYM, "obligations to the
11 HOA as holder of the deed of trust against the Property." *See Joint Trial Exhibit 9, bates 137-139.*

12 13. However, Miles Bauer miscalculated the superpriority amount as the actual nine-
13 month superpriority amount was \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-*
14 *Day 3 (Decision) Page 7, 14-16; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial*
15 *Exhibit 11, bates 215.* Thus, the Miles Bauer check in the amount of \$486.00 did not satisfy the
16 actual superpriority amount of \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-*
17 *Day 3 (Decision) Page 8, 13-15; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial*
18 *Exhibit 11, bates 215.*

19 14. Thereafter, neither Miles Bauer nor BANA nor BNYM did anything to satisfy the
20 superpriority portion of the HOA lien, and on April 1, 2013, NAS recorded a Notice of Foreclosure
21 Sale in the Clark County Recorder's Office.

22 15. On June 7, 2013, NAS conducted the foreclosure sale wherein Underwood Partners,
23 LLC ("Underwood"), as the highest bidder in the amount of \$30,000.00, purchased the Subject
24 Property.

25 16. Underwood then conveyed its interest in the Subject Property to NV Eagles.

1 17. There was no valid tender of the superpriority portion of the HOA lien in the amount
2 of \$540.00 by BANA, Miles Bauer, BNYM or any party prior to the HOA foreclosure sale
3 conducted on June 7, 2013.

4 18. There was no evidence of any kind of fraud, unfairness or oppression that accounted
5 for and/or brought about the purchase price of the Subject Property at the foreclosure sale and/or
6 affecting the foreclosure sale of the Subject Property.

7 19. Furthermore, notwithstanding the fact that the Miles Bauer check was for an amount
8 less than the superpriority amount, BANA and/or BNYM had adequate time and notice to correct
9 this error prior to the foreclosure sale. BANA and/or BNYM did nothing.

10 CONCLUSIONS OF LAW

11 1. As confirmed by the Nevada Supreme Court in its *SFR* Decision, a foreclosure sale
12 that was conducted pursuant to NRS Chapter 116 extinguished BNYM and/or its predecessor's deed
13 of trust encumbering the Subject Property as a matter of Nevada law.

14 2. The Nevada Supreme Court in its *SFR* and *Shadow Wood* Decisions held and
15 confirmed that the recitals as contained in the Foreclosure Deed serve as conclusive proof that the
16 statutory requirements have been complied with as to the notice provisions of NRS 116.31162
17 through 116.31168, which concern the occurrence of default, notice, and publication of the
18 foreclosure sale. *See SFR* at 411-412.

19 3. Therefore, the conclusiveness of the recitals as contained in the Foreclosure Deed
20 can only be challenged via post-sale equitable claims supported by a finding of unfairness of the
21 sale. *See Shadow Wood* at 1110-1112.

22 4. The Nevada Supreme Court in its *PNC* Order in the case of *PNC Bank National*
23 *Association v. Saticoy Bay LLC Series 9320 MT. Cash Ave. UT 103*, Nevada Supreme Court case
24 no. 69595 (Nev. May 25, 2017 (unpublished Order of Affirmance) held that the amounts as stated in
25

1 the pre-sale notices constituted prima facie evidence that a HOA was foreclosing on its
2 superpriority lien comprised of monthly assessments pursuant to NRS Chapter 116.

3 5. In *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72,
4 427 P.3d 113 (Nev. 2018) (“*Diamond Spur*”), the Nevada Supreme Court expressly held that a
5 “[v]alid tender requires payment in full.” *Id.*

6 6. Under NRS 116.31162(b), the superpriority portion of the Association’s lien is
7 comprised of nine months of common assessments and charges for nuisance-abatement and
8 maintenance under NRS 116.310312. In this case, the evidence absolutely and conclusively
9 confirmed that the superpriority portion of the HOA lien was in the amount of \$540.00.

10 7. The Nevada Supreme Court, in *Diamond Spur* established that a “lien may be lost by
11 ...payment or tender of the proper amount of the debt secured by the lien.” *Id.* Additionally, the
12 Nevada Supreme Court in *Diamond Spur* held that a “[v]alid tender requires payment in full.” *Id.*
13 Furthermore, as recently as January 23, 2020, the Nevada Supreme Court confirmed its holding in
14 *Diamond Spur* in its unpublished Order in *Nationstar v. 2016 Marathon Keys Trust*, case # 75967
15 (unpublished Order, January 23, 2020) (“*Marathon*”), that again confirmed that “[v]alid tender
16 requires payment in full.” *Id.*

17 8. In Nevada, “[t]he burden of demonstrating that the delinquency was cured presale,
18 rendering the sale void, [is] on the party challenging the foreclosure...” *Resources Group, LLC v.*
19 *Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019) (“*Resources Group*”). Further,
20 *Resources Group* established that the party contesting the validity of the HOA’s foreclosure of its
21 superpriority lien bears the burden of demonstrating that it tendered its “delinquency-curing check,”
22 and whether it met the burden by proving that it “paid the delinquency amount in full prior to the
23 sale.” *Id.*, 437 P.3d at 159.

24 9. Here, BNYM failed to carry its burden as the check delivered to NAS by Miles
25 Bauer did not satisfy the superpriority amount of the HOA lien. Thus, under Nevada law, the tender

1 was invalid and insufficient to cure the superpriority portion of the HOA lien. *See Diamond Spur,*
2 *Resources Group and Marathon.*

3 10. The Nevada Supreme Court in the case of *Nationstar Mortgage, LLC. v. Saticoy Bay*
4 *LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (November 22, 2017), held that the
5 commercial reasonableness standard, which derives from Article 9 of the Uniform Commercial
6 Code, has no applicability in the context of an HOA foreclosure involving the sale of real property.
7 The Nevada Supreme Court, therefore, confirmed its holding in *Shadow Wood* as to the long-
8 standing rule that “inadequacy of price, however, gross, is not in itself a sufficient ground for setting
9 aside a trustee’s sale” absent additional “proof of some element of fraud, unfairness, or oppression
10 as accounts for and brings about the inadequacy of price.” *Shadow Wood* at 1111 (quoting *Golden*
11 *v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963).

12 11. The evidence provided by BNYM at trial was insufficient to establish that the
13 foreclosure sale of the property was commercially unreasonable under *Golden v. Tomiyasu*, 79 Nev.
14 503, 387 P.2d 989 (1963), which requires some proof of some element of fraud, unfairness or
15 oppression as accounts for/brings about a grossly inadequate price. Nevada law does not permit a
16 Court to invalidate a sale solely on the basis of price. Thus, the HOA foreclosure sale of the Subject
17 Property was commercially reasonable as a matter of law. BNYM provided no evidence of any
18 kind to show a nexus between any alleged act of fraud, unfairness or oppression that accounted
19 for/brought about the sale price of the Subject Property and/or affected the foreclosure sale.

20 **THEREFORE, PURSUANT TO THE ABOVE FINDINGS OF FACT AND**
21 **CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
22 the deed of trust and any assignments thereof, as liens on the Subject Property are hereby cancelled
23 and without legal force or effect, and do not convey any right, title or interest in and to the Subject
24 Property to BNYM and/or its predecessors in interest and/or its assignees.
25

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that BNYM and/or its predecessors in interest and/or assignees do not have any estate, right, title, lien or interest in or to the Subject Property or any part of the Subject Property.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that there is no just reason for delay of entry of final judgment and final judgment is so entered pursuant to Rule 54 of the Nevada Rules of Civil Procedure.

DONE and DATED this 30th day of April, 2020.

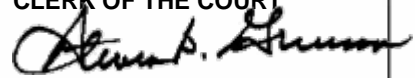
DISTRICT COURT JUDGE
ROB BARE

HGL

Respectfully submitted by:

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong
JOSEPH Y. HONG, ESQ.
State Bar No. 005995
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
Attorney for NV Eagles, LLC



1 **NEFF**
JOSEPH Y. HONG, ESQ.
2 State Bar No. 005995
HONG & HONG LAW OFFICE
3 1980 FESTIVAL PLAZA DRIVE, SUITE 650
Las Vegas, Nevada 89135
4 Telephone No.: (702) 870-1777
Facsimile No.: (702) 870-0500
5 Email: Yosuphonglaw@gmail.com
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6
7
8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 MELISSA LIEBERMAN, an individual, on
behalf of herself and all others similarly situated;

12 Plaintiff,

13 vs.

14 MADEIRA CANYON COMMUNITY
ASSOCIATION, *et al.*,

15 Defendants.

16 And related claims.
17

Case No.: A-13-685203-C

Dept. No.: XXXII

18 **NOTICE OF ENTRY OF FINDINGS OF FACTS,**
19 **CONCLUSIONS OF LAW AND JUDGMENT**

20 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 ///

22 ///

23 ///

24 ///

25 ///

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT was entered in the above-entitled matter, and filed on the 30th day of April, 2020, a copy of which is attached hereto.

DATED this 30th day of April, 2020.

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong

JOSEPH Y. HONG, ESQ.

State Bar No. 005995

1980 Festival Plaza Drive, Suite 650

Las Vegas, Nevada 89135

Attorney for NV Eagles, LLC

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCp 5(b)(2)(D), I certify that I am an employee of Joseph Y. Hong, Esq., and that on this 30th day of April, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT** by electronic transmission through the Eighth Judicial District Court EFP system (Odyssey eFileNV) pursuant to NEFCR 9 upon each party in this case who is registered as an electronic case filing user with the Clerk.

By/s/ *Debra L. Batesel*

An employee of Joseph Y. Hong, Esq.



1 **FFCL**
2 **JOSEPH Y. HONG, ESQ.**
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4 **HONG & HONG LAW OFFICE**
5 1980 FESTIVAL PLAZA DRIVE, SUITE 650
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8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 MELISSA LIEBERMAN, an individual, on
12 behalf of herself and all others similarly situated;

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12 13. However, Miles Bauer miscalculated the superpriority amount as the actual nine-
13 month superpriority amount was \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-*
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19 14. Thereafter, neither Miles Bauer nor BANA nor BNYM did anything to satisfy the
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21 Sale in the Clark County Recorder's Office.

22 15. On June 7, 2013, NAS conducted the foreclosure sale wherein Underwood Partners,
23 LLC ("Underwood"), as the highest bidder in the amount of \$30,000.00, purchased the Subject
24 Property.

25 16. Underwood then conveyed its interest in the Subject Property to NV Eagles.

1 17. There was no valid tender of the superpriority portion of the HOA lien in the amount
2 of \$540.00 by BANA, Miles Bauer, BNYM or any party prior to the HOA foreclosure sale
3 conducted on June 7, 2013.

4 18. There was no evidence of any kind of fraud, unfairness or oppression that accounted
5 for and/or brought about the purchase price of the Subject Property at the foreclosure sale and/or
6 affecting the foreclosure sale of the Subject Property.

7 19. Furthermore, notwithstanding the fact that the Miles Bauer check was for an amount
8 less than the superpriority amount, BANA and/or BNYM had adequate time and notice to correct
9 this error prior to the foreclosure sale. BANA and/or BNYM did nothing.

10 CONCLUSIONS OF LAW

11 1. As confirmed by the Nevada Supreme Court in its *SFR* Decision, a foreclosure sale
12 that was conducted pursuant to NRS Chapter 116 extinguished BNYM and/or its predecessor's deed
13 of trust encumbering the Subject Property as a matter of Nevada law.

14 2. The Nevada Supreme Court in its *SFR* and *Shadow Wood* Decisions held and
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16 statutory requirements have been complied with as to the notice provisions of NRS 116.31162
17 through 116.31168, which concern the occurrence of default, notice, and publication of the
18 foreclosure sale. *See SFR* at 411-412.

19 3. Therefore, the conclusiveness of the recitals as contained in the Foreclosure Deed
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22 4. The Nevada Supreme Court in its *PNC* Order in the case of *PNC Bank National*
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24 no. 69595 (Nev. May 25, 2017 (unpublished Order of Affirmance) held that the amounts as stated in
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1 the pre-sale notices constituted prima facie evidence that a HOA was foreclosing on its
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6 6. Under NRS 116.31162(b), the superpriority portion of the Association’s lien is
7 comprised of nine months of common assessments and charges for nuisance-abatement and
8 maintenance under NRS 116.310312. In this case, the evidence absolutely and conclusively
9 confirmed that the superpriority portion of the HOA lien was in the amount of \$540.00.

10 7. The Nevada Supreme Court, in *Diamond Spur* established that a “lien may be lost by
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12 Nevada Supreme Court in *Diamond Spur* held that a “[v]alid tender requires payment in full.” *Id.*
13 Furthermore, as recently as January 23, 2020, the Nevada Supreme Court confirmed its holding in
14 *Diamond Spur* in its unpublished Order in *Nationstar v. 2016 Marathon Keys Trust*, case # 75967
15 (unpublished Order, January 23, 2020) (“*Marathon*”), that again confirmed that “[v]alid tender
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17 8. In Nevada, “[t]he burden of demonstrating that the delinquency was cured presale,
18 rendering the sale void, [is] on the party challenging the foreclosure...” *Resources Group, LLC v.*
19 *Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019) (“*Resources Group*”). Further,
20 *Resources Group* established that the party contesting the validity of the HOA’s foreclosure of its
21 superpriority lien bears the burden of demonstrating that it tendered its “delinquency-curing check,”
22 and whether it met the burden by proving that it “paid the delinquency amount in full prior to the
23 sale.” *Id.*, 437 P.3d at 159.

24 9. Here, BNYM failed to carry its burden as the check delivered to NAS by Miles
25 Bauer did not satisfy the superpriority amount of the HOA lien. Thus, under Nevada law, the tender

1 was invalid and insufficient to cure the superpriority portion of the HOA lien. *See Diamond Spur,*
2 *Resources Group and Marathon.*

3 10. The Nevada Supreme Court in the case of *Nationstar Mortgage, LLC. v. Saticoy Bay*
4 *LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (November 22, 2017), held that the
5 commercial reasonableness standard, which derives from Article 9 of the Uniform Commercial
6 Code, has no applicability in the context of an HOA foreclosure involving the sale of real property.
7 The Nevada Supreme Court, therefore, confirmed its holding in *Shadow Wood* as to the long-
8 standing rule that “inadequacy of price, however, gross, is not in itself a sufficient ground for setting
9 aside a trustee’s sale” absent additional “proof of some element of fraud, unfairness, or oppression
10 as accounts for and brings about the inadequacy of price.” *Shadow Wood* at 1111 (quoting *Golden*
11 *v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963).

12 11. The evidence provided by BNYM at trial was insufficient to establish that the
13 foreclosure sale of the property was commercially unreasonable under *Golden v. Tomiyasu*, 79 Nev.
14 503, 387 P.2d 989 (1963), which requires some proof of some element of fraud, unfairness or
15 oppression as accounts for/brings about a grossly inadequate price. Nevada law does not permit a
16 Court to invalidate a sale solely on the basis of price. Thus, the HOA foreclosure sale of the Subject
17 Property was commercially reasonable as a matter of law. BNYM provided no evidence of any
18 kind to show a nexus between any alleged act of fraud, unfairness or oppression that accounted
19 for/brought about the sale price of the Subject Property and/or affected the foreclosure sale.

20 **THEREFORE, PURSUANT TO THE ABOVE FINDINGS OF FACT AND**
21 **CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
22 the deed of trust and any assignments thereof, as liens on the Subject Property are hereby cancelled
23 and without legal force or effect, and do not convey any right, title or interest in and to the Subject
24 Property to BNYM and/or its predecessors in interest and/or its assignees.

1 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that BNYM
2 and/or its predecessors in interest and/or assignees do not have any estate, right, title, lien or interest
3 in or to the Subject Property or any part of the Subject Property.

4 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that there is no
5 just reason for delay of entry of final judgment and final judgment is so entered pursuant to Rule 54
6 of the Nevada Rules of Civil Procedure.

7 DONE and DATED this 30th day of April, 2020.

8
9 

10 DISTRICT COURT JUDGE
11 ROB BARE

HGL

12 Respectfully submitted by:

13 HONG & HONG LAW OFFICE

14 /s/ Joseph Y. Hong

15 JOSEPH Y. HONG, ESQ.

16 State Bar No. 005995

17 1980 Festival Plaza Drive, Suite 650

18 Las Vegas, Nevada 89135

19 Attorney for NV Eagles, LLC
20
21
22
23
24
25