

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

Bank of America, N.A.; The Bank of New York  
Mellon FKA The Bank of New York, as  
Trustee,

Appellants,

v.

NV Eagles, LLC,

No. 84552

DOCKETING

CIVIL APPEALS

Electronically Filed  
May 04 2022 02:44 p.m.

Elizabeth N. Brown  
Clerk of Supreme Court

## 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.

1. Judicial District Eighth Department XXIV

County Clark Judge David M. Jones

District Ct. Case No. A-13-685203-C

**2. Attorney filing this docketing statement:**

Attorney Melanie D. Morgan; Lilith V. Xara Telephone (702) 634-5000

Firm Akerman LLP

Address 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134

Client(s) Bank of America, N.A.; The Bank of New York Mellon, as Trustee

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 John Henry Wright Telephone (702) 634-5000

Firm The Wright Law Group

Address 2340 Paseo Del Prado, Suite D-305, Las Vegas, Nevada 89102

Client(s) NV Eagles, LLC

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(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:

Bank of America, N.A., et al. v. NV Eagles, LLC, Supreme Court Case No. 81239

**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, NV, No. A-13-690944-C (consolidated)

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

This is an NRS 116 quiet-title action. NV Eagles claims its predecessor purchased property free and clear of 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's (BoNYM) deed of trust at the HOA's foreclosure conducted by NAS. Before the foreclosure, BANA retained Miles Bauer. BANA and Miles Bauer were aware of NAS's rejection policy. Miles Bauer nonetheless offered to pay the superpriority portion to NAS. Based on the ledger provided, Miles Bauer tendered a check. After a bench trial, the trial court found Miles Bauer's tender was ineffective because it was for slightly less than the superpriority amount. This court reversed, holding Appellants supported their futility argument with evidence of NAS's known rejection policy, and remanded. On remand, the trial court entered judgment in favor of NV Eagles again, holding tender futility is irrelevant if Miles Bauer miscalculates the superpriority amount.

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

1. Whether BANA was excused from tendering when the evidence established that BANA and Miles Bauer knew of NAS's policy to reject all superpriority tenders?

**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:

This case is one of many pending in this court that raises issues regarding the effect of an HOA's foreclosure sale under the pre-amendment version of NRS 116.



**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 by either the Supreme Court or the Court of Appeals.

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

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** Mar 11, 2022

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** Mar 11, 2022

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

**19. Date notice of appeal filed** Apr 8, 2022

---

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)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

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

The Findings of Fact, Conclusions of Law, and Order on Post-Remand Hearing entered on March 11, 2022 is a final judgment.

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

(a) Parties:

Melissa Lieberman; Bank of America, N.A.; 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; Cogburn Law Offices; Lawyer's Title of Nevada, Inc.; Madeira Canyon Homeowners Association; Nevada Association Services, Inc.; Norman Teran; Pulte Mortgage, LLC; Resurgent Capital Partners, LP; Underwood Partners, LLC

(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:

Pulte was dismissed on 10/30/13. Teran and Cogburn were dismissed on 1/9/14. Claims against Underwood were dismissed in part on 1/21/14. NAS and the HOA were dismissed on 2/14/14. Lawyer's Title was dismissed on 11/4/15. Resurgent was dismissed on 11/21/18. Lieberman did not appear at trial or remand, and her remaining claims were resolved through the post-remand order on 3/11/22.

**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 wrongful foreclosure, quiet title, breach of contract, breach of implied duty of good faith, deceptive trade practices, and abuse of process claims that were disposed: as to Underwood, 1/21/14; as to the HOA and NAS, 2/14/14; as to Resurgent, 11/21/18; as to BANA and BoNYM, 4/30/20; and as to Underwood, 3/11/22. NAS asserted claims for negligence, indemnity and contribution, and interpleader that were disposed on 2/10/14. BANA and BoNYM's quiet title/declaratory relief claims and NV Eagles quiet title/declaratory relief claims were disposed on

**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:

(b) Specify the parties remaining below:

(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)):**

N/A

**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, & BoNYM  
Name of appellant

Lilith Vala Xara  
Name of counsel of record

5/4/2022  
Date

/s/ Lilith V. Xara  
Signature of counsel of record

Clark Country, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

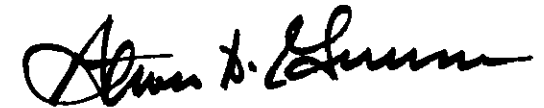
I certify that on the 4th day of May, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ 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.)

John Henry Wright, Esq.  
The Wright Law Group, P.C.  
2340 Paseo Del Prado, Suite D-305  
Las Vegas, NV 89102  
Attorneys for NV Eagles, LLC

Dated this 4th day of May, 2022

/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.

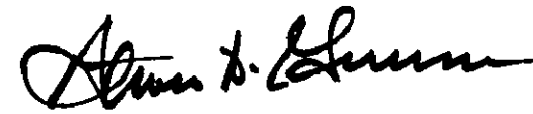
DATED this 5<sup>th</sup> day of August, 2013.

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

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](mailto:richard@vilkinlaw.com)  
*Attorneys for defendant and counterclaimant Nevada  
Association Services, Inc.*

Electronically Filed  
08/19/2013 07:38:51 AM



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.

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

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

12           4.       Answering paragraphs 22, 29, 36 and 42 of the Complaint, this answering  
13 defendant repeats its responses as stated herein to each of the paragraphs of the Complaint  
14 realleged by plaintiff in paragraphs 22, 29, 36 and 42.  
15  
16

17  
18                               FIRST AFFIRMATIVE DEFENSE

19           Plaintiff has failed to state any cause of action upon which relief can be granted.  
20

21                               SECOND AFFIRMATIVE DEFENSE

22           The recovery sought is barred by the doctrines of waiver, unclean hands, laches and  
23 failure to do equity.  
24

25  
26                               THIRD AFFIRMATIVE DEFENSE

27           Plaintiff was more than 50 percent negligent in and about the acts complained of in her  
28 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

7  
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.  
24

25  
26 NINTH AFFIRMATIVE DEFENSE

27 Plaintiff lacks standing to bring this action.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7

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.

## PRA YER

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*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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*

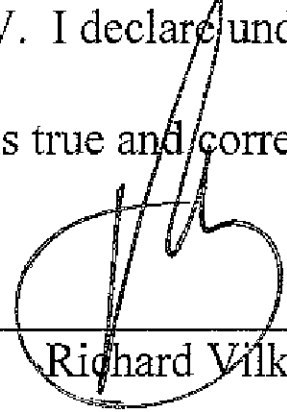
*Nevada Association Services, Inc.*

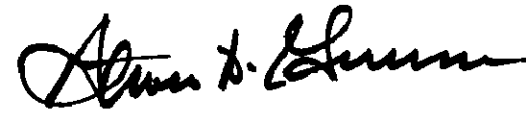
Certificate of Mailing

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

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](mailto: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  
25  
26  
27  
28

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

5  
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

18 10. NAS was contracted by the Madeira Canyon Homeowners Association (“HOA”) in  
19 2010 to collect debts owed to it for unpaid homeowners assessments by plaintiff  
20 Melissa Lieberman for the property located at 2184 Point National Drive,  
21 Henderson, NV 89074 (“the subject property”). This effort resulted in a foreclosure  
22 sale of the subject property on June 7, 2013.  
23

24 11. Prior to the sale, NAS was contacted by third-party defendants COGBURN LAW  
25 OFFICES, LLC and NORMA TERAN. Said third-party defendants stated orally  
26 and in writing that they represented plaintiff MELISSA LIEBERMAN. Said third-  
27 party defendants requested a payment plan from NAS for plaintiff. Said payment  
28

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.  
17  
18  
19  
20

## 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)  
9

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.  
21  
22

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

24 ///

25 ///

26 ///

27 ///

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):

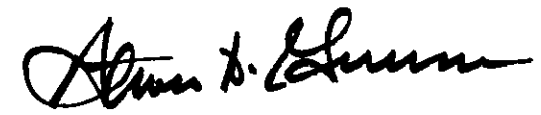
Jamie S. Cogburn, Esq.  
Ryan H. Devine, Esq.  
Cogburn Law Offices  
2879 St. Rose Parkway, Suite 200  
Las Vegas, NV 89052

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



Electronically Filed  
10/30/2013 10:02:44 AM



CLERK OF THE COURT

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

Attorneys for Third Party Defendant  
PULTE MORTGAGE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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,

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

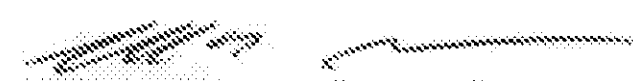
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

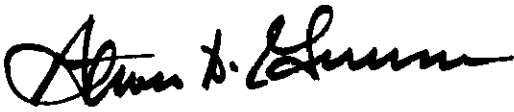
Submitted by:

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

NEOJ  
COLT B. DODRILL, ESQ.  
Nevada Bar No. 9000  
WOLFE & WYMAN LLP  
11811 N. Tatum, Suite 3031  
Phoenix, Arizona 85028  
cbdodrill@wolfewyman.com  
Tel: (602) 953-0100  
Fax: (602) 953-0101

Attorneys for Third Party Defendant  
PULTE MORTGAGE, LLC

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,

Third Party Complainant,

CASE NO. A-13-685203-C

Dept.: XXXII

**NOTICE OF ENTRY OF 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 CERTIFICATE HOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2006-J8, MORTGAGE PASS THROUGH CERTIFICATES SERIES 2006-J8, and DOES 1-25, inclusive,

Third Party Defendants.

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

**TO: ALL PARTIES HEREIN AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on October 30, 2013, the court in the above-captioned action entered the stipulation and order re dismissal of third-party defendant Pulte Mortgage, LLC attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

DATED: October 31, 2013

WOLFE & WYMAN LLP

By: /s/ Colt B. Dodrill

COLT B. DODRILL, ESQ.

Nevada Bar No. 9000

11811 N. Tatum, Suite 3031

Phoenix, Arizona 85028

Attorneys for Third-Party Defendant, PULTE MORTGAGE, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of October, 2013, service of the foregoing NOTICE OF ENTRY OF STIPULATION AND ORDER RE DISMISSAL OF THIRD PARTY DEFENDANT PULTE MORTGAGE, LLC was made on all parties as listed below by placing a true and correct copy thereof in a sealed envelope placed in the United States Mail at 980 Kelly Johnson Drive, Suite 140, Las Vegas, NV 89119, postage pre-paid and addressed as follows:

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.

By: /s/ Katia Ioffe  
KATIA IOFFE  
An employee of Wolfe & Wyman LLP

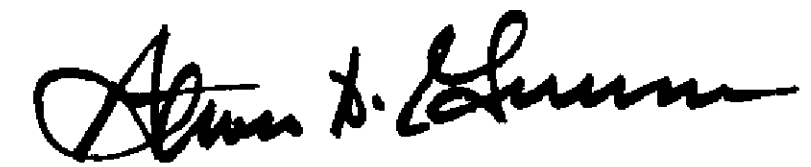


**EXHIBIT “A”**

**EXHIBIT “A”**



Electronically Filed  
10/30/2013 10:02:44 AM



CLERK OF THE COURT

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

Attorneys for Third Party Defendant  
PULTE MORTGAGE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v. PULTE MORTGAGE, LLC

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,

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. 201109190000030 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

**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**

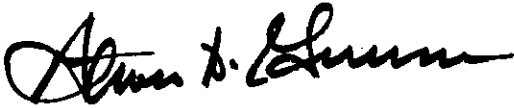
WOLFE & WYMAN LLP  
ATTORNEYS & COUNSELORS AT LAW

ORIGINAL

Electronically Filed  
01/09/2014 09:20:38 AM

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.

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**

25 This Court heard arguments in regard to Third Party Defendants' Motion to Dismiss on  
26 the 10<sup>th</sup> 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  
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.

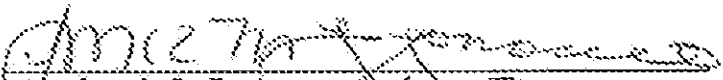
DATED this 6 day of Jan, 2018

  
THE HONORABLE ROB BARE  
EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully submitted by:

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 08

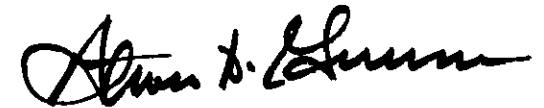
PARKER SCHEER LAGOMARSINO

  
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.*



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

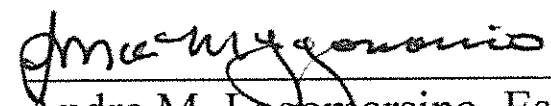
**NOTICE OF ENTRY OF ORDER**

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 9<sup>th</sup> 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 9<sup>th</sup> 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:

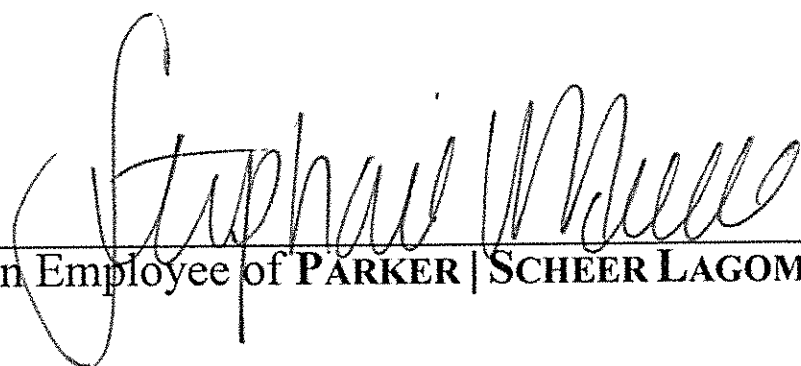
LAW OFFICES OF RICHARD VILKIN, P.C.  
Richard J. Vilkin, Esq.  
Nevada Bar No. 8301  
1286 Crimson Sage Ave.  
Henderson, Nevada 89012  
T: 702.476.3211  
*Attorney for Third Party Plaintiff  
Nevada Association Services, Inc.; and  
Defendant Nevada Association Services, Inc.*

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*

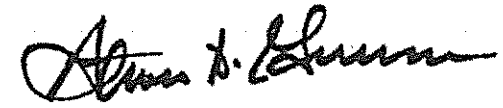
  
An Employee of PARKER | SCHEER LAGOMARSINO

ORIGINAL

Electronically Filed  
01/09/2014 09:20:38 AM

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 10<sup>th</sup> 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.

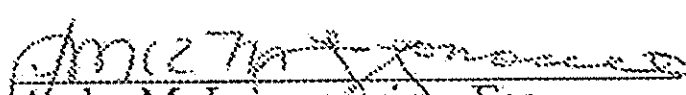
DATED this 6 day of Jan, 2018

  
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.

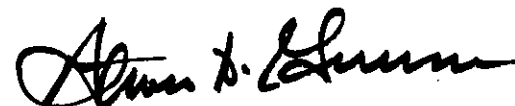
Did not approve order  
Richard J. Vilkin, Esq.  
Nevada Bar No. 8301  
1286 Crimson Sage Ave.  
Henderson, Nevada 89012  
T: 702.476.3211  
*Attorney for Third Party Plaintiff, Nevada Association Services, Inc.*

1 **ODRG**

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

8 Attorney for Plaintiff,  
9 Nevada Title Company

Electronically Filed  
01/21/2014 09:22:46 AM



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  
12 situated,

13 Plaintiff,

14 vs.

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

27 AND ALL RELATED ACTIONS.

Case No.: A685203

Dept. No.: XXXII

Date of Hearing: October 17, 2013

Time of Hearing: 9:00 a.m.

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

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

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.

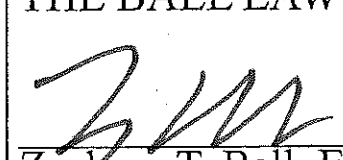
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon oral stipulation  
14 between UNDERWOOD and Defendants BANK OF AMERICA, N.A. and BNY MELLON at  
15 the time of the hearing, all arguments related to BANK OF AMERICA, N.A. and BNY  
16 MELLON's recorded lien on 2184 Pont National Drive, Henderson, 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 <sup>Jan</sup> November, 2013.

21  
22   
23 DISTRICT COURT JUDGE

24 Submitted By:

25 THE BALL LAW GROUP

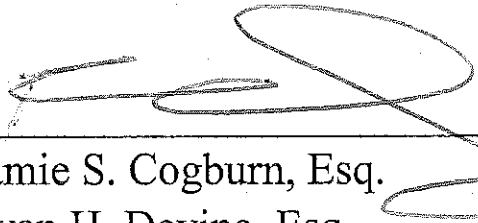
26   
27 Zachary T. Ball, Esq.  
28 Nevada Bar No. 8364  
Attorney for Defendant,  
*Underwood Partners, LLC*

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

1 *Reviewed and Approved By:*

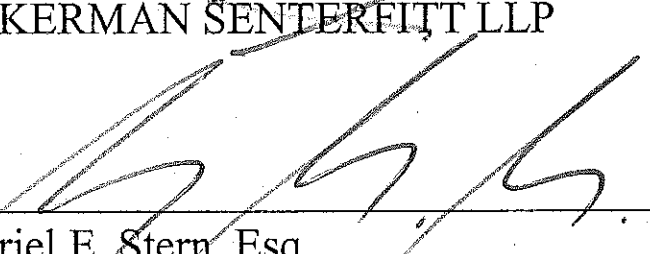
2 DATED this 18 day of November, 2013.

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*

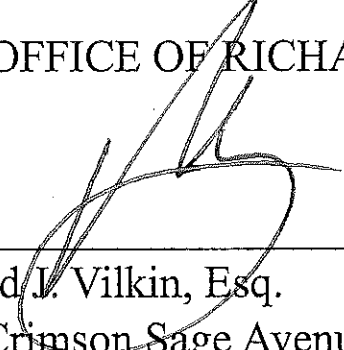
11 DATED this \_\_\_ day of November, 2013.

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 14<sup>TH</sup> day of November, 2013.


21 LAW OFFICE OF RICHARD VILKIN, P.C.

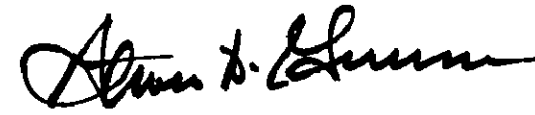
22   
23 \_\_\_\_\_  
24 Richard J. Vilkin, Esq.  
25 1286 Crimson Sage Avenue  
26 Henderson, Nevada 89012  
27 Attorney for *Nevada Association Services*  
28 *Inc.*

1 DATED this 18 day of <sup>December</sup>~~November~~, 2013.

2 PARKER SCHEER LAGOMARSINO

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
Andre M. Lagomarsino, Esq.  
Daniel M. Ryan, Esq.  
9555 South Eastern Avenue, Ste. 210  
Henderson, Nevada 89123  
Attorney for Nevada Association Services  
Inc.



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](mailto: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

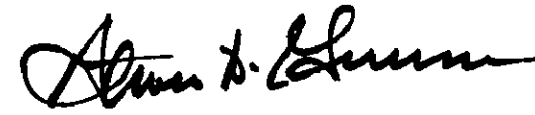
5 3770 Howard Hughes Parkway, Suite 100

6 Las Vegas, NV 89169

7 Phone: (702) 577-9300

8 *Attorneys for defendant Mediera Canyon*

9 *Community Association*



CLERK OF THE COURT

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](mailto:richard@vilkinlaw.com)  
*Attorneys for defendants and counterclaimants*  
*Madiera Canyon Homeowners Association and*  
*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

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND ATTORNEYS: PLEASE TAKE NOTICE that the court has  
signed the "Order Granting The Motion By Defendant Nevada Association Services, Inc. To  
Dismiss Plaintiff's Complaint" on February 6, 2014 and said Order was filed on February 14,

1 2014. A conformed copy of said Order is attached.

2 Date: February 15, 2014

LAW OFFICES OF RICHARD VILKIN, P.C.

3  
4 By: 

5 Richard Vilkin, Esq.

6 Nevada Bar No. 8301

7 1286 Crimson Sage Ave.

8 Henderson, NV 89012

9 Phone: (702) 476-3211

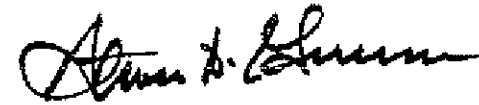
10 Fax: (702) 476-3212

11 *Attorneys for defendants and*

12 *counterclaimants Madeira Canyon*

13 *Homeowners Association and Nevada*

14 *Association Services, Inc.*



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](mailto: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*

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

Certificate of Mailing

I hereby certify that on February 15, 2014, I put copies of the foregoing NOTICE OF ENTRY OF ORDER in sealed envelopes, postage prepaid, and deposited said envelopes 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):

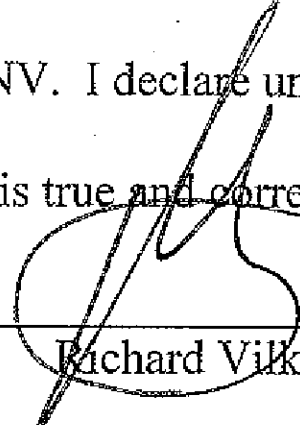
Jamie S. Cogburn, Esq.  
Cogburn Law Offices  
2879 St. Rose Parkway, Suite 200  
Henderson, NV 89052

Zachary T. Ball, Esq.  
The Ball Law Group, LLC  
3455 Cliff Shadows Parkway, Suite 150  
Las Vegas, NV 89128

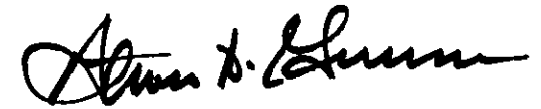
Ariel Stern, Esq.  
Akerman, LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144

Andre M. Lagomarsino, Esq.  
Parker Scheer Lagomarsino  
9555 South Eastern Ave., Suite 210  
Las Vegas, NV 89123

Executed this 15<sup>th</sup> day of February, 2014 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

**ORDR**  
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](mailto: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; LAYWERS 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 )

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.

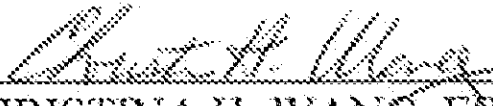
20 **IT IS HEREBY FURTHER ORDERED** that pursuant to EDCR 2.23, the hearing  
21 scheduled for October 27, 2015 is advanced and VACATED.  
22

23 DATED this 3 day of Nov, 2015.  
24  
25  
26  
27  
28

  
DISTRICT COURT JUDGE

ADS BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 8

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*

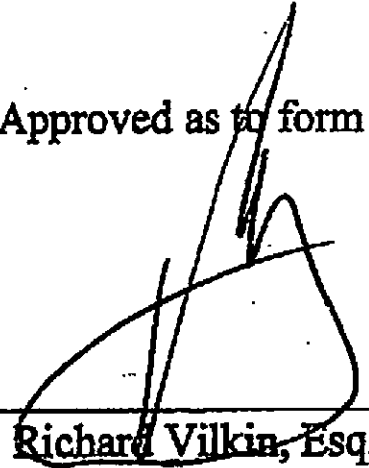
20 Approved as to form and content by:

21  
22  
23 Jamie S. Cogburn, Esq.  
24 Ryan H. Devine, Esq.  
25 COGBURN LAW OFFICES  
26 2879 St. Rose Parkway, Suite 200  
27 Las Vegas, Nevada 89052  
28 *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  
12  
13 Approved as to form and content by:

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

Approved as to form and content by:

21  
22  
23 Ariel E. Stern, Esq.  
24 Nevada Bar No. 8276  
25 Steven Shevorski, Esq.  
26 Nevada Bar No. 8256  
27 AKERMAN SENTERFITT LLP  
28 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  
12


13 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.*  
20  
21  
22

23 Approved as to form and content by:

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*

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*

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

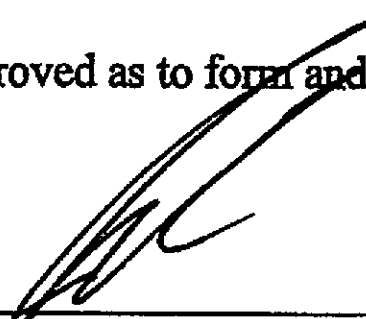
13 Approved as to form and content by:

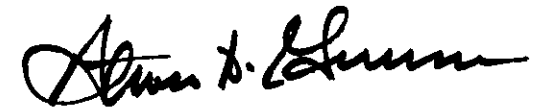
Approved as to form and content by:

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*



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](mailto: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

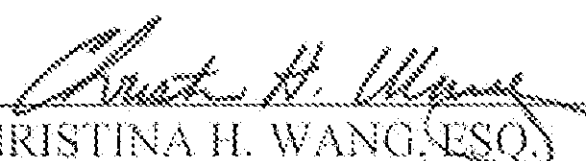
Dept. No.: XXXII

NOTICE OF ENTRY OF ORDER

1 vs. )  
2 COGBURN LAW OFFICE, a Nevada domestic )  
3 limited liability company; NORMA TERAN, an )  
4 individual; LAYWERS 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

11 PLEASE TAKE NOTICE that the Court entered an ORDER GRANTING THIRD-  
12 PARTY DEFENDANT LAYWERS 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 5<sup>th</sup> 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 *Laywers 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.*

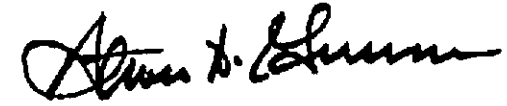
Ariel E. Stern, Esq.  
Nevada Bar No. 8276  
Steven Shevorski, Esq.  
Nevada Bar No. 8256  
AKERMAN SENTERFITT LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
*Attorneys for Bank of America, N.A. and BNY Mellon, as Trustee*

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](mailto: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;

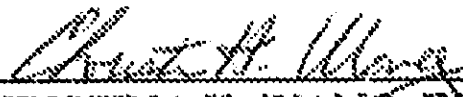
17 IT IS HEREBY ORDERED that the above-referenced Motion to Dismiss is hereby  
18 GRANTED in its entirety and LAWYERS TITLE OF NEVADA, INC. is hereby dismissed  
19 from this action with prejudice.

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 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

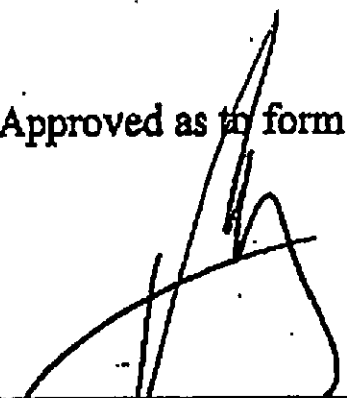
4 CHRISTINA H. WANG, ESQ.  
5 Nevada Bar No. 9713  
6 FIDELITY NATIONAL LAW GROUP  
7 2450 St. Rose Pkwy., Ste. 100  
8 Henderson, Nevada 89074  
9 *Attorneys for Third-Party Defendant*  
10 *Lawyers Title of Nevada, Inc.*

11 Approved as to form and content by:

12

13

14

15   
16 Richard Vilkin, Esq.

17 LAW OFFICES OF RICHARD VILKIN, P.C.  
18 1286 Crimson Sage Ave.  
19 Henderson, Nevada 89012  
20 *Attorneys for Nevada Association Services,*  
21 *Inc.*

22 Approved as to form and content by:

23

24

25

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

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*

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.*

8

9 Approved as to form and content by:


Approved as to form and content by:

10

11

12

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

  
13 Ariel E. Stern, Esq.  
14 Nevada Bar No. 8276  
15 Steven Shevorski, Esq.  
16 Nevada Bar No. 8256  
17 AKERMAN SENTERFITT LLP  
18 1160 Town Center Drive, Suite 330  
19 Las Vegas, Nevada 89144  
20 *Attorneys for Bank of America, N.A. and*  
21 *BNY Mellon, as Trustee*

17

18

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*

28

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.*

8

9 Approved as to form and content by:

Approved as to form and content by:

10

11

12

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

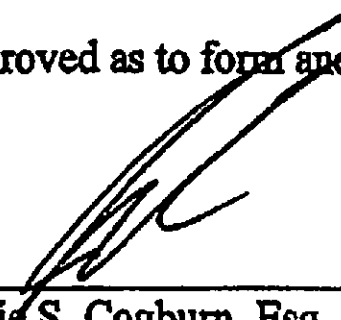
18

19

20 Approved as to form and content by:

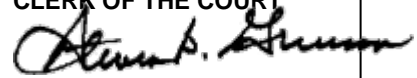
21

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*

28





**NVDP**  
COGBURN LAW OFFICES  
Jamie S. Cogburn, Esq.  
Nevada Bar No. 8409  
jsc@cogburnlaw.com  
2580 St. Rose Parkway, Suite 330  
Henderson, Nevada 89074  
Telephone: (702) 748-7777  
Facsimile: (702) 966-3880  
*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, et al.,

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**

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

...

...

...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

...

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

Dated this 21<sup>st</sup> 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 21<sup>st</sup> 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**

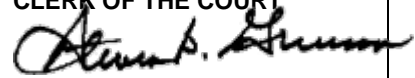
Ariel E. Stern  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
*Attorneys for Bank of America, N.A.*

**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



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  
Consolidated with: A-13-690944-C  
Dept. No.: XXXII

**CROSS-CLAIM AGAINST NV EAGLES,  
LLC**

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, asserts the  
following cross-claim against NV Eagles, LLC.

...

...

## JURISDICTION AND VENUE

1. The Bank of New York Mellon is a national banking association authorized to conduct business in Clark County, Nevada. The Bank of New York Mellon serves as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8.

2. NV Eagles is a Nevada limited liability company.

3. This action concerns real property located at 2184 Pont National Drive, Henderson, Nevada 89044, APN 190-20-311-033 (the **property**). The property is located in Clark County, Nevada, and therefore both venue and jurisdiction are appropriate with this court.

## FACTS

4. Under Nevada law, homeowners associations have the right to charge property owners residing within the community assessments to cover the homeowners association's expenses for maintaining or improving the community.

5. When these assessments are not paid, the homeowners association may both impose and foreclose on a lien.

6. A homeowners association may impose a lien for "any penalties, fees, charges, late charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).<sup>1</sup>

7. NRS 116.3116 makes a homeowners association's lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: the lien is senior to the first deed of trust "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2)(c).

8. According to the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. Bank of America, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014), if a homeowners association properly

---

<sup>1</sup> NRS 116, *et seq.* was amended in 2015. The foreclosure sale at issue here occurred before that amendment, and all citations to NRS 116 refer to the pre-amendment version of NRS 116.

1 forecloses on the superpriority portion of its lien, it can extinguish a first deed of trust. However, the  
2 foreclosure of Madeira Canyon Homeowners Association's (the **HOA**) lien in this case did not  
3 extinguish BoNYM's senior deed of trust because the HOA did not foreclose on the superpriority  
4 portion of its lien, and if it did, the foreclosure was unfair and oppressive.

### 5 The Deed of Trust

6 9. On or about November 20, 2006, Melissa Lieberman (**borrower**) executed a  
7 \$511,576.00 promissory note (**Note**) in favor of Pulte Mortgage, LLC, which was secured by a deed  
8 of trust (**Deed of Trust**) recorded in the Clark County Recorder's Office as Instrument Number  
9 20061127-0002922.

10 10. On or about September 14, 2011, the Deed of Trust was assigned to BoNYM via an  
11 Assignment of Deed of Trust recorded in the Clark County Recorder's Office as Instrument Number  
12 20110919-0000030.

13 11. The borrower defaulted under the terms of the Note and Deed of Trust.

14 12. The Deed of Trust provides that, if the borrower defaults in paying the Note, or fails to  
15 perform any agreement in the Note or Deed of Trust, the beneficiary may, upon notice to the borrower,  
16 declare the amounts owed under the Note immediately due and payable.

17 13. Following the borrower's default, the borrower was provided with notice of the intent  
18 to accelerate the amounts owed under the Note.

19 14. Although BoNYM, through its agents, has demanded that the borrower pay the  
20 amounts due under the Note, she has failed and refused to do so, and continues to fail and refuse to do  
21 so.

### 22 The HOA's Foreclosure

23 15. The property is governed by the HOA's Declaration of Covenants, Conditions, and  
24 Restrictions (**CC&Rs**), which were recorded in the Clark County Recorder's Office as Instrument  
25 Number 20050524-0002414.

26 16. After the borrower defaulted on her obligations to the HOA, the HOA retained Nevada  
27 Association Services, Inc. (**NAS**) to collect the delinquency. The HOA's contract with NAS stated:  
28

1 "NAS is given full power and authority to act on behalf of and in the name of the [HOA] to do all  
2 things which NAS deems appropriate to effect the collection of the delinquency."

3 17. On October 27, 2010, NAS recorded a Notice of Delinquent Assessment Lien (**Lien**)  
4 in the Clark County Recorder's Office as Instrument Number 20101027-0002037. The Lien stated the  
5 amount due to the HOA was \$2,254.73, which included assessments, dues, interest, and fees. It did  
6 not identify the superpriority amount or describe the "deficiency in payment" as required by NRS  
7 116.31162(1)(b)(1).

8 18. On December 21, 2010, NAS recorded a Notice of Default and Election to Sell Under  
9 Homeowners Association Lien in the Clark County Recorder's Office as Instrument Number  
10 20101221-0000548. The Notice stated the amount due to the HOA was \$3,112.73, which included  
11 assessments, dues, interest, and fees. It did not identify the superpriority amount or describe the  
12 "deficiency in payment" as required by NRS 116.31162(1)(b)(1).

13 19. After it received the Notice of Default, Bank of America, N.A. (**BANA**) – who serviced  
14 the loan secured by the Deed of Trust at the time – retained Miles, Bauer, Bergstrom & Winters, LLP  
15 (**Miles Bauer**) to satisfy the superpriority portion of the Lien to protect the Deed of Trust.

16 20. On or about February 22, 2011, Miles Bauer sent a letter to NAS, requesting the  
17 superpriority amount of the HOA's Lien and offering to pay that amount once the amount was  
18 provided.

19 21. On or about March 12, 2011, NAS sent Miles Bauer a payoff ledger showing the total  
20 amount the borrower owed the HOA broken down by categories, including amounts due for "monthly  
21 assessments." The ledger did not show the HOA had incurred any maintenance or nuisance-abatement  
22 charges.

23 22. On or about April 1, 2011, Miles Bauer sent a \$486.00 check to NAS, enclosed by a  
24 letter explaining the check was intended to satisfy the beneficiary of the Deed of Trust's "obligations  
25 to the HOA as a holder of the first deed of trust against a property."

26 23. Following its standard protocol, NAS rejected the \$486.00 check by simply ignoring it.

27 24. While NAS did not explain to Miles Bauer the specific reason it rejected this particular  
28 check, NAS rejected all Miles Bauer's superpriority checks because they did not include all of NAS's

1 collection costs. NAS incorrectly believed its collection costs were secured by the superpriority  
2 portion of its association-client's liens.

3 25. Further, NAS did not believe the foreclosure of an association's lien could extinguish a  
4 senior deed of trust because it did not believe the superpriority portion existed until the senior deed of  
5 trust encumbering the same property was foreclosed. In fact, it had taken that position in litigation  
6 against BANA, where BANA sought a declaration confirming its right to satisfy the superpriority  
7 portion of an association's lien before that lien was foreclosed. NAS asserted BANA had no right  
8 to do so.

9 26. After NAS rejected Miles Bauer's tender, it proceeded with the foreclosure of the  
10 HOA's Lien. On April 1, 2013, NAS recorded a Notice of Foreclosure Sale in the Clark County  
11 Recorder's Office as Instrument Number 20130401-0000723, which set the sale for April 26, 2013.

12 27. No sale occurred on that date.

13 28. On June 7, 2013, NAS foreclosed on the HOA's Lien, selling the property to  
14 Underwood Partners, LLC for \$30,000.00, as reflected in the Foreclosure Deed recorded in the Clark  
15 County Recorder's Office as Instrument Number 20130703-0002523.

16 29. On information and belief, the fair market value of free and clear title to the property  
17 at the time of the sale was \$430,000.00.

18 30. The proceeds from the foreclosure sale satisfied the borrower's entire delinquency to  
19 the HOA and all of NAS's collection costs. BoNYM received nothing.

20 31. On September 18, 2013, Underwood conveyed its interest in the property to NV Eagles  
21 via a Grant, Bargain, and Sale Deed recorded in the Clark County Recorder's Office as Instrument  
22 Number 20131018-0001137.

23 32. The HOA's foreclosure sale did not extinguish the Deed of Trust because Miles Bauer's  
24 tender cured the default as to the superpriority portion of the HOA's Lien before the sale.

25 33. Even if Miles Bauer's tender did not accurately calculate the entire superpriority  
26 amount, the tender was still valid because any miscalculation was caused by NAS's refusal to identify  
27 or accurately define the superpriority amount.

28 ...



39. The HOA's foreclosure sale was unfair and oppressive because, in calculating the superpriority amount allegedly owed and rejecting Miles Bauer's tender as insufficient, NAS included amounts in the supposed superpriority portion of the HOA's Lien – including fines, interest, late fees, and collection costs – that were not entitled to superpriority under NRS 116.3116. NAS also improperly rejected the Miles Bauer tender.

**(Quiet Title / Declaratory Relief against NV Eagles)**

42. Upon information and belief, NV Eagles claims an interest in the property adverse to BoNYM, in that NV Eagles claims the HOA's foreclosure sale extinguished the Deed of Trust. A judicial determination is necessary to ascertain the rights, obligations, and duties of the various parties.

1           43.     The foreclosure sale did not extinguish the Deed of Trust because Miles Bauer's tender  
2     cured the default as to the superpriority portion of the HOA's Lien before the sale. Consequently,  
3     NAS foreclosed on only the remaining subpriority portion of the Lien and conveyed title that remained  
4     encumbered by the Deed of Trust.

5           44.     The foreclosure sale did not extinguish the Deed of Trust because the HOA and NAS  
6     elected to foreclose on only the subpriority portion of the HOA's Lien.

7           45.     The HOA's foreclosure sale did not extinguish the Deed of Trust because the recorded  
8     notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required by  
9     Nevada law, including, without limitation: whether the deficiency included a superpriority component,  
10    the amount of the superpriority component, how the superpriority component was calculated, when  
11    payment on the superpriority component was required, where payment was to be made, or the  
12    consequences for failure to pay the superpriority amount.

13          46.     The foreclosure sale did not extinguish the Deed of Trust because the sale was unfair  
14    and oppressive in several respects, including, without limitation: the lack of sufficient notice, NAS's  
15    failure to accept Miles Bauer's tender, the sale of the property for a fraction of the property's fair market  
16    value, and the failure to promote an equitable sales price by attracting proper prospective purchasers.  
17    The foreclosure sale was designed and intended solely to result in a maximum profit for the HOA and  
18    NAS.

19          47.     Based on the adverse claims asserted by the parties, a judicial determination is  
20    necessary to ascertain the rights, obligations, and duties of the various parties.

21          48.     BoNYM is entitled to a declaration that the HOA's foreclosure sale did not extinguish  
22    the senior Deed of Trust, and thus the Deed of Trust encumbers NV Eagles' title to the property.

23          49.     BoNYM was required to retain an attorney to prosecute this action, and is therefore  
24    entitled to collect its reasonable attorneys' fees and costs.

25                   **PRAYER FOR RELIEF**

26           WHEREFORE, BoNYM prays for the following:

27           1.     A declaration establishing the Deed of Trust is the senior lien encumbering  
28    the property;

2. A declaration establishing the Deed of Trust is senior and superior to any right, title, interest, lien, equity, or estate of NV Eagles;

3. A declaration establishing that the superpriority portion of the HOA's Lien was satisfied by Miles Bauer's tender;

4. Reasonable attorneys' fees as special damages and the costs of the suit; and

5. For such other and further relief the Court deems proper.

Dated this 12<sup>th</sup> day of July, 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 on this 12<sup>th</sup> day of July, 2019, I caused to be served a true and correct copy of the foregoing **CROSS-CLAIM AGAINST NV EAGLES, LLC**, 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 as follows:

**Gordon & Rees, LLP**

Gayle Angulo	gangulo@gordonrees.com
Marie Ogella	mogella@gordonrees.com
Robert Larsen	rlarsen@gordonrees.com

**Cogburn Law Offices**

Jamie Cogburn	jsc@cogburnlaw.com
Lo Mercado	lmercado@cogburnlaw.com
Wiznet Filing	wiznet@cogburnlaw.com
Katie Johnson	kjj@cogburncares.com

**Hong & Hong, APLC**

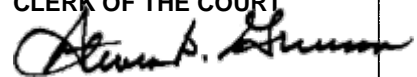
Debbie Batesel	dbhonglaw@hotmail.com
Joseph Y. Hong, Esq	yosuphonglaw@gmail.com

☐ **(UNITED STATES MAIL)** By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

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

*/s/ Carla Llarena*

\_\_\_\_\_  
An employee of AKERMAN LLP



1 CROM

2 JOSEPH Y. HONG, ESQ.  
3 Nevada Bar No. 5995  
4 HONG & HONG LAW OFFICE  
5 1980 Festival Plaza Dr., Suite 650  
6 Las Vegas, Nevada 89135  
7 Tel: (702) 870-1777  
8 Fax: (702) 870-0500  
9 Email: [Yosuphonglaw@gmail.com](mailto:Yosuphonglaw@gmail.com)

10 Attorney for Underwood Partners, LLC.  
11 and NV Eagles, LLC.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MELISSA LIEBERMAN, an individual, )  
15 on behalf of itself and all others )  
16 similarly situated, )

17 Plaintiff,

18 vs.

19 MADERA CANYON HOMEOWNERS'  
20 ASSOCIATION, at al., )

21 Defendants. )

CASE NO. A-13-685203-C  
DEPT. NO. XXXII

Consolidated Case No. A-13-690944-C

CROSS-CLAIM AGAINST  
BANK OF AMERICA, N.A. AND THE  
BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE CERTIFICATE-  
HOLDERS OF CWALT, INC.,  
ALTERNATIVE LOAN TRUST  
2006-J-8, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
2006-J-8

22 COMES NOW NV Eagles, LLC ( "Plaintiff"), by and through its attorney of record,  
23 JOSEPH Y. HONG, ESQ. of HONG & HONG LAW OFFICE, and complains and alleges as  
24 follows:

25 1. At all relevant times herein, Plaintiff is, and was, a Nevada limited liability  
26 company.

1           2.       Plaintiff believes and alleges that at all relevant times herein, Defendants,  
2 Bank of America, N.A. and The Bank of New York Mellon fka The Bank of New York, as trustee  
3 for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-J-8, Mortgage Pass-Through  
4 Certificates, Series 2006-J-8 (collectively "Bank"), are, and were, a form and type of entity unknown  
5 conducting business in Clark County, Nevada.

6           3.       On or about June 7, 2013, Plaintiff's predecessor purchased a real property located  
7 a 2184 Pont National Dr., Henderson, Nevada 89044, APN 190-20-311- 033 ("Subject Property")  
8 at a Trustee's sale conducted by Defendant, HOA, pursuant to a power of sale granted by NRS  
9 116.3115 et. seq. and NRS 116.3116 through 116.31168 et. seq.

10          4.       Plaintiff, therefore, has a legal and equitable interest in the Subject Property.

11          5.       Defendants, Bank, were the beneficiaries of the Deed of Trust recorded against and  
12 encumbering the Subject Property at the time of the Trustee's Sale.

13          6.       Plaintiff does not know the true names, identities, or capacities of Does I  
14 through X and Roe Business Entities I through X, joined herein by fictitious names, but upon  
15 information and belief, said Defendants are unknown employees, agents, contractors, successors,  
16 persons, entities, assigns, or tortfeasors who are in some way responsible to Plaintiff for its damages  
17 as alleged herein, in either a representative capacity or by virtue of independent acts or omissions.  
18 When the true names and identities of the Doe and Roe Business Entity Defendants are ascertained,  
19 Plaintiff will pray for leave to amend this Complaint to insert and show the true names, identities,  
20 capacities, and involvement of each of the Doe and Roe Business Entity Defendants when  
21 ascertained.

22          7.       Plaintiff is informed and believes and thereupon alleges that each of these  
23 fictitiously named Defendants claim some right, title, estate, lien or interest in the Subject Property  
24 adverse to Plaintiff's title and their claims, and each of them, constitute a cloud on Plaintiff's title  
25 to the Subject Property.

26          8.       Plaintiff has been required to retain the services of an attorney to prosecute  
27 this action. Plaintiff, therefore, is entitled to an award of attorney's fees and costs.  
28

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

9. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 8 herein as though fully set forth herein and further alleges as follows.

10. Plaintiff is the sole owner in fee of the Subject Property.

11. Title to the Subject Property is encumbered by defects and other clouds on title caused by liens, instruments and documents recorded by each of the Defendants against the Subject Property. Each of these defects constitutes a claim by the Defendants related to such defect against the Subject Property. Unless the Subject Property is free from such defects, Plaintiff does not have marketable title and cannot sell the Subject Property, market the Subject Property, insure the Subject Property or take loans against the Subject Property.

12. A Deed of Trust, which Defendants were the beneficiaries, was recorded against the Subject Property.

13. Plaintiff disputes any and all claims on the Subject Property made by Defendants, Bank, and/or their successors and/or their assignees, and/or Doe and Roe Business Entity Defendants. Plaintiff seeks by this action to quiet title to the Subject Property such that Plaintiff shall have clean and marketable title to the Subject Property.

14. The claims of Defendants, Bank, and/or their successors and/or their assignees, and/or Doe and Roe Business Entity Defendants, on the Subject Property are adverse. Plaintiff contends that Defendants, and each of them, acquired no right, title or interest in and to the Subject Property by the claims each such Defendant has made. Plaintiff is informed and believes that each of the Defendants do claim some right, title or interest in and to the Subject Property.

15. Plaintiff has no plain, speedy or adequate remedy at law.

16. The land records of Clark County, Nevada do not accurately reflect the status of Plaintiff's ownership of the Subject Property in fee. Accordingly, there is confusion as to the status of title to the Subject Property.

17. Plaintiff seeks to quiet title and is entitled to a Judgment/Order quieting title

1 to the Subject Property in its name.

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

4 18. Plaintiff repeats and realleges the allegations contained in Paragraphs 1  
5 through 17 herein as though fully set forth herein and further alleges as follows.

6 19. Plaintiff is informed and believes that each and every instrument, document  
7 or lien which constitutes a claim of each Defendant is without legal force or effect by virtue of  
8 Plaintiff's acquisition of the Subject Property, which was previously purchased at a legally noticed  
9 and held Trustee's sale.

10 20. The various instruments, documents and liens constituting the claims of  
11 Defendants create a cloud on title to the Subject Property and, therefore, deprive Plaintiff of the use,  
12 enjoyment and possession of the Subject Property.

13 21. Unless the Court Orders the various instruments, documents and liens which underlie  
14 each of Defendants' claims on the Subject Property canceled, Plaintiff will continue to suffer the loss  
15 of use, enjoyment, and possession of its Subject Property, for which it is without adequate remedy  
16 at law.

17 22. Wherefore, Plaintiff prays that the Court Order and Decree that each of the  
18 various instruments, documents and liens which give rise to the claims is to be delivered up and  
19 canceled by the Court, and that in the event Defendants fail or refuse to do so, the Court Order and  
20 direct the Clerk of Court to execute reconveyances of same.

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

23 23. Plaintiff repeats and realleges the allegations contained in Paragraphs  
24 1 through 22 herein as though fully set forth herein and further alleges as follows.

25 24. Plaintiff believes that Defendants, Bank, and/or its successors and/or assignees,  
26 will be attempting to conduct a foreclosure sale of the Subject Property in the near future. Plaintiff,  
27 therefore, is entitled to an Order/Judgment from this Court temporarily and permanently enjoining  
28 said contemplated sale and Defendants, Bank, and/or its successors and/or its assignees, from taking



any action to affect Plaintiff's exclusive title, possession, use and enjoyment of the Subject Property. There is no adequate remedy at law wherein Plaintiff will face immediate, permanent and irreparable harm if injunctive relief is not provided.

25. The "relative hardships" of the parties and the "public interest" clearly require that an injunction be issued.

26. Plaintiff enjoys a substantial likelihood of succeeding on the merits of this case.

27. Based upon the foregoing, Plaintiff is entitled to a temporary restraining order, a preliminary injunction and/or a permanent injunction.

WHEREFORE, Plaintiff prays for Judgment as follows:

1. For a Judgment, Decree and/or Order quieting title to the Subject Property in the name of Plaintiff in a form suitable for recording;

2. For a Judgment, Decree and/or Order finding that each of the instruments, documents and liens which constitutes a claim against the Subject Property is without legal force or effect, and do not convey any right, title or interest in and to the Subject Property to Defendants, Bank, and/or their successors and/or their assignees, and/or Doe and Roe Business Entity Defendants, and furthermore, for a Judgment, Decree and/or Order compelling Defendants, Bank, and/or their successors and/or their assignees, and/or Doe and Roe Business Entity Defendants, and each of them, to deliver to the Court the original of any instruments, documents or liens which constitute a claim against the Subject Property for cancellation, or in the alternative, for a Judgment, Decree and/or Order conveying title of the Subject Property to Plaintiff;

3. For attorney's fees and costs; and

...

...

...

...

4. For such other relief this Court deems proper.

DATED this 15<sup>th</sup> day of July, 2019.



---

JOSEPH Y. HONG, ESQ.  
Nevada Bar No. 5995  
1980 Festival Plaza Dr., Suite 650  
Las Vegas, Nevada 89135  
Attorney for NV Eagles, LLC.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

By/s/ Debra L. Batesel  
An employee of Joseph Y. Hong, Esq.

*Heather S. Smith*

CLERK OF THE COURT

1 **FFCL**  
2 JOHN HENRY WRIGHT, ESQ.  
3 Nevada Bar No. 6182  
4 **THE WRIGHT LAW GROUP, P.C.**  
5 2340 Paseo Del Prado, Suite D-305  
6 Las Vegas, Nevada 89102  
7 Telephone: (702) 405-0001  
8 Facsimile: (702) 405-8454  
9 Email: [john@wrightlawgroupnv.com](mailto:john@wrightlawgroupnv.com)

10 *Attorney for Defendant/Counter-claimant*  
11 *NV EAGLES, LLC*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A-13-685203-C

DEPT. NO. XXIX

Hearing: February 10, 2022  
Time: 9:00 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER ON POST-REMAND HEARING**

**THIS MATTER** concerning the parties' post-remand arguments, having come on for hearing, on the 10<sup>th</sup> day of February, 2022, John Henry Wright, Esq., appearing on behalf of Defendant/Counterclaimant NV EAGLES, LLC, and Melanie Morgan, Esq., appearing on behalf of Defendant BANK OF AMERICA, N.A. and THE BANK OF NEW YORK MELLON, AS TRUSTEES, and the Court having reviewed the Parties' Post-Remand Briefs and the respective

THE WRIGHT LAW GROUP P.C.  
2340 Paseo Del Prado, Suite D-305  
Las Vegas, Nevada 89102  
Tel: (702) 405-0001 Fax: (702) 405-8454





Oppositions thereto and all exhibits attached thereto, considered the arguments of counsel, and being fully appraised in the premises, and good cause having been shown, makes the following Findings of Fact, Conclusions of Law and Orders as follows:

#### **FINDINGS OF FACT**

1. In the lead up to an HOA foreclosure auction authorized pursuant to NRS 116, of the property located at 2185 Pont National Dr., Henderson, Nevada, ("Subject Property") , on behalf of the first deed of trust holder, on or about April 1, 2011, Miles Bauer, its counsel, sent a check for \$486.00 to NAS enclosed with a cover letter explaining that the check was equal to "9 months worth of delinquent assessments" and intended to satisfy BANA's, as the predecessor to BNYM, "obligations to the HOA as holder of the deed of trust against the Property." *See Joint Trial Exhibit 9, bates 137-139.*

2. However, Miles Bauer miscalculated the super-priority amount as the actual nine-month super-priority amount was \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-Day 3 (Decision) Page 7, 14-16; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial Exhibit 11, bates 215.* Thus, the Miles Bauer check in the amount of \$486.00 did not satisfy the actual super-priority amount of \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-Day 3 (Decision) Page 8, 13-15; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial Exhibit 11, bates 215.* *See also,* Nevada Supreme Court Order of Remand at p.2, establishing tender was insufficient. The attempted payment was rejected by NAS.

3. Thereafter, neither Miles Bauer nor BANA nor BNYM did anything further to attempt to satisfy the super-priority portion of the HOA lien, and on April 1, 2013, NAS recorded a Notice of Foreclosure Sale in the Clark County Recorder's Office.

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

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

6. There was no valid tender of the super-priority portion of the HOA lien in the amount of \$540.00 by BANA, Miles Bauer, BNYM or any party prior to the HOA foreclosure sale conducted on June 7, 2013.



7. There was no evidence of any kind of fraud, unfairness or oppression that accounted for and/or affected the purchase price of the Subject Property at the foreclosure sale and/or affecting the foreclosure sale of the Subject Property.

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

### **CONCLUSIONS OF LAW**

1. The Nevada Supreme Court remanded this case in order for this Court to consider whether the holding in *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 136 Nev. 62, 458 P.3d 348 (2020), setting forth the futility of tender defense, fits this factual scenario where an insufficient amount was actually tendered and rejected. The uncontroverted evidence in this case reveals that BANA made an ineffective tender that was insufficient to cure the super-priority default. NAS was justified in rejecting said tender for insufficiency. To apply *Perla Del Mar* to this case would have the effect of making the futility exception the rule regardless of whether or not a tender was made or intended to be made. The facts of this case simply do not meet the criteria for the application of *Perla Del Mar*. The rule in *Perla De Mar* is met to excuse a tender which was never sent because it was known to be futile - not excuse a tender that was insufficient.

2. As provided in *Resources Group, LLC v. Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019), the party contesting the validity of the HOA's foreclosure of its super-priority lien bears the burden of demonstrating that it tendered its "delinquency-curing checks" and that it paid the correct delinquency amount in full prior to the sale. *Resources Group*, 437 P.3d 154, 159 (2019). *Resources Group* clearly and unequivocally sets forth that it is the bank's burden to show that the super-priority component of the HOA lien, was paid in full.

3. *Perla Del Mar* confirms *Resources Group*, "[w]e conclude that an offer to pay the super-priority amount in the future once that amount is determined, does not constitute tender sufficient to preserve the first deed of trust..." 136 Nev. Av. Rep 6 at 2. What *Perla Del Mar* actually does is create a very fact specific carve out: "[w]e further conclude, however, that formal tender is excused when evidence shows that the party entitled to payment had a known policy of rejecting



1 such payments.” *Id.* The Supreme Court expressly points out that “excused tender” is based on the  
2 specific facts and specific evidence. *Id.*

3 4. The futility defense has no application where the facts clearly establish that the bank’s  
4 actions or lack thereof were never influenced by a known policy of rejection and in fact, in the  
5 instant case, actions were taken in spite of any policy of NAS. Here, the evidence establishes that  
6 BANA fully intended to tender, did in fact attempt to tender, but made an inadequate tender that  
7 NAS had every right to reject. Therefore, the circumstances must be such as to show that the party  
8 was ready, willing and able to make actual payment, and that he would have done so *but for* some  
9 action or statement of the creditor. “Actual tender of money is dispensed with if the debtor is  
10 willing and ready to pay, and about to produce it, but is prevented by the creditor declaring he will  
11 not receive it.” *McCalley v. Otey*, (Ala.) 42 Am. St. Rep. 87 (s. c. 12 So 406). It has long been held  
12 that there must be evidence that the party who claims waiver or futility was in some way influenced  
13 by the actions or statements. See *Shoebe’s Ex’rs v. Carr*, 17 Va. 10, 1812 Va. Lexus, 3 Munf. 10  
14 (Va. 1812) (citing *Shank v. Groff*, 45 W.Va. 543, 32 S.E. 248).

15 5. Thus, employment of the “futility” defense, an affirmative defense, requires the bank to  
16 establish that futility is the reason Miles Bauer did not tender. There must be a nexus between the  
17 “knowing” and the inaction on the part of Miles Bauer. Thus, futility cannot be applicable if Miles  
18 Bauer actually tendered. *Perla Del Mar* simply does not apply here. It is BANA’s burden to  
19 establish that NAS’s policy was the reason it failed to tender a sufficient amount in this case. Not  
20 by chance. Not by BANA benefiting from its own neglect. This necessarily involves a requirement  
21 that BANA provide evidence that it actually relied on the policy in order to satisfy what is being  
22 defined as the *Perla Del Mar* standard. BANA supplied no such evidence and cannot, because it  
23 attempted to tender.

24 6. The futility exception cannot apply in a case where a failed tender was made and rightfully  
25 rejected. The facts reveal that neither BANA nor Miles Bauer never relied on any NAS policy  
26 when determining whether and in what amount to tender. It was BANA’s policy to retain Miles  
27 Bauer to pay the super-priority amount of the lien, and BANA did in fact hire Miles Bauer to pay  
28 the super-priority lien in this case Despite any collection agents’ interpretation of NRS 116.3116,



1 BANA and Miles Bauer were, in fact, making thousands of tenders based on their own  
2 interpretation of the law. The trial testimony by both BANA's representative and Rock Jung, Esq.,  
3 the attorney from Miles Bauer, bares these truths out. This is even confirmed in BANA's own brief:

4 As in Perla Trust, testimony from a BANA employee and Jung established  
5 BANA's tender policy and the 1,000+ times that policy was put to use.

6 (BANA's brief at 6:19-21). There is nothing in the trial testimony to suggest that BANA relied in  
7 any manner on the policies of any HOA or their respective collection agents during the relative  
8 times between 2010 and 2013. Rather, it was BANA's policy to retain Miles Bauer to pay the  
9 super-priority portion of the HOA lien. And, Miles Bauer did exactly that. The testimony of Rock  
10 Jung reveals that even though it knew of the likelihood that NAS might decline to accept anything  
11 less than an amount it believed was properly due, Miles Bauer followed its own policies and  
12 tendered what it believed to be adequate to satisfy the bank's obligations. Rock Jung testified that  
13 while employed by Miles Bauer he handled as many as five to six thousand HOA foreclosure cases,  
14 most of which were dealing with NAS as the collection agent for the HOA, and despite NAS  
15 typically rejecting anything less than the full amount, BANA and Miles Bauer nonetheless tendered  
16 as many as twenty-five hundred (2500) checks.

17 7. There is testimony that is also noticeably lacking. There is no testimony by any BANA  
18 representative or its attorney at Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer"), stating  
19 that the reason they "did not" tender was because NAS had a policy of rejecting any and all tenders.  
20 This lack of testimony clearly reveals that it did not matter to Miles Bauer or BANA what NAS's  
21 policy was. BANA and Miles Bauer, as reflected in their letters, interpreted NRS 116.3116 as they  
22 saw appropriate and that was the only thing they considered in determining whether or not, and in  
23 what amount, to tender. Miles Bauer is a law firm that interpreted the statute before writing its  
24 letters and making its inadequate tender. Miles Bauer's interpretation of the law was clearly  
25 contrary to any interpretation on the part of NAS. Moreover, the Supreme Court has addressed  
26 this exact same scenario in 2020 Nev. Unpub. LEXIS 471, 462 P.3d 255 2020 (*Jessup II*) wherein  
27 the Supreme Court stated:

28 [T]he district court found that "Mr Jung understood that failure to pay the  
superpriority portion of the lien would result in the loss of his client's interest  
in the property." The implication behind this factual finding is that the





1 district court determined it was unreasonable for Mr. Jung to abandon Miles  
2 Bauer's legal position regarding NRS 116.3116(2) (2009) based solely on  
3 ACS's September 2011 letter, and we are not persuaded that this finding was  
4 clearly erroneous.

5 (*Id.*, at 3). Rock Jung is the same attorney that authored the letter to NAS and testified at trial in  
6 this case. Thus, there can be no reliance on NAS's misinterpretation of NRS 116.3116 upon which  
7 any policy could have been based.

8 8. Further, one's "mistaken belief regarding the foreclosure sale's effect could not alter the  
9 sale's actual legal effect, particularly when the super-priority portion of the HOA's lien was still  
10 in default at the time of the sale." *see Jessup I*, citing *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev.  
11 619, 426 P.3d 593 (Nev. 2018) ("subjective beliefs as to the effect of the foreclosure sale are  
12 irrelevant"). Moreover, as noted above, any argument of reliance on NAS's interpretation is  
13 contrary to Miles Bauer's own interpretation of the same statute and its own actions.

14 9. Here, the evidence establishes that regardless of any policy on the part of NAS, BANA fully  
15 intended to tender, did in fact tender, but made an inadequate tender that NAS had every right to  
16 reject.

### 17 ORDER

18 Now therefore, **IT IS HEREBY ORDERED**, that the Tender made by Miles Bauer on  
19 behalf of BANK OF AMERICA, in the amount of Four Hundred Eighty-Six dollars (\$486.00) was  
20 insufficient to cure the default in the Super-Priority component of the MADEIRA CANYON  
21 HOMEOWNERS' ASSOCIATION's Delinquent Assessment Lien and was, therefore, rightfully  
22 rejected. The futility of tender defense available to a party which in fact tenders, or attempts to  
23 tender but provides an insufficient amount. The defense is available as an excuse to tender, not an  
24 excuse to tender the wrong amount.

25 **IT IS FURTHER ORDERED** that the HOA Foreclosure Sale conducted on June 7, 2013,  
26 extinguished BANK OF AMERICA, N.A. and THE BANK OF NEW YORK MELLON, AS  
27 TRUSTEES' Deed of Trust.



1           **IT IS FURTHER ORDERED** that Defendant/Counterclaimant NV Eagles, LLC's is  
2   Granted Quiet Title to the Property free and clear of any claims by BANK OF AMERICA, N.A.  
3   and THE BANK OF NEW YORK MELLON, AS TRUSTEES' and all others.

4           **IT IS SO ORDERED.**

Dated this 11th day of March, 2022

5           Dated this \_\_\_\_ day of March, 2022.

HONORABLE DAVID M. JONES  
5A9 3D6 CA3E 4216  
David M Jones  
District Court Judge

9   Order Prepared by:

Approved as to Form and Content:

10   DATED this 10<sup>th</sup> day of March, 2022.

DATED this 10<sup>th</sup> day of March, 2022.

11           **THE WRIGHT LAW GROUP, P.C.**

**AKERMAN LLP**

13   /s/ John Henry Wright, Esq.  
JOHN HENRY WRIGHT, ESQ.

14   Nevada Bar No. 6182  
2340 Paseo Del Prado, Suite D-305  
15   Las Vegas, Nevada 89102

16   Attorney for Defendant/Counter-claimant  
NV EAGLES, LLC

/s/ Lilith V. Xara, Esq.  
MELANIE D. MORGAN, ESQ.

17   Nevada Bar No. 8215  
LILITH V. XARA, ESQ.  
18   Nevada Bar No. 13138  
1635 Village Center Cir., Suite 200  
19   Las Vegas, Nevada 89134

Attorneys for Plaintiff  
Bank of America, N.A. and The Bank of  
New York Mellon

## Candi Ashdown

---

**From:** lilith.xara@akerman.com  
**Sent:** Thursday, March 10, 2022 5:49 PM  
**To:** Candi Ashdown  
**Cc:** melanie.morgan@akerman.com  
**Subject:** RE: CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

Hello Candi,

We have reviewed and you may submit with my e-signature.

Thank you,

**Lilith V. Xara**

(She/Her/Hers)

Associate, Consumer Financial Services, Data and Technology (CFS+) Practice Group  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5020 | T: 702 634 5000 | C: 702 964 3377 | F: 702 380 8572  
Only in Nevada  
[lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)

[vCard | Profile](#)



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Candi Ashdown <Candi@wrightlawgroupnv.com>  
**Sent:** Thursday, March 10, 2022 4:01 PM  
**To:** Morgan, Melanie (Ptrn-Las) <melanie.morgan@akerman.com>; Xara, Lilith (Assoc-Las) <lilith.xara@akerman.com>  
**Subject:** FW: CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

**[External to Akerman]**

Have you had a chance to review the attached Order?

---

**From:** Candi Ashdown  
**Sent:** Wednesday, March 9, 2022 5:38 PM  
**To:** [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com); [lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)  
**Cc:** [carla.llarena@akerman.com](mailto:carla.llarena@akerman.com); [patricia.larsen@akerman.com](mailto:patricia.larsen@akerman.com); Dayana Shakerian <[dayana@wrightlawgroupnv.com](mailto:dayana@wrightlawgroupnv.com)>  
**Subject:** CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

Hello Counsel,

Please see the attached *Findings of Fact, Conclusions of Law and Order on Post-Remand Hearing* in the above referenced case. If the Order meets with your approval, may I have your permission to affix your e-signature? As always, your time and consideration is appreciated. Thank you.

Sincerely,

*Candi Ashdown*

Legal Assistant/Paralegal

The Wright Law Group P.C.

2340 Paseo Del Prado, Suite D-305

Las Vegas, NV 89102

Wrightlawgroupnv.com

P. (702) 405-0001 ext. 108

F. (702) 405-8454



THE  
WRIGHT LAW GROUP  
P.C.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4		
5		
6	Melissa Lieberman, Plaintiff(s)	CASE NO: A-13-685203-C
7	vs.	DEPT. NO. Department 29
8	Mediera Canyon Community	
9	Association, Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

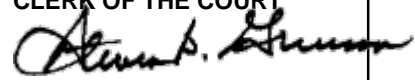
15 Service Date: 3/11/2022

16 "Ariel E. Stern, Esq." .	ariel.stern@akerman.com
17 Akerman Las Vegas Office .	akermanlas@akerman.com
18 Elizabeth Streible .	elizabeth.streible@akerman.com
19 Gayle Angulo .	gangulo@gordonrees.com
20 Marie Ogella .	mogella@gordonrees.com
21 Robert Larsen .	rlarsen@gordonrees.com
22 Debbie Batesel	dbhonglaw@hotmail.com
23 Joseph Hong, Esq.	yosuphonglaw@gmail.com
24 Natalie Winslow	natalie.winslow@akerman.com
25 Melanie Morgan	melanie.morgan@akerman.com

26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Brieanne Siriwan	brieanne.siriwan@akerman.com
John Wright	efile@wrightlawgroupnv.com
Jill Sallade	jill.sallade@akerman.com
Lilith Xara	lilith.xara@akerman.com



1 **NEOJ**  
2 JOHN HENRY WRIGHT, ESQ.  
3 Nevada Bar No. 6182  
4 **THE WRIGHT LAW GROUP, P.C.**  
5 2340 Paseo Del Prado, Suite D-305  
6 Las Vegas, Nevada 89102  
7 Telephone: (702) 405-0001  
8 Facsimile: (702) 405-8454  
9 Email: [john@wrightlawgroupnv.com](mailto:john@wrightlawgroupnv.com)

10 *Attorneys for Defendant/Counter-claimant*  
11 *NV EAGLES, LLC*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A-13-685203-C

DEPT. NO. XXIX

**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an Findings of Fact, Conclusions of Law and Order on  
Post Remand Hearing was entered on March 11, 2022, a copy of which is hereto attached as

///

///

///

///





**Exhibit 1.**

Dated this 11<sup>th</sup> day of March, 2022.

Respectfully Submitted By:  
**THE WRIGHT LAW GROUP, P.C.**

/s/ John Henry Wright, Esq.  
JOHN HENRY WRIGHT, ESQ.

Nevada Bar No. 6182  
2340 Paseo Del Prado, Suite D-305  
Las Vegas, Nevada 89102

*Attorney for Defendant/Counter-claimant*  
*NV EAGLES, LLC*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing NOTICE OF ENTRY OF ORDER was submitted  
3 electronically for filing and/or service with the Eighth Judicial District Court on the 11<sup>th</sup> day of  
4 March, 2022. Electronic service of the foregoing document shall be made in accordance with the  
5 E-Service List as follows:<sup>1</sup>

6 **AKERMAN LLP**

Melanie D. Morgan, Esq.

[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)

7 Lilith V. Xara, Esq.

[lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)

8 *Attorneys for Bank of America, N.A. and the Bank of New York Mellon*

9 I further certify that I served a copy of this document by mailing a true and correct copy,  
10 thereof, postage prepaid, addressed to:

11 None

12 /s/ Candi Ashdown  
13 An employee of **THE WRIGHT LAW GROUP, P.C.**

THE WRIGHT LAW GROUP P.C.  
2340 Paseo Del Prado, Suite D-305  
Las Vegas, Nevada 89102  
Tel: (702) 405-0001 Fax: (702) 405-8454



# EXHIBIT 1

*Heather S. Smith*  
CLERK OF THE COURT

1 **FFCL**  
2 JOHN HENRY WRIGHT, ESQ.  
3 Nevada Bar No. 6182  
4 **THE WRIGHT LAW GROUP, P.C.**  
5 2340 Paseo Del Prado, Suite D-305  
6 Las Vegas, Nevada 89102  
7 Telephone: (702) 405-0001  
8 Facsimile: (702) 405-8454  
9 Email: [john@wrightlawgroupnv.com](mailto:john@wrightlawgroupnv.com)

10 *Attorney for Defendant/Counter-claimant*  
11 *NV EAGLES, LLC*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A-13-685203-C

DEPT. NO. XXIX

Hearing: February 10, 2022  
Time: 9:00 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER ON POST-REMAND HEARING**

**THIS MATTER** concerning the parties' post-remand arguments, having come on for hearing, on the 10<sup>th</sup> day of February, 2022, John Henry Wright, Esq., appearing on behalf of Defendant/Counterclaimant NV EAGLES, LLC, and Melanie Morgan, Esq., appearing on behalf of Defendant BANK OF AMERICA, N.A. and THE BANK OF NEW YORK MELLON, AS TRUSTEES, and the Court having reviewed the Parties' Post-Remand Briefs and the respective





Oppositions thereto and all exhibits attached thereto, considered the arguments of counsel, and being fully appraised in the premises, and good cause having been shown, makes the following Findings of Fact, Conclusions of Law and Orders as follows:

#### **FINDINGS OF FACT**

1. In the lead up to an HOA foreclosure auction authorized pursuant to NRS 116, of the property located at 2185 Pont National Dr., Henderson, Nevada, ("Subject Property") , on behalf of the first deed of trust holder, on or about April 1, 2011, Miles Bauer, its counsel, sent a check for \$486.00 to NAS enclosed with a cover letter explaining that the check was equal to "9 months worth of delinquent assessments" and intended to satisfy BANA's, as the predecessor to BNYM, "obligations to the HOA as holder of the deed of trust against the Property." *See Joint Trial Exhibit 9, bates 137-139.*

2. However, Miles Bauer miscalculated the super-priority amount as the actual nine-month super-priority amount was \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-Day 3 (Decision) Page 7, 14-16; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial Exhibit 11, bates 215.* Thus, the Miles Bauer check in the amount of \$486.00 did not satisfy the actual super-priority amount of \$540.00. *See Recorder's Transcript of Hearing Re: Bench Trial-Day 3 (Decision) Page 8, 13-15; see also Joint Trial Exhibit 9, bates 134; see also Joint Trial Exhibit 11, bates 215.* *See also*, Nevada Supreme Court Order of Remand at p.2, establishing tender was insufficient. The attempted payment was rejected by NAS.

3. Thereafter, neither Miles Bauer nor BANA nor BNYM did anything further to attempt to satisfy the super-priority portion of the HOA lien, and on April 1, 2013, NAS recorded a Notice of Foreclosure Sale in the Clark County Recorder's Office.

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

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

6. There was no valid tender of the super-priority portion of the HOA lien in the amount of \$540.00 by BANA, Miles Bauer, BNYM or any party prior to the HOA foreclosure sale conducted on June 7, 2013.



7. There was no evidence of any kind of fraud, unfairness or oppression that accounted for and/or affected the purchase price of the Subject Property at the foreclosure sale and/or affecting the foreclosure sale of the Subject Property.

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

### **CONCLUSIONS OF LAW**

1. The Nevada Supreme Court remanded this case in order for this Court to consider whether the holding in *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 136 Nev. 62, 458 P.3d 348 (2020), setting forth the futility of tender defense, fits this factual scenario where an insufficient amount was actually tendered and rejected. The uncontroverted evidence in this case reveals that BANA made an ineffective tender that was insufficient to cure the super-priority default. NAS was justified in rejecting said tender for insufficiency. To apply *Perla Del Mar* to this case would have the effect of making the futility exception the rule regardless of whether or not a tender was made or intended to be made. The facts of this case simply do not meet the criteria for the application of *Perla Del Mar*. The rule in *Perla De Mar* is met to excuse a tender which was never sent because it was known to be futile - not excuse a tender that was insufficient.

2. As provided in *Resources Group, LLC v. Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019), the party contesting the validity of the HOA's foreclosure of its super-priority lien bears the burden of demonstrating that it tendered its "delinquency-curing checks" and that it paid the correct delinquency amount in full prior to the sale. *Resources Group*, 437 P.3d 154, 159 (2019). *Resources Group* clearly and unequivocally sets forth that it is the bank's burden to show that the super-priority component of the HOA lien, was paid in full.

3. *Perla Del Mar* confirms *Resources Group*, "[w]e conclude that an offer to pay the super-priority amount in the future once that amount is determined, does not constitute tender sufficient to preserve the first deed of trust..." 136 Nev. Av. Rep 6 at 2. What *Perla Del Mar* actually does is create a very fact specific carve out: "[w]e further conclude, however, that formal tender is excused when evidence shows that the party entitled to payment had a known policy of rejecting



1 such payments.” *Id.* The Supreme Court expressly points out that “excused tender” is based on the  
2 specific facts and specific evidence. *Id.*

3 4. The futility defense has no application where the facts clearly establish that the bank’s  
4 actions or lack thereof were never influenced by a known policy of rejection and in fact, in the  
5 instant case, actions were taken in spite of any policy of NAS. Here, the evidence establishes that  
6 BANA fully intended to tender, did in fact attempt to tender, but made an inadequate tender that  
7 NAS had every right to reject. Therefore, the circumstances must be such as to show that the party  
8 was ready, willing and able to make actual payment, and that he would have done so *but for* some  
9 action or statement of the creditor. "Actual tender of money is dispensed with if the debtor is  
10 willing and ready to pay, and about to produce it, but is prevented by the creditor declaring he will  
11 not receive it." *McCalley v. Otey*, (Ala.) 42 Am. St. Rep. 87 (s. c. 12 So 406). It has long been held  
12 that there must be evidence that the party who claims waiver or futility was in some way influenced  
13 by the actions or statements. See *Shoebe’s Ex’rs v. Carr*, 17 Va. 10, 1812 Va. Lexus, 3 Munf. 10  
14 (Va. 1812) (citing *Shank v. Groff*, 45 W.Va. 543, 32 S.E. 248).

15 5. Thus, employment of the “futility” defense, an affirmative defense, requires the bank to  
16 establish that futility is the reason Miles Bauer did not tender. There must be a nexus between the  
17 “knowing” and the inaction on the part of Miles Bauer. Thus, futility cannot be applicable if Miles  
18 Bauer actually tendered. *Perla Del Mar* simply does not apply here. It is BANA’s burden to  
19 establish that NAS’s policy was the reason it failed to tender a sufficient amount in this case. Not  
20 by chance. Not by BANA benefiting from its own neglect. This necessarily involves a requirement  
21 that BANA provide evidence that it actually relied on the policy in order to satisfy what is being  
22 defined as the *Perla Del Mar* standard. BANA supplied no such evidence and cannot, because it  
23 attempted to tender.

24 6. The futility exception cannot apply in a case where a failed tender was made and rightfully  
25 rejected. The facts reveal that neither BANA nor Miles Bauer never relied on any NAS policy  
26 when determining whether and in what amount to tender. It was BANA’s policy to retain Miles  
27 Bauer to pay the super-priority amount of the lien, and BANA did in fact hire Miles Bauer to pay  
28 the super-priority lien in this case Despite any collection agents’ interpretation of NRS 116.3116,



1 BANA and Miles Bauer were, in fact, making thousands of tenders based on their own  
2 interpretation of the law. The trial testimony by both BANA's representative and Rock Jung, Esq.,  
3 the attorney from Miles Bauer, bares these truths out. This is even confirmed in BANA's own brief:

4 As in Perla Trust, testimony from a BANA employee and Jung established  
5 BANA's tender policy and the 1,000+ times that policy was put to use.

6 (BANA's brief at 6:19-21). There is nothing in the trial testimony to suggest that BANA relied in  
7 any manner on the policies of any HOA or their respective collection agents during the relative  
8 times between 2010 and 2013. Rather, it was BANA's policy to retain Miles Bauer to pay the  
9 super-priority portion of the HOA lien. And, Miles Bauer did exactly that. The testimony of Rock  
10 Jung reveals that even though it knew of the likelihood that NAS might decline to accept anything  
11 less than an amount it believed was properly due, Miles Bauer followed its own policies and  
12 tendered what it believed to be adequate to satisfy the bank's obligations. Rock Jung testified that  
13 while employed by Miles Bauer he handled as many as five to six thousand HOA foreclosure cases,  
14 most of which were dealing with NAS as the collection agent for the HOA, and despite NAS  
15 typically rejecting anything less than the full amount, BANA and Miles Bauer nonetheless tendered  
16 as many as twenty-five hundred (2500) checks.

17 7. There is testimony that is also noticeably lacking. There is no testimony by any BANA  
18 representative or its attorney at Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer"), stating  
19 that the reason they "did not" tender was because NAS had a policy of rejecting any and all tenders.  
20 This lack of testimony clearly reveals that it did not matter to Miles Bauer or BANA what NAS's  
21 policy was. BANA and Miles Bauer, as reflected in their letters, interpreted NRS 116.3116 as they  
22 saw appropriate and that was the only thing they considered in determining whether or not, and in  
23 what amount, to tender. Miles Bauer is a law firm that interpreted the statute before writing its  
24 letters and making its inadequate tender. Miles Bauer's interpretation of the law was clearly  
25 contrary to any interpretation on the part of NAS. Moreover, the Supreme Court has addressed  
26 this exact same scenario in 2020 Nev. Unpub. LEXIS 471, 462 P.3d 255 2020 (*Jessup II*) wherein  
27 the Supreme Court stated:

28 [T]he district court found that "Mr Jung understood that failure to pay the  
superpriority portion of the lien would result in the loss of his client's interest  
in the property." The implication behind this factual finding is that the



1 district court determined it was unreasonable for Mr. Jung to abandon Miles  
2 Bauer's legal position regarding NRS 116.3116(2) (2009) based solely on  
3 ACS's September 2011 letter, and we are not persuaded that this finding was  
4 clearly erroneous.

5 (*Id.*, at 3). Rock Jung is the same attorney that authored the letter to NAS and testified at trial in  
6 this case. Thus, there can be no reliance on NAS's misinterpretation of NRS 116.3116 upon which  
7 any policy could have been based.

8 8. Further, one's "mistaken belief regarding the foreclosure sale's effect could not alter the  
9 sale's actual legal effect, particularly when the super-priority portion of the HOA's lien was still  
10 in default at the time of the sale." *see Jessup I*, citing *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev.  
11 619, 426 P.3d 593 (Nev. 2018) ("subjective beliefs as to the effect of the foreclosure sale are  
12 irrelevant"). Moreover, as noted above, any argument of reliance on NAS's interpretation is  
13 contrary to Miles Bauer's own interpretation of the same statute and its own actions.

14 9. Here, the evidence establishes that regardless of any policy on the part of NAS, BANA fully  
15 intended to tender, did in fact tender, but made an inadequate tender that NAS had every right to  
16 reject.

### 17 ORDER

18 Now therefore, **IT IS HEREBY ORDERED**, that the Tender made by Miles Bauer on  
19 behalf of BANK OF AMERICA, in the amount of Four Hundred Eighty-Six dollars (\$486.00) was  
20 insufficient to cure the default in the Super-Priority component of the MADEIRA CANYON  
21 HOMEOWNERS' ASSOCIATION's Delinquent Assessment Lien and was, therefore, rightfully  
22 rejected. The futility of tender defense available to a party which in fact tenders, or attempts to  
23 tender but provides an insufficient amount. The defense is available as an excuse to tender, not an  
24 excuse to tender the wrong amount.

25 **IT IS FURTHER ORDERED** that the HOA Foreclosure Sale conducted on June 7, 2013,  
26 extinguished BANK OF AMERICA, N.A. and THE BANK OF NEW YORK MELLON, AS  
27 TRUSTEES' Deed of Trust.





1           **IT IS FURTHER ORDERED** that Defendant/Counterclaimant NV Eagles, LLC's is  
2   Granted Quiet Title to the Property free and clear of any claims by BANK OF AMERICA, N.A.  
3   and THE BANK OF NEW YORK MELLON, AS TRUSTEES' and all others.

4           **IT IS SO ORDERED.**

Dated this 11th day of March, 2022

5           Dated this \_\_\_\_ day of March, 2022.

HONORABLE DAVID M. JONES  
5A9 3D6 CA3E 4216  
David M Jones  
District Court Judge

9   Order Prepared by:

Approved as to Form and Content:

10   DATED this 10<sup>th</sup> day of March, 2022.

DATED this 10<sup>th</sup> day of March, 2022.

11           **THE WRIGHT LAW GROUP, P.C.**

**AKERMAN LLP**

13   /s/ John Henry Wright, Esq.  
14   JOHN HENRY WRIGHT, ESQ.

14   Nevada Bar No. 6182  
15   2340 Paseo Del Prado, Suite D-305  
15   Las Vegas, Nevada 89102

16   Attorney for Defendant/Counter-claimant  
16   NV EAGLES, LLC

/s/ Lilith V. Xara, Esq.  
MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215  
LILITH V. XARA, ESQ.  
Nevada Bar No. 13138  
1635 Village Center Cir., Suite 200  
Las Vegas, Nevada 89134

Attorneys for Plaintiff  
Bank of America, N.A. and The Bank of  
New York Mellon

## Candi Ashdown

---

**From:** lilith.xara@akerman.com  
**Sent:** Thursday, March 10, 2022 5:49 PM  
**To:** Candi Ashdown  
**Cc:** melanie.morgan@akerman.com  
**Subject:** RE: CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

Hello Candi,

We have reviewed and you may submit with my e-signature.

Thank you,

**Lilith V. Xara**

(She/Her/Hers)

Associate, Consumer Financial Services, Data and Technology (CFS+) Practice Group  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5020 | T: 702 634 5000 | C: 702 964 3377 | F: 702 380 8572  
Only in Nevada  
[lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)

[vCard | Profile](#)



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Candi Ashdown <[Candi@wrightlawgroupnv.com](mailto:Candi@wrightlawgroupnv.com)>  
**Sent:** Thursday, March 10, 2022 4:01 PM  
**To:** Morgan, Melanie (Ptrn-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>; Xara, Lilith (Assoc-Las) <[lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)>  
**Subject:** FW: CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

**[External to Akerman]**

Have you had a chance to review the attached Order?

---

**From:** Candi Ashdown  
**Sent:** Wednesday, March 9, 2022 5:38 PM  
**To:** [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com); [lilith.xara@akerman.com](mailto:lilith.xara@akerman.com)  
**Cc:** [carla.llarena@akerman.com](mailto:carla.llarena@akerman.com); [patricia.larsen@akerman.com](mailto:patricia.larsen@akerman.com); Dayana Shakerian <[dayana@wrightlawgroupnv.com](mailto:dayana@wrightlawgroupnv.com)>  
**Subject:** CASE NO. A-13-685203-C -Ordr- MELISSA LIEBERMAN vs. MADEIRA CANYON HOMEOWNERS' ASSOCIATION, et al.

Hello Counsel,

Please see the attached *Findings of Fact, Conclusions of Law and Order on Post-Remand Hearing* in the above referenced case. If the Order meets with your approval, may I have your permission to affix your e-signature? As always, your time and consideration is appreciated. Thank you.

Sincerely,

*Candi Ashdown*

Legal Assistant/Paralegal

The Wright Law Group P.C.

2340 Paseo Del Prado, Suite D-305

Las Vegas, NV 89102

Wrightlawgroupnv.com

P. (702) 405-0001 ext. 108

F. (702) 405-8454



THE  
WRIGHT LAW GROUP  
P.C.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4		
5		
6	Melissa Lieberman, Plaintiff(s)	CASE NO: A-13-685203-C
7	vs.	DEPT. NO. Department 29
8	Mediera Canyon Community	
9	Association, Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

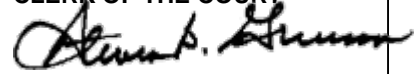
15 Service Date: 3/11/2022

16 "Ariel E. Stern, Esq." .	ariel.stern@akerman.com
17 Akerman Las Vegas Office .	akermanlas@akerman.com
18 Elizabeth Streible .	elizabeth.streible@akerman.com
19 Gayle Angulo .	gangulo@gordonrees.com
20 Marie Ogella .	mogella@gordonrees.com
21 Robert Larsen .	rlarsen@gordonrees.com
22 Debbie Batesel	dbhonglaw@hotmail.com
23 Joseph Hong, Esq.	yosuphonglaw@gmail.com
24 Natalie Winslow	natalie.winslow@akerman.com
25 Melanie Morgan	melanie.morgan@akerman.com

26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Brieanne Siriwan	brieanne.siriwan@akerman.com
John Wright	efile@wrightlawgroupnv.com
Jill Sallade	jill.sallade@akerman.com
Lilith Xara	lilith.xara@akerman.com



1 **NEOJ**

2 MELANIE D. MORGAN, ESQ.

3 Nevada Bar No. 8215

4 LILITH V. XARA, ESQ.

5 Nevada Bar No. 13138

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: melanie.morgan@akerman.com

12 Email: lilith.xara@akerman.com

13 *Attorneys for Bank of America, N.A. and The Bank*  
14 *of 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 **EIGHTH JUDICIAL 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.: XXIX

Consolidated with: A-13-690944-C

**NOTICE OF ENTRY OF ORDER  
GRANTING IN PART AND DENYING  
IN PART DEFENDANT  
UNDERWOOD PARTNERS, LLC'S  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

///

///

///

///

1 **TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:**

2 PLEASE TAKE NOTICE that an the **ORDER GRANTING IN PART AND DENYING IN**  
3 **PART DEFENDANT UNDERWOOD PARTNERS, LLC'S MOTION TO DISMISS OR, IN**  
4 **THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** had been entered on the 21<sup>st</sup>  
5 day of January 2014, in the above-captioned matter. A copy of said Order is attached hereto as  
6 **Exhibit A.**

7 DATED this 4<sup>th</sup> day of May 2022

8 **AKERMAN LLP**

9 /s/ Lilith V. Xara

10 MELANIE D. MORGAN, ESQ.

11 Nevada Bar No. 8215

12 LILITH V. XARA, ESQ.

13 Nevada Bar No. 13138

14 1635 Village Center Circle, Suite 200

15 Las Vegas, Nevada 89134

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May 2022 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT UNDERWOOD PARTNERS, LLC'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**, addressed to:

**Hong & Hong Law Office**

Joseph Y. Hong, Esq.

yosuphonglaw@gmail.com

Debbie Batesel

dbhonglaw@hotmail.com

**Gordon & Rees LLP**

Robert Larsen

rlarsen@gordonrees.com

Marie Ogella

mogella@gordonrees.com

Gayle Angulo

gangulo@gordonrees.com

**The Wright Law Group, P.C.**

John H Wright

efile@wrightlawgroupnv.com

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

/s/ Patricia Larsen

An employee of AKERMAN LLP



**EXHIBIT A**

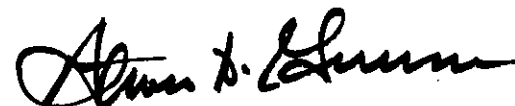
**EXHIBIT A**

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

Electronically Filed  
01/21/2014 09:22:46 AM



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.

Case No.: A685203

Dept. No.: XXXII

Date of Hearing: October 17, 2013

Time of Hearing: 9:00 a.m.

21 AND ALL RELATED ACTIONS.

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.

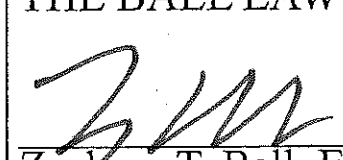
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon oral stipulation  
14 between UNDERWOOD and Defendants BANK OF AMERICA, N.A. and BNY MELLON at  
15 the time of the hearing, all arguments related to BANK OF AMERICA, N.A. and BNY  
16 MELLON's recorded lien on 2184 Pont National Drive, Henderson, 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 <sup>Jan</sup> November, 2013.

21  
22   
23 DISTRICT COURT JUDGE

24 Submitted By:

25 THE BALL LAW GROUP

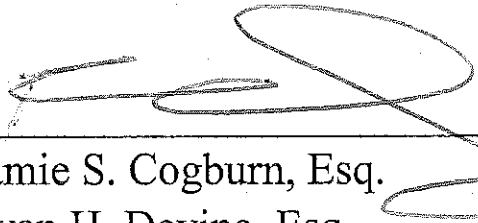
26   
27 Zachary T. Ball, Esq.  
28 Nevada Bar No. 8364  
Attorney for Defendant,  
*Underwood Partners, LLC*

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

1 *Reviewed and Approved By:*

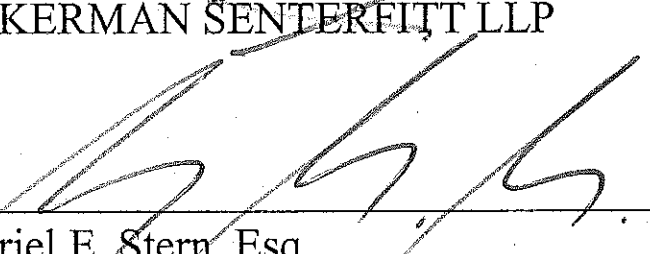
2 DATED this 18 day of November, 2013.

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*

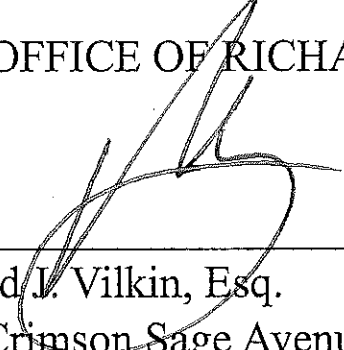
11 DATED this \_\_\_ day of November, 2013.

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 14<sup>TH</sup> 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 18 day of <sup>December</sup>~~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

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28