

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., AND
THE BANK OF NEW YORK
MELLON FKA THE BANK OF NEW
YORK, AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF
CWALT, INC., ALTERNATIVE
LOAN TRUST 2006 J-8, MORTGAGE
PASS-THROUGH CERTIFICATES,
SERIES 2006-J8,

Appellants,

v.

NV EAGLES, LLC,

Respondent.

Supreme Court Case No. 84552

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Department XXIX
The Honorable David M. Jones, District Judge
District Court Case No. A-13-685203-C

APPELLANT'S APPENDIX, VOLUME I

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Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series
2006-J8*

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DATED this 14th day of September, 2022.

AKERMAN LLP

/s/ Lilith V. Xara

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CERTIFICATE OF SERVICE

I certify that I electronically filed on September 14, 2022, the foregoing **APPELLANT'S APPENDIX, VOLUME I** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

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

/s/ Patricia Larsen

An employee of AKERMAN LLP


CLERK OF THE COURT

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13 Attorneys for Plaintiff

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 MELISSA LIEBERMAN, an individual, on
11 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.

Case No: A - 13 - 685203 - C

Dept. No.: XXXII

COMPLAINT

20 **COMPLAINT**

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

COGBURN LAW OFFICES
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Henderson, NV 89052
(702) 384-3616 FAX: (702) 943-1936

THE PARTIES, JURISDICTION, & VENUE

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

2. Mediera 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 Mediera 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

foreclosure sales.

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

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

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

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

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

SECOND CLAIM FOR RELIEF
(Quiet Title against All Defendants)

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

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

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

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

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

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

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

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THIRD CLAIM FOR RELIEF
(Breach of Contract against Mediera 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 Mediera, 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.

COGBURN LAW OFFICES

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

4 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

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

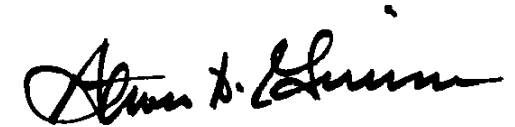
9 DATED this 16th day of June, 2013.

10 COGBURN LAW OFFICES

11
12 By: 

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14 Nevada State Bar No. 8409
15 Ryan H. Devine, Esq.
16 Nevada State Bar No. 12953
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27
28

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY



CLERK OF THE COURT

MELISSA LIEBERMAN, ET AL

Plaintiff,

Case No:A-13-685203-C

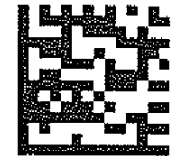
vs.

MEDIERA CANYON COMMUNITY
ASSOCIATION, A NEVADA
HOMEOWNERS ASSOCIATION, ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CARSON CITY ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT; CIVIL COVER SHEET** on **07/30/2013** and served the same on **07/30/2013** at **2:34 PM** by delivering and leaving a copy with:

ALENA DUGGAN, PROCESS SPECIALIST, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of **THE CORPORATION TRUST COMPANY OF NEVADA**, resident agent for **RESURGENT CAPITAL SERVICES, LP, A NATIONAL CORPORATION**, at the registered address of:

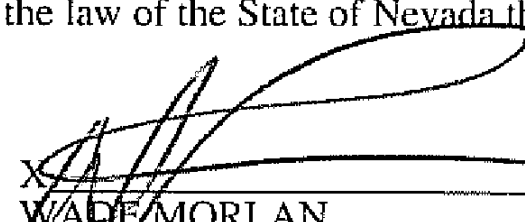
Service address: 311 S. DIVISION ST., Carson City, NV 89703-4202

A description of **ALENA DUGGAN** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Brown	20-30	5ft4in-5ft8in	161-200 lbs
Other Features:					

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

Executed on: 07/31/2013
by WADE MORLAN


WADE MORLAN
Registration#: R-006823
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: A-13-685203-C

No Notary is Required per NRS 53.045



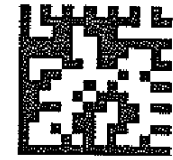
34769

Reno/Carson Messenger Service, Inc.
185 Martin Street
Reno, NV 89509
775.322.2424
Federal Tax ID: 88-0306306
NV STATE LIC#322



Process Server - Messenger Service
RENO / CARSON / LAS VEGAS
*** WE MAKE DEADLINES ***

Invoice #: 33794
Date: 07/31/2013



INVOICE FOR SERVICE:

Amount Due: \$59.50

COGBURN LAW OFFICES
9555 SOUTH EASTERN STE 280,
LAS VEGAS, NV 89123

Phone number: 702-384-3616
Fax number: 702-943-1936
Email Address: kl@cogburnlaw.com

Requestor: KRISTIN LITTLE
Your File# A-13-685203-C

Service #34769: RESURGENT CAPITAL SERVICES, LP, A NATIONAL
CORPORATION
Manner of Service: CORPORATE

Completion Information/Received by: ALENA DUGGAN

Service Date/Time: 07/30/2013 2:34 PM

Service address: 311 S. DIVISION ST. THE CORPORATION TRUST COMPANY OF NEVADA
Carson City NV 89703-4202

Served by: WADE MORLAN R-006823

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Brown	20-30	5ft4in-5ft8in	161-200 lbs
Other Features:					

EIGHTH JUDICIAL DISTRICT COURT-STATE OF NEVADA, CLARK COUNTY

MELISSA LIEBERMAN, ET AL v. MEDIERA CANYON COMMUNITY ASSOCIATION, A NEVADA HOMEOWNERS ASSOCIATION, ET AL

Service Documents: SUMMONS; COMPLAINT; CIVIL COVER SHEET

CASE#: A-13-685203-C

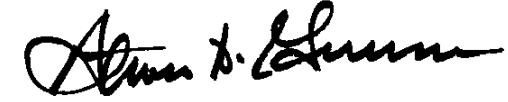
Service Comments:

Standard Service	\$40.00
MILEAGE	\$19.50

TOTAL CHARGES: **\$59.50**

BALANCE: **\$59.50**

CREDIT TERMS ARE NET 30. INVOICES NOT PAID WITHIN TERMS WILL BE ASSESSED A 1.5% PER MONTH
FINANCE CHARGE



CLERK OF THE COURT

1 **ACOM**
2 **COGBURN LAW OFFICES**
3 JAMIE S. COGBURN, ESQ.
4 Nevada Bar No. 8409
5 Jsc@cogburnlaw.com
6 RYAN H. DEVINE, ESQ.
7 Nevada Bar No. 12953
8 rdevine@cogburnlaw.com
9 2879 St. Rose Parkway, Suite 200
10 Las Vegas, Nevada 89052
11 Tel: (702) 384-3616
12 Fax: (702) 943-1936
13 Attorneys for Plaintiff

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

13 MADEIRA CANYON HOMEOWNERS'
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.

Case No: A - 1 3 - 6 8 5 2 0 3 - C

Dept. No.: X X X I I

**FIRST AMENDED COMPLAINT FOR
QUIET TITLE**

20 **FIRST AMENDED COMPLAINT**

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

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

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

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

6 13. On March 28, 2013, Plaintiff became aware of the Foreclosure Sale set for April
7 26, 2013 citing an \$8,505.07 unpaid balance for HOA fees.

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

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

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

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

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

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

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

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

24 **FIRST CLAIM FOR RELIEF**

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

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

28 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.

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

4 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

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

9 DATED this 5th day of August, 2013.

10 COGBURN LAW OFFICES

11
12 By: Ryan H. Devine
13 Jamie S. Cogburn, Esq.
14 Nevada State Bar No. 8409
15 Ryan H. Devine, Esq.
16 Nevada State Bar No. 12953
17 2879 St. Rose Pkwy. Suite 200
18 Las Vegas, Nevada 89052
19 Attorneys for Plaintiff
20
21
22
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26
27
28

Allen D. Quinn

CLERK OF THE COURT

1 STATE OF NEVADA)

2)ss

3 COUNTY OF CLARK)

AFFIDAVIT OF SERVICE

4 Michael E. Clarke (#R-003972), being first duly sworn, deposes and says: That
5 affiant is and was on the day when they first received the within Summons and Complaint, a
6 citizen of the United States, over the age of 18 years, and not a party to, nor interested in,
7 the within action; That affiant received the within named document(s) on the 30th day of
8 July, 2013, and personally served the same upon Nevada Association Services, Inc., by
9 leaving one copy of the within named document(s) with Carly Jarrard, Administrative
10 Assistant for Registered Agent David Stone; who is authorized to accept service for Nevada
11 Association Services, Inc., located at 6224 W. Desert Inn Rd. Ste. A, in the City of Las
12 Vegas, County of Clark, State of Nevada, on the 31st day of July, 2013 at 11:04am.
13 foregoing is true and correct.

EXECUTED this
1st day of August, 2013

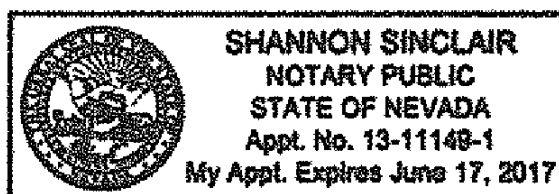
Michael E. Clarke

Signature of person making service
Corporate Intelligence International
707 South 10th Street
Las Vegas, Nevada 89101
State License #595-595A

19 **SUBSCRIBED AND SWORN** to before me this
20 1st day of August, 2013

Shannon Sinclair

21 **NOTARY PUBLIC** in and for said County and State
22 My Commission expires: _____
23 (SEAL)



RETURN OF SERVICE

State of NEVADA

County of CLARK

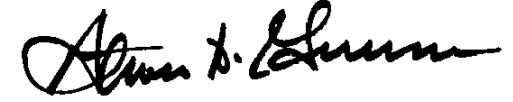
Case Number: A-13-685203-C

Court
Electronically Filed
08/15/2013 11:47:47 AM

Plaintiff:
LIEBERMAN

vs.

Defendant:
MADEIAR CANYON HOMEOWNERS' ASSOCIATION



CLERK OF THE COURT

For:
COGBURN LAW OFFICES
2879 St Rose Pkwy #200
Henderson, NV 89052

Received by ORANGE COUNTY PROCESS MANAGEMENT on the 5th day of August, 2013 at 1:46 pm to be served on **UNDERWOOD PARTNERS, LLC AN UNKNOWN BUSINESS ENTITY, 180 NEWPORT CENTER DRIVE#230, NEWPORT BEACH, CA 92660.**

I, BARBARA TUSTISON, do hereby affirm that on the **5th day of August, 2013 at 2:05 pm, I:**

served a **CORPORATION** by delivering a true copy of the **FIRST AMENDED COMPLAINT FOR QUIET TITLE; SUMMONS** to: **FELECIA DAVENPORT** as **MANAGING AGENT** for **UNDERWOOD PARTNERS, LLC**, at the address of: **180 NEWPORT CENTER DRIVE#230, NEWPORT BEACH, CA 92660**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Registered Process Server, in good standing, in the judicial circuit in which the process was served.



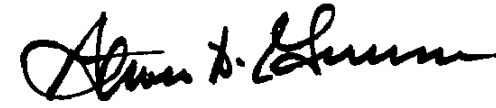
BARBARA TUSTISON
PSC 1501

ORANGE COUNTY PROCESS MANAGEMENT
295 BROADWAY
COSTA MESA, CA 92627
(949) 678-7003

Our Job Serial Number: OCP-2013000906

1 Richard Vilkin, Esq.
2 Nevada Bar No. 8301
3 Law Offices of Richard Vilkin, P.C.
4 1286 Crimson Sage Ave.
5 Henderson, NV 89012
6 Phone: (702) 476-3211
7 Fax: (702) 476-3212
8 Email: richard@vilkinlaw.com
9 *Attorneys for defendant and counterclaimant Nevada*
10 *Association Services, Inc.*

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



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 v.

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

24 Defendants.

Case No. A-13-685203-C

Dept.: XXXII

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

24 COMES NOW defendant NEVADA ASSOCIATION SERVICES, INC. ("NAS"), and
25 responds to the Complaint of plaintiff as follows:
26

27 1. Answering paragraphs 3, 6, 14 and 16 of the Complaint, this answering defendant
28 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
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17 FIRST AFFIRMATIVE DEFENSE
18

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

21 SECOND AFFIRMATIVE DEFENSE
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23 The recovery sought is barred by the doctrines of waiver, unclean hands, laches and
24 failure to do equity.
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26 THIRD AFFIRMATIVE DEFENSE
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28 Plaintiff was more than 50 percent negligent in and about the acts complained of in her
Complaint and therefore is barred from recovery pursuant to NRS 41.141.

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FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring this action.

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TENTH AFFIRMATIVE DEFENSE

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.

PRAYER

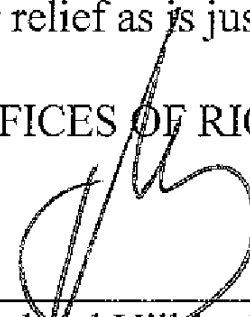
Wherefore, defendant NAS prays for Judgment as follows:

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

Date: August 19, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

By: _____


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

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COUNTERCLAIMS BY NAS

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

FIRST CAUSE OF ACTION

(Breach Of Contract And Failure To Pay Account Stated)

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

SECOND CAUSE OF ACTION

(Interpleader)

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

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

5 7. NAS was contracted by the Madeira Canyon Homeowners Association to collect
6 debts owed to it for unpaid homeowners assessments by counterclaimant for the property located
7 at 2184 Point National Drive, Henderson, NV 89044-2006 ("the subject property"). This effort
8 resulted in a foreclosure sale of the subject property on June 7, 2013. As a result of the sale, and
9 after paying the homeowners association the money owed to it, and after paying to NAS its fees
10 and costs incurred in collecting the debt as allowed by contract and Nevada law, NAS was left
11 with an excess of \$21,392.36. NAS has no further direct interest in such funds.
12

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

22 9. Therefore, after filing this Counterclaim, counterclaimant NAS will deposit with
23 the Clerk of the Eighth Judicial District Court the amount of \$21,392.36. Counterclaimant will
24 serve the Third-Party Defendants with the Third Party Complaint and request that the court
25 determine how such funds should be distributed amongst counterdefendant Melissa Lieberman
26 and the third-party defendants.
27
28

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

/ / /

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///

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: 

5 Richard Vilkin

6 Nevada Bar No. 8301

7 1286 Crimson Sage Ave.

8 Henderson, NV 89012

9 Phone: (702) 476-3211

10 *Attorneys for defendant and counterclaimant*

11 *Nevada Association Services, Inc.*

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No. A-13-685203-C

Dept.: XXXII

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

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

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

1 Date: August 19 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

2
3 By: 

4 Richard Vilkin, Esq.

5 Nevada Bar No. 8301

6 1286 Crimson Sage Ave.

7 Henderson, NV 89012

8 Phone: (702) 476-3211

9 Fax: (702) 476-3212

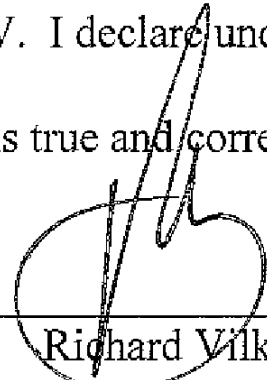
10 *Attorneys for defendant Nevada Association*
11 *Services, Inc.*

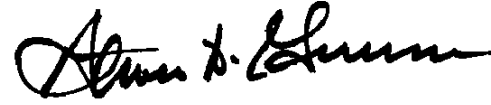
1 Certificate of Mailing

2 I hereby certify that on August 19, 2013, I put a copy of the ANSWER OF
3 DEFENDANT NEVADA ASSOCIATION SERVICES, INC.; COUNTERCLAIMS OF
4 COUNTERCLAIMANT NEVADA ASSOCIATION SERVICES in a sealed envelope, postage
5 prepaid, and deposited said envelope in the U.S. Mail, addressed as follows, to counsel in the
6 case of *Melissa Lieberman v. Mediera Canyon Community Association et al.* (Nev. Dist. Ct.
7 Case No. A-13-685203-C):
8

9 Jamie S. Cogburn, Esq.
10 Ryan H. Devine, Esq.
11 Cogburn Law Offices
12 2879 St. Rose Parkway, Suite 200
13 Las Vegas, NV 89052

14 Executed this 19th day of August, 2013 at Henderson, NV. I declare under penalty of
15 perjury under the laws of the State of Nevada that the foregoing is true and correct.
16

17 
18 Richard Vilkin
19
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25
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27
28



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Counterclaimant,

v.

MELISSA LIEBERMAN, an individual,

Counterdefendant.

NEVADA ASSOCIATION SERVICES, INC.,

Case No. A-13-685203-C

Dept.: XXXII

THIRD PARTY COMPLAINT BY NEVADA
ASSOCIATION SERVICES, INC.

1 a Nevada corporation,

2 Third Party Complainant,

3 v.

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

20 Third party defendants.

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

23 GENERAL ALLEGATIONS

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

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

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 10. NAS was contracted by the Madeira Canyon Homeowners Association (“HOA”) in
18 2010 to collect debts owed to it for unpaid homeowners assessments by plaintiff
19 Melissa Lieberman for the property located at 2184 Point National Drive,
20 Henderson, NV 89074 (“the subject property”). This effort resulted in a foreclosure
21 sale of the subject property on June 7, 2013.
- 22 11. Prior to the sale, NAS was contacted by third-party defendants COGBURN LAW
23 OFFICES, LLC and NORMA TERAN. Said third-party defendants stated orally
24 and in writing that they represented plaintiff MELISSA LIEBERMAN. Said third-
25 party defendants requested a payment plan from NAS for plaintiff. Said payment
26
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1 plan was provided to third-party defendants in writing. Plaintiff then breached the
2 payment plan. NAS contacted said third party defendants multiple times prior to the
3 foreclosure sale to see if something could be worked out to avoid the foreclosure
4 sale, but NAS did not hear back from said third party defendants prior to the sale.
5 Said third party defendants then filed the instant lawsuit on behalf of plaintiff
6 blaming NAS for a wrongful foreclosure and other causes of action, but NAS alleges
7 that said third party defendants undertook a duty to NAS to notify plaintiff of NAS'
8 communications concerning plaintiff's account and to inform her of the payment
9 plan and when payments were due, as well as other communications from NAS
10 concerning the impending foreclosure. On information and belief, said third party
11 defendants breached that duty by not informing plaintiff of such information and
12 communications. As a result of the negligence of third-party defendants, the
13 foreclosure sale went forward. As a result of the negligence of said third party
14 defendants, third party plaintiff NAS has suffered damages, including but not limited
15 to the damages alleged by plaintiff against NAS in her Complaint and the attorneys
16 fees and costs expended by NAS in defending the action brought by plaintiff.
17
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21 SECOND CAUSE OF ACTION

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

- 24 12. Third-party plaintiff NAS reiterates herein by reference paragraphs 1-11 above.
25
26 13. The conduct of third-party defendants COGBURN LAW OFFICES, LLC and
27 TERAN entitle third-party plaintiff NAS to implied/equitable indemnity because
28 either there was no negligence by NAS or such negligence was passive.

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

4 THIRD CAUSE OF ACTION
5

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

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

12 16. Recorded records in Clark County, Nevada state that there are numerous liens and
13 other debts secured by the subject property belonging to the third party defendants named in this
14 cause of action and possibly to counterclaimant herein Melissa Lieberman. These debts exceed
15 the amount of \$21,392.36 currently in the possession of NAS. Third-party plaintiff does not
16 know the current status of such debts, nor how the amount it currently has possession of should
17 be distributed to the various third-party defendants named in this cause of action and
18 counterdefendant Melissa Lieberman. Third-party plaintiff is therefore faced with multiple or
19 double liability. Third party plaintiff has asserted a similar cause of action for interpleader as a
20 counterclaim against Melissa Lieberman.
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*

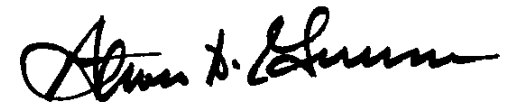
Certificate of Mailing

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



CLERK OF THE COURT

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

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

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

17 MELISSA LIEBERMAN,
18
19 Plaintiff,

20 v.

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

Defendants, et al.

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

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

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

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

///

///

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

10. BANA admits the allegations contained in paragraph 10.

///

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

FIRST CLAIM FOR RELIEF

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

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

SECOND CLAIM FOR RELIEF

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

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

THIRD CLAIM FOR RELIEF

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

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

FOURTH CLAIM FOR RELIEF

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

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

FIFTH CLAIM FOR RELIEF

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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///

FIFTH AFFIRMATIVE DEFENSE

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

DATED this 12th day of September, 2013.

AKERMAN SENTERFITT LLP

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of September, 2013, and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**, postage prepaid and addressed to:

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

Attorneys for Plaintiff

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

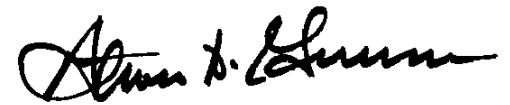
Attorneys for Nevada Association Services, Inc.

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

Attorneys for Underwood Partners, LLC

/s/ Eloisa Nuñez

An employee of AKERMAN SENTERFITT LLP



CLERK OF THE COURT

1 **ANTC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 STEVEN SHEVORSKI, ESQ.
5 Nevada Bar No. 8256
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12 Email: steven.shevorski@akerman.com

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

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

17 MELISSA LIEBERMAN,
18
19 Plaintiff,

20 v.

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

Defendants, et al.

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

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

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

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SECOND CLAIM FOR RELIEF

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

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

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

///

///

FOURTH AFFIRMATIVE DEFENSE

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

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

FIFTH AFFIRMATIVE DEFENSE

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

DATED this 12th day of September, 2013.

AKERMAN SENTERFITT LLP

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

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

CERTIFICATE OF SERVICE

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

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

Attorneys for Plaintiff

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

Attorneys for Nevada Association Services, Inc.

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

Attorneys for Underwood Partners, LLC

/s/ Eloisa Nuñez

An employee of AKERMAN SENTERFITT LLP

1 AFFT
2 Law Offices of Richard Vilkin, P.C.
3 Richard Vilkin, Esq.
4 1286 Crimson Sage Avenue
5 Henderson, NV 89012
6 State Bar No.: 8301
7 Attorney(s) for: Plaintiff(s)

Allen D. Quinn

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

8
9
10 Melissa Lieberman, an individual, on behalf of itself and all others
11 similarly situated
12 vs
13 Plaintiff(s)
14 Mediera Canyon Community Association, a Nevada Association, et al.
15 Defendant(s)

Case No.: A-13-685203-C

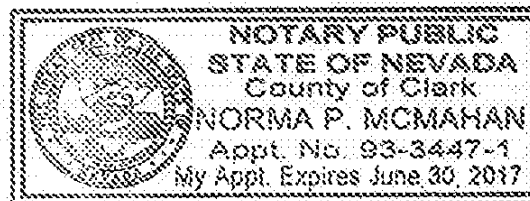
Dept. No.: XXXII

Date:

Time:

AFFIDAVIT OF SERVICE

16 I, Myla Carson, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
17 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
18 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:
19 Summons on Third Party Complaint; Third Party Complaint By Nevada Association Services, Inc. on the
20 27th day of September, 2013 and served the same on the 27th day of September, 2013 at 9:51 am, by serving the
21 Third Party Defendant, Cogburn Law Offices, a Nevada domestic limited liability company, by personally
22 delivering and leaving a copy at Registered Agent: Cogburn Law Offices, LLC 2879 St. Rose Pkwy, Suite 200,
23 Henderson, NV 89052 with Regina Hogue pursuant to NRS 14.020 as a person of suitable age and discretion at
24 the above address, which address is the address of the registered agent as shown on the current certificate of
25 designation filed with the Secretary of State.



33 State of Nevada, County of Clark

34 SUBSCRIBED AND SWORN to before me on this

35 27th day of September 2013

36 Notary Public Norma P. McMahon

Affiant Myla Carson

R-067968

Legal Process Service

License # 604

WorkOrderNo 1308080

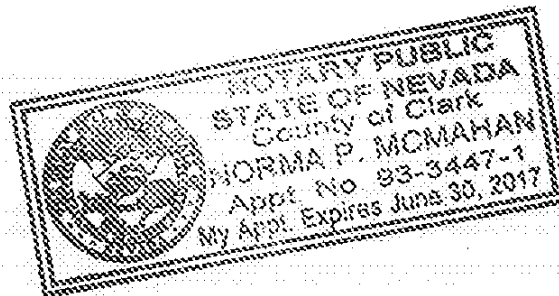
01 10000000000000000000 10 10 1100000000

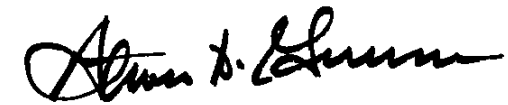
DISTRICT COURT
CLARK COUNTY, NEVADA

Time:

Defendant(s)

I, Myla Carson, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons on Third Party Complaint: Third Party Complaint By Nevada Association Services, Inc. on the 27th day of September, 2013 and served the same on the 27th day of September, 2013 at 9:52 am by delivering and leaving a copy with the Third Party Defendant, Norma Teran, an individual at Cogburn Law Offices, 2879 St. Rose Pkwy Ste. 200, Henderson, NV 89052.

[illegible]



CLERK OF THE COURT

RPLY

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/Counter-defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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, LP, a
national corporation, UNDERWOOD
PARTNERS, LLC, an unknown business entity,
and DOES I through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

Defendant.

NEVADA ASSOCIATION SERVICES, INC., a
Nevada corporation,

Counterclaimant,

vs.

MELISSA LIEBERMAN, an individual,

Counter-defendant.

Case No: A-13-685203-C

Dept. No.: XXXII

**PLAINTIFF/COUNTER-DEFENDANT
MELISSA LIEBERMAN'S REPLY TO
COUNTERCLAIMANT NEVADA
ASSOCIATION SERVICES, INC.'S
COUNTERCLAIMS**

COGBURN LAW OFFICES
2879 St. Rose Pkwy, Suite 200
Henderson, NV 89052
(702) 384-3616 FAX: (702) 943-1936

1 Counter-defendant, MELISSA LIEBERMAN ("Lieberman"), by and through her
2 attorneys of record, Cogburn Law Offices, and hereby replies to Counterclaimant's
3 Counterclaims as follows:

4 **FIRST CAUSE OF ACTION**

5 **(Breach of Contract and Failure to Pay Account Stated)**

6 1. Answering paragraph 1, Counter-defendant hereby incorporates by reference the
7 preceding paragraphs as if fully set forth herein.

8 2. Answering paragraph 2, Counter-defendant lacks sufficient information to either
9 admit or deny the allegation contained therein; therefore denies the allegations.

10 3. Answering paragraph 3, Counter-defendant lacks sufficient information to either
11 admit or deny the allegation contained therein; therefore denies the allegations.

12 4. Answering paragraph 4, Counter-defendant denies allegations contained therein.

13 **SECOND CAUSE OF ACTION**

14 **(Interpleader)**

15 5. Answering paragraph 5, Counter-defendant hereby incorporates by reference the
16 preceding paragraphs as if fully set forth herein.

17 6. Answering paragraph 6, Counter-defendant lacks sufficient information to either
18 admit or deny the allegation contained therein; therefore denies the allegations.

19 7. Answering paragraph 7, Counter-defendant lacks sufficient information to either
20 admit or deny the allegation contained therein; therefore denies the allegations.

21 8. Answering paragraph 8, Counter-defendant lacks sufficient information to either
22 admit or deny the allegation contained therein; therefore denies the allegations.

23 9. Answering paragraph 9, Counter-defendant lacks sufficient information to either
24 admit or deny the allegation contained therein; therefore denies the allegations.

25 10. Answering paragraph 10, Counter-defendant lacks sufficient information to either
26 admit or deny the allegation contained therein; therefore denies the allegations.

27 11. Answering paragraph 11, Counter-defendant denies allegations contained therein

28 ///

AFFIRMATIVE DEFENSES

1. Counterclaimant has failed to state a claim against this answering Counter-defendant upon which relief can be granted.

2. This answering Counter-defendant is and was not in breach of contract.

3. Counterclaimant failed to complete the work it agreed to perform.

4. The claims of the Counterclaimant have been waived as a result of the acts and the conduct of the Counterclaimant.

5. Counterclaimant has failed to mitigate its damages.

6. By virtue of their conduct, Counterclaimants should be estopped from making any claim against this Counterclaimant.

7. Plaintiff is guilty of unclean hands and therefore is not entitled to any relief from this answering Counter-defendant.

8. Counterclaimant's damages if any, were directly and proximately caused and contributed to by the conduct, acts, or omissions of Counterclaimant thereby completely or partially barring their claims.

9. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Counter-defendant's Answer and therefore Counter-defendant reserve the right to amend his Answer to allege additional affirmative defenses if subsequent investigation warrants.

10. Counterclaimant is not equitably entitled to obtain any money from Counter-defendant.

11. Counterclaimant has suffered no harm as a result of Counter-defendant's conduct.

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PRAYER FOR RELIEF

WHEREFORE, Counter-defendant prays for relief as follows:

1. Counterclaimant takes nothing by way of its Complaint and that the Complaint be dismissed with prejudice.
2. That Counter-defendant be awarded his attorneys' fees and costs to defend this action; and
3. For such other relief as the Court deems reasonable and proper.

DATED this 1 day of October, 2013.

COGBURN LAW OFFICES

By: _____

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

COGBURN LAW OFFICES
2879 St. Rose Pkwy, Suite 200
Henderson, NV 89052
(702) 384-3616 FAX: (702) 943-1936

On October 1 2013, I served the within document(s):

☒ By **U.S. Mail** a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

☐ By Facsimile Transmission – the transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached to the hard copy. The names and facsimile numbers of the person(s) served are as set forth below.

☐ By personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury that the foregoing is true and correct.

Kristin Hottle
An employee of Cogburn Law

Allen D. Quinn

CLERK OF THE COURT

1 AFFT
2 Law Offices of Richard Vilkin, P.C.
3 Richard Vilkin, Esq.
4 1286 Crimson Sage Avenue
5 Henderson, NV 89012
6 State Bar No.: 8301
7 Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

8
9 Melissa Lieberman, an individual, on behalf of itself and all others
10 similarly situated

11 vs

Plaintiff(s)

12 Mediera Canyon Community Association, a Nevada Association, et al.

Defendant(s)

Case No.: A-13-685203-C

Dept. No.: XXXII

Date:

Time:

AFFIDAVIT OF SERVICE

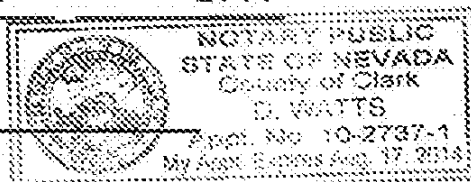
15 I, Myla Carson, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:
18 Summons on Third Party Complaint; Third Party Complaint By Nevada Association Services, Inc. on the
19 27th day of September, 2013 and served the same on the 27th day of September, 2013 at 9:51 am by serving the
20 Third Party Defendant, Cogburn Law Offices, a Nevada domestic limited liability company by personally
21 delivering and leaving a copy at Registered Agent: Cogburn Law Offices, LLC 2879 St. Rose Pkwy, Suite 200,
22 Henderson, NV 89052 with Regina Hogue pursuant to NRS 14.020 as a person of suitable age and discretion at
23 the above address, which address is the address of the registered agent as shown on the current certificate of
24 designation filed with the Secretary of State.

33 State of Nevada, County of Clark

34 SUBSCRIBED AND SWORN to before me on this

35 27th day of September 2013

36 *D. Watts*
Notary Public D. Watts



Myla Carson
Affiant Myla Carson

R-067968

Legal Process Service License # 604

WorkOrderNo 1308080



AFFT
Law Offices of Richard Vilkin, P.C.
Richard Vilkin, Esq.
1286 Crimson Sage Avenue
Henderson, NV 89012
State Bar No.: 8301
Attorney(s) for: Plaintiff(s)


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

Melissa Lieberman, an individual, on behalf of itself and all others
similarly situated

vs

Plaintiff(s)

Mortgage Electronic Systems, Inc. ("MERS") as Nominee for Pulte
Mortgage, LLC

Defendant(s)

Case No.: A-13-685203-C

Dept. No.: XXXII

Date:

Time:

AFFIDAVIT OF SERVICE

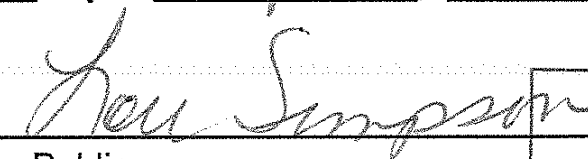
Phillip Sterling, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons on Third Party Complaint; Third Party Complaint By Nevada Association Services, Inc. on the 26th day of September, 2013 and served the same on the 27th day of September, 2013 at 11:00AM by serving the Third Party Defendant, Mortgage Electronic Systems, Inc. as Nominee for Pulte Mortgage, LLC by personally delivering and leaving a copy at 7390 S. Jola St., Englewood, CO 80112 with Colin Reynolds as Corporate Paralegal an agent lawfully designated by statute to accept service of process.

State of Colorado, County of Douglas

SUBSCRIBED AND SWORN to before me on this

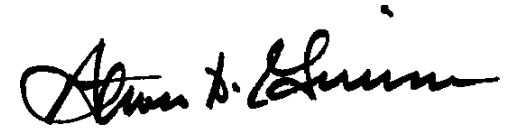
27th day of Sept, 2013

Notary Public


LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15


Affiant: Phillip Sterling

WorkOrderNo 1308086



CLERK OF THE COURT

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

AFFIDAVIT OF SERVICE

DATED this 22nd Day of October, 2013

COGBURN LAW OFFICES

By: /s/ Ryan H. Devine, Esq.

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

1 STATE OF NEVADA)
2 COUNTY OF CLARK)

)ss:

AFFIDAVIT OF SERVICE

3 Michael E. Clarke (#R-003972), a citizen of the United States, over 18 years of age, not a party to, nor
4 interested in the proceeding in which this affidavit is made. That affiant received a copy of the Summons and
5 First Amended Complaint, on the 6th day of August, 2013 and served the same on the 7th day of August, 2013 at
6 2:15pm by:

7 (Affiant must complete the appropriate paragraph)

8 1. Delivering and leaving a copy with the Defendant _____, at (state address) _____
9 _____

10 2. Serving the Defendant _____, by personally delivering and leaving a copy with _____, a
11 person of suitable age and discretion residing at the Defendant's usual place of abode located at: (state
12 address): _____

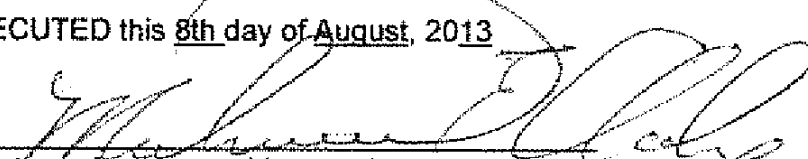
13 3. Serving the Defendant Madeira Canyon Homeowner's Association, by personally delivering and
14 leaving a copy at (state address) 8345 W. Sunset Rd., Las Vegas, Nevada

15 (a) With _____ as _____, an agent lawfully designated by statute to accept
16 service of process;

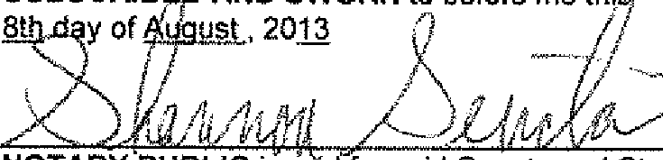
17 (b) With Randolph Watkins, pursuant to NRS 14.020 as a person of suitable age and discretion
18 at the above address, which address is the address of the resident agent as shown on the current certificate of
19 designation filed with the Secretary of State.

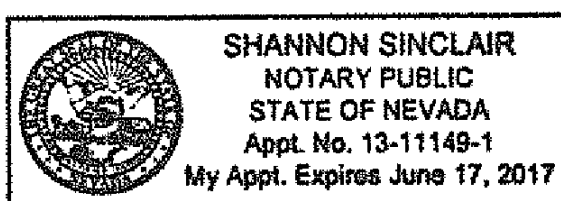
20 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and
21 correct.

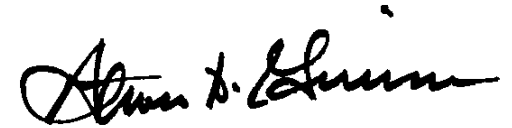
22 EXECUTED this 8th day of August, 2013

23 
24 Signature of person making service
25 Corporate Intelligence International
26 707 South 10th Street
27 Las Vegas, Nevada 89101
28 State License #595-595A

23 SUBSCRIBED AND SWORN to before me this
24 8th day of August, 2013

25 
26 NOTARY PUBLIC in and for said County and State
27 My Commission expires: _____
28 (SEAL)





CLERK OF THE COURT

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

AFFIDAVIT OF SERVICE

DATED this 10th Day of December, 2013

COGBURN LAW OFFICES

By: /s/ Ryan H. Devine, Esq.

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

1 STATE OF NEVADA)

2)ss
3 COUNTY OF CLARK)

AFFIDAVIT OF SERVICE

4 Michael Briggs (#R-031466), being first duly sworn, deposes and says: That affiant is and
5 was on the day when they first received the within Summons and First Amended Complaint for Quiet
6 Title, a citizen of the United States, over the age of 18 years, and not a party to, nor interested in,
7 the within action; That affiant received the within named document(s) on the 2nd day of December,
8 2013, and served on the 4th day of December, 2013 at 12:45pm by delivering a copy to the
9 Resident Agent at (state address):

10 CSC Services of Nevada Inc.
11 2215-B Renaissance Drive
12 Las Vegas, Nevada 891119


Resident Agent for:

13 Resurgent Capital Services, LP

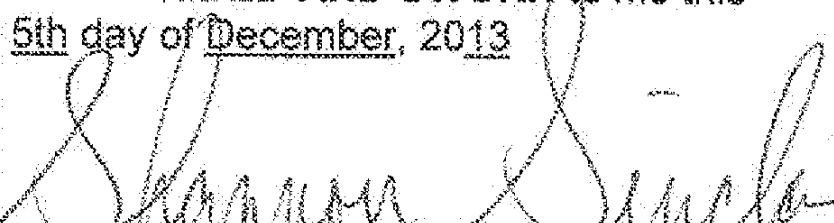
14 And leaving said documents with Kris Eppes, who is authorized to accept service for the Resident
15 Agent, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address,
16 which address is the address of the resident agent as shown on the current certificate of designation
17 filed with the Secretary of State.

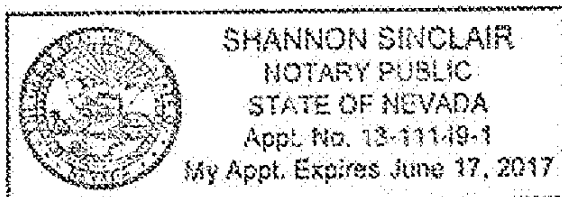
18 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
19 true and correct.

Dated this 5th day of December, 2013

20 
21 Signature of person making service
22 Corporate Intelligence International
23 720 E. Charleston Blvd Ste. 135
24 Las Vegas, Nevada 89104
25 State License #595/595-A

26 **SUBSCRIBED AND SWORN** to me this
27 5th day of December, 2013

28 
NOTARY PUBLIC in and for said County and State
My commission expires: _____
(SEAL)



ORIGINAL

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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
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 10th day of December, 2013. Third Party Defendants, Cogburn Law Offices and Norma
27 Teran were represented by Andre Lagomarsino, Esq. of Parker, Scheer, Lagomarsino. Third
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. LaFourette*, 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.

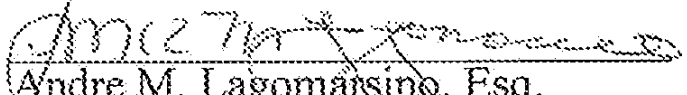
DATED this 6 day of Jan, 2013


THE HONORABLE ROB BARE
EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 08

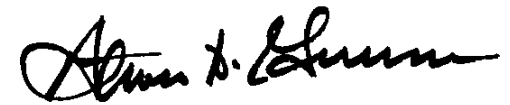
PARKER SCHEER LAGOMARSINO


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,

Third Party Defendants.

Case No: A-13-685203-C

Dept.: XXXII

NOTICE OF ENTRY OF ORDER

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

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

5 DATED this 9th day of January, 2014.

6 PARKER | SCHEER LAGOMARSINO

7 

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

11 T: 702.383.2864

12 F: 702.383.0065

13 *Attorney for Third Party Defendants*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

 Facsimile

 X Mail

Addressed as follows:

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

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

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

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

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

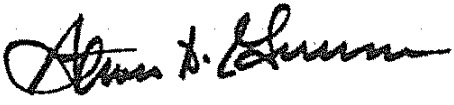

An Employee of PARKER | SCHEER LAGOMARSINO

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1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA


CLERK OF THE COURT

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

7 Plaintiff,

8 vs.

9 MEDIERA CANYON COMMUNITY
10 ASSOCIATION, a Nevada homeowners
11 association, NEVADA ASSOCIATION
12 SERVICES, INC., a Nevada corporation, BANK
13 OF AMERICA, N.A., a federal savings bank,
14 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,

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 10th day of December, 2013. Third Party Defendants, Cogburn Law Offices and Norma
27 Teran were represented by Andre Lagomarsino, Esq. of Parker, Scheer, Lagomarsino. Third
28 Party Plaintiff, Nevada Association Services, Inc. (NAS), was represented by counsel Richard

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

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

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

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

22 CONCLUSIONS OF LAW

23 **Negligence:**

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

28

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.

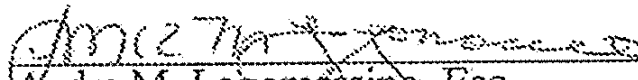
DATED this 6 day of Jan, 2018


THE HONORABLE ROB BARE
EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 11

PARKER SCHEER LAGOMARSINO


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

Approved as to form and content:

LAW OFFICES OF RICHARD VILKIN, P.C.

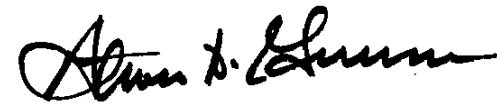
Did not approve order
Richard J. Vilkin, Esq.
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1286 Crimson Sage Ave.
Henderson, Nevada 89012
T: 702.476.3211
Attorney for Third Party Plaintiff, Nevada Association Services, Inc.

1 **ODRG**

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

5 Attorney for Plaintiff,
6 Nevada Title Company

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CLERK OF THE COURT

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

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

12 Plaintiff,

13 vs.

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

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.

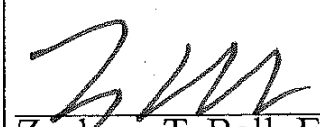
20 DATED AND DONE this 6 day of ^{Jan} November, 2013.

21
22 
23 DISTRICT COURT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

24 Submitted By:

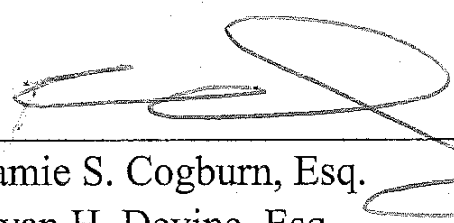
25 THE BALL LAW GROUP

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

1 Reviewed and Approved By:

2 DATED this 18 day of November, 2013.

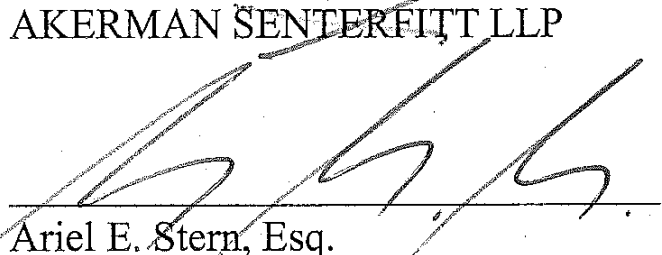
3 COGBURN LAW OFFICES

4 
5 _____
6 Jamie S. Cogburn, Esq.

7 Ryan H. Devine, Esq.
8 2879 St. Rose Parkway, Suite 200
9 Las Vegas, Nevada 89052
10 Attorneys for Plaintiff

11 DATED this __ day of November, 2013.

12 AKERMAN SENTERFITT LLP

13  #8256
14 Ariel E. Stern, Esq.

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

20 DATED this 14TH day of November, 2013.

21 LAW OFFICE OF RICHARD VILKIN, P.C.

22 
23 _____
24 Richard J. Vilkin, Esq.

25 1286 Crimson Sage Avenue
26 Henderson, Nevada 89012
27 Attorney for Nevada Association Services
28 Inc.

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

2 PARKER SCHEER LAGOMARSINO

3

4 
5 Andre M. Lagomarsino, Esq.

6 Daniel M. Ryan, Esq.

7 9555 South Eastern Avenue, Ste. 210

8 Henderson, Nevada 89123

9 Attorney for Nevada Association Services
10 Inc.

11

12

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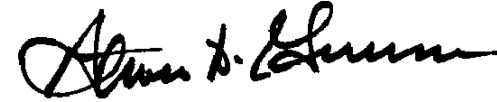
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28



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Counterclaimant,

v.

MELISSA LIEBERMAN, an individual,

Counterdefendant.

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Case No. A-13-685203-C

Dept.: XXXII

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

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

15
 16 On January 9, 2014, counsel for defendant Nevada Association Services, Inc. ("NAS"),
 17 Richard Vilkin, and counsel for defendant Mediera Canyon Community Association ("Mediera
 18 Canyon HOA"), David W. Gutke, Esq., appeared in this court on the scheduled Motion to
 19 Dismiss by NAS, joined in by Mediera Canyon HOA. There was no appearance by counsel for
 20 plaintiff and the motion was continued for hearing on January 23, 2014.
 21

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

26 After considering the moving and opposition papers, and after hearing oral argument, and
 27 good cause appearing, Judge Bare granted the motion to dismiss plaintiff's Complaint without
 28 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.
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Phone: (702) 384-3616
Attorneys for plaintiff

1 GORDON & REES, LLP

2 By: 

3 David W. Gutke, Esq.

4 Nevada Bar No. 9820

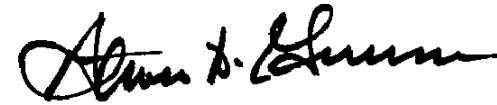
5 3770 Howard Hughes Parkway, Suite 100

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.
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Law Offices of Richard Vilkin, P.C.
1286 Crimson Sage Ave.
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Phone: (702) 476-3211
Fax: (702) 476-3212
Email: 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

1286 Crimson Sage Ave.

Henderson, NV 89012

Phone: (702) 476-3211

8 Fax: (702) 476-3212

Attorneys for defendants and

9 *counterclaimants Madeira Canyon*

10 *Homeowners Association and Nevada*

11 *Association Services, Inc.*

Richard Vilkin, Esq.
Nevada Bar No. 8301
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Phone: (702) 476-3211
Fax: (702) 476-3212
Email: richard@vilkinlaw.com
Attorneys for defendant and counterclaimant
Nevada Association Services, Inc.

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

Dept.: XXXXII

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,

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

Y.

MELISSA LIEBERMAN, an individual,

NEVADA ASSOCIATION SERVICES, INC.,
a Nevada corporation,

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.
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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: David W. Gutke

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*

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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):

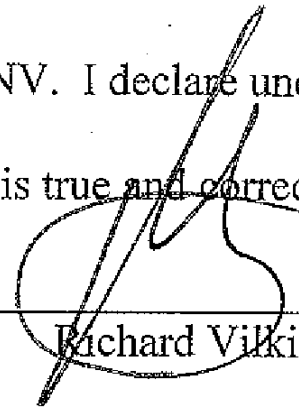
Jamie S. Cogburn, Esq.
Cogburn Law Offices
2879 St. Rose Parkway, Suite 200
Henderson, NV 89052

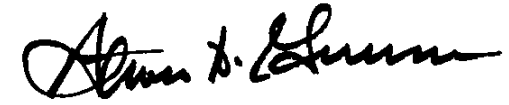
Zachary T. Ball, Esq.
The Ball Law Group, LLC
3455 Cliff Shadows Parkway, Suite 150
Las Vegas, NV 89128

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 15th 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

1 JOHN HENRY WRIGHT
Nevada Bar No. 6182
2 THE WRIGHT LAW GROUP
2340 Paseo Del Prado, Suite D-305
3 Las Vegas, Nevada 89102
Telephone: (702) 405-0001
4 Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com
5 Attorney for Defendant
UNDERWOOD PARTNERS, LLC,
6

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

Plaintiff,

11 vs.

CASE NO. A-13-685203-C

DEPT. NO. XXXII

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

18 Defendants.
19

20 **DEFENDANT UNDERWOOD PARTNERS, LLC,'S**
21 **MOTION TO CONSOLIDATE**

22 COMES NOW, Defendant, UNDERWOOD PARTNERS, LLC (referred to as
23 "UNDERWOOD") by and through its attorney JOHN HENRY WRIGHT, ESQ., of the law firm
24 THE WRIGHT LAW GROUP, P.C., and hereby moves this Honorable Court for consolidation of
25 CASE A-13-690944-C pending in Department X into the instant litigation as these two cases
26 involve common questions of law and fact under NRCP 42(a).
27
28



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



DATED: this 20th day of February, 2014.

THE WRIGHT LAW GROUP, PC

JOHN HENRY WRIGHT, ESQ.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Attorneys for Defendant
UNDERWOOD PARTNERS, LLC

NOTICE OF MOTION

TO: ALL PARTIES

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **Defendant** **UNDERWOOD PARTNERS LLC's Motion to Consolidate** on for hearing before the Honorable Judge Rob Bare, Department 32, at the Regional Justice Center, Las Vegas, Nevada, on the 25 day of March, 2014, at the hour of 9:00, A.m., or as soon thereafter as counsel may be heard.

DATED: this 20th day of February, 2014.

THE WRIGHT LAW GROUP, PC

JOHN HENRY WRIGHT, ESQ.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Attorney for Defendant
UNDERWOOD PARTNERS, LLC



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

A. Nature of the Case

The instant case addresses a currently pending legal issue: what is the operative effect of a foreclosure sale by a common interest community from a default by a member for failure to pay regular assessments and the subsequent deed, complying with the statutory requirements, to the first deed of trust holder and the defaulted member. This issue is currently before the Nevada Supreme Court as lower courts have been inconsistent in deciding various factors relating to this issue. This is commonly known as the "Lien Superpriority" arising out of NRS 116.3116, *et. seq.* EAGLES has filed 10 actions on ten parcels of property it purchased through this legal process seeking to quiet title in all 10 parcels and extinguish the potential claims of prior owners and/or first deed of trust holders.

II.

STATEMENT OF FACTS

1. The instant case was filed on July 16, 2013 and was brought by Plaintiff MELISSA LIEBERMAN against Defendants MADIERA CANYON HOMEOWNERS ASSOCIATION ("Madiera"), NEVADA ASSOCIATION SERVICES, INC. ("NAS"), BANK OF NEVADA, N.A., RESURGENT CAPITAL SERVICES, LP and UNDERWOOD, regarding the property located at 2184 Pont National Drive, Henderson, Nevada 89044, APN # 190-20-311-033 ("Property").
2. Plaintiff asserted numerous causes of action. The first cause of action is for Violation of NRS § 107.080/wrongful foreclosure against Defendants Madiera and NAS. The second cause of action is for quiet title as to all defendants. The third cause of action is for breach of contract against Defendants Madiera and NAS. The fourth cause of action is for breach of the implied covenant of good faith and fair dealing against Defendants Madiera and NAS. The fifth cause of action is for violation of NRS § 598/unfair and deceptive trade practices against



1 UNDERWOOD. The sixth cause of action is for Abuse of Process against
2 UNDERWOOD. See, Complaint attached as Exhibit A. These last two claims
3 were dismissed by this Court on October 17, 2013.

4 3. Plaintiff filed an Amended Complaint on August 5, 2013 but the causes of action
5 remained as pled and against whom pled as the original Complaint.

6 4. On October 18, 2013, UNDERWOOD transferred the title it held pursuant to the
7 Foreclosure Deed it recorded on July 3, 2013 from the purchase of the Property at
8 an auction held on June 7, 2013.

9 5. Case A690944 was filed on October 30, 2013 and involves Plaintiff NV EAGLES,
10 LLC's ("EAGLES") claims for Quiet Title under NRS 30.010, 40.10 and 116.3116,
11 Unjust Enrichment and Preliminary and Permanent Injunction for the Property
12 against Plaintiff and other potential title claimants. See, Complaint attached as
13 Exhibit B.

14 6. Soon after, it was made clear to counsel for EAGLES that the instant case was
15 ongoing and previously filed and these matters involved the same question as to the
16 title ownership of the Property with the substantive difference between the two
17 being the subsequent case, A690944, was brought in the name of the current record
18 holder of title whereas the instant case, A685203, was brought by the prior unit
19 owner against the purchaser at the HOA sale in June of 2013; a very minor
20 difference.

21 7. Counsel for EAGLES substituted in as counsel for UNDERWOOD on January 3,
22 2014 based upon current ownership of record title.

23 8. Plaintiff's counsel, was informed of the transfer of record title from
24 UNDERWOOD to EAGLES in October of 2013 and proposed to amend her First
25 Amended Complaint to substitute in EAGLES as the proper party in interest such
26 that the instant motion could be avoided and the subsequent case be dismissed.

27 9. Plaintiff has not amended her Amended Complaint and UNDERWOOD is aware
28 that EAGLES now needs to hold the 16.1 Early Case Conference and commence



discovery. UNDERWOOD is seeking to consolidate these matters to avoid unnecessary duplication of litigation since the two cases involve substantially similar claims regarding the same parcel of real property.

III.

LEGAL STANDARDS

A. MOTION FOR CONSOLIDATION

NRCP 42 (a) provides:

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The Nevada Supreme Court has addressed this issue and confirmed that the Federal version of this rule, FRCP 42(a) is identical to NRCP 42(a) and is addressed to the sound discretion of the District Court. *Marcus v. Del Webb Communities, Inc.*, (2007) 123 Nev. 278, 286; 163 P.3d 462, 467-468. The Nevada Supreme Court referred directly to the decision of the Eighth Circuit Court of Appeals decision in *Enterprise Bank v. Settee*, (8th Cir. 1994) 21 F.3d 233, 235. In *Enterprise*, the lower court consolidated two actions where the defendant was common to both. The Court reviewed decisions of the First, Fifth and Sixth Circuit Courts of Appeal and agreed that the operative language is not “to avoid unnecessary costs or delay” but the “common question of law or fact”. *Id.* In *Enterprise*, the two actions were consolidated to determine the validity of one of the plaintiff’s prejudgment attachment; not to address a common issue of fact or law and the Eighth Circuit held consolidation was improper stating “because a common issue of law or fact is a prerequisite to consolidation, the district court abused its discretion by consolidating the two lawsuits.” *Id.*

B. A COMMON ISSUE OF LAW EXISTS IN ALL CASES

In these cases, the legal issues between Plaintiff Melissa Lieberman and UNDERWOOD and/or EAGLES is the effect of a sale of real property pursuant to NRS 116.3116 *et. seq.* on the prior owners of the Property and the first deed of trust on the Property. All of this arises out of the misconception that there is a statutorily created “superpriority” for 9 months of common interest association assessments. First, the law, both common and Nevada statutory, are clear that the



1 HOA's interest is first in time because it's interest is perfected as of the date the CC&R's were
2 recorded. NRS 116.3116(4). This date, barring a very remote few circumstances, will always
3 occur prior to the recordation of the First Deed of Trust and is always superior in positions. The
4 law then grants a "superpriority" to the First Deed of Trust and carves out a 9-month exception
5 from that "superpriority" which is returned to the HOA which, by reason of being recorded first
6 in time has priority over the First Deed of Trust.

7 Arguments will arise as to whether there is a "superpriority" under the statute; did the first
8 deed of trust holder receive notice, actual or constitutional; does the foreclosure deed extinguish
9 the first deed of trust; and does the statute create a "payment" priority or a "title" priority. There
10 will be issues regarding the effect of the foreclosure deed and the existence of, if any, exceptions
11 to the statutory language. These legal issues will all arise from and concern the same provisions
12 of NRS 116.3116 *et. seq.* and the interpretation thereof.

13 **C. COMMON ISSUES OF FACT EXIST IN ALL CASES**

14 These cases involve, arise from and concern the exact same property, 2184 Pont National
15 Drive, Henderson, Nevada 89044 and involve the same parties, Melissa Lieberman, EAGLES,
16 Bank of America, N.A. and, putatively, UNDERWOOD, NAS and Madiera (these three are
17 factually important to the subsequent case A690944 but they are not actually named as parties
18 thereto). The questions regarding the service and other aspects of the process of foreclosure on the
19 Property are the same.

20 **IV.**

21 **LEGAL ARGUMENT**

22 This Court should exercise its discretion pursuant to NRCP 42(a) and consolidate case
23 numbers A685203 and A690944. These cases involve the same factual scenario regarding the
24 same Property and involving the same claims for relief, namely the request to quiet title. The same
25 legal arguments regarding the application and effect of NRS 116.3116 *et. Seq.* will predominate
26 each case and arise as to and out of the sale of the Property. The primary difference between the
27 two cases is that the current holder of record title, EAGLES, is in the subsequent case, A690944,
28 and the previous holder of record title, UNDERWOOD, is in the instant case, A685203. Neither

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1 case has progressed to the point where consolidation would create a hardship or difficult in
2 management from the Court's point of view. In fact, as the subsequent has not yet held the 16.1
3 conference and discovery has not yet started, it is more judicially economical to bring those parties
4 into the instant case and proceed with one discovery schedule. Although judicial economy is not
5 the controlling factor, it is relevant and economy favors consolidation.

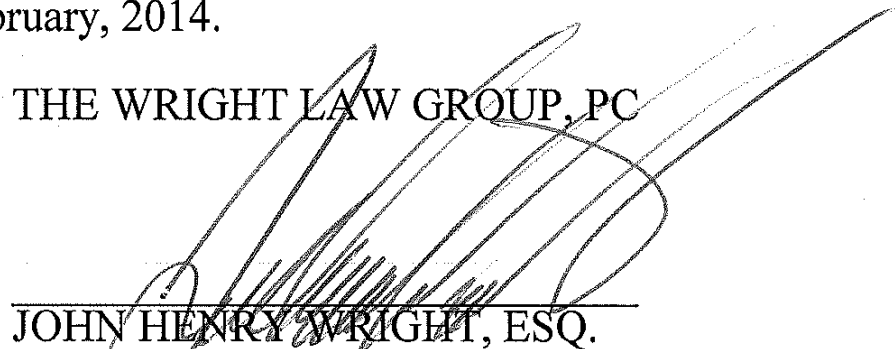
6 V.

7 **CONCLUSION**

8 This Court should grant the instant motion and consolidate case numbers A658203 and
9 A690944 into the instant litigation; A685203.

10 DATED: this 20th day of February, 2014.

11 THE WRIGHT LAW GROUP, PC

12
13 
14 JOHN HENRY WRIGHT, ESQ.
15 2340 Paseo Del Prado, Suite D-305
16 Las Vegas, Nevada 89102
17 Attorney for Defendant
18 UNDERWOOD PARTNERS, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of THE WRIGHT LAW GROUP, P.C. and that on the 20th day of February, 2014, I caused the foregoing, **DEFENDANT UNDERWOOD PARTNERS, LLC.'S MOTION TO CONSOLIDATE**, to be served as follows:

☒ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDER 7.26, by sending it via facsimile; and/or

☐ by hand delivery

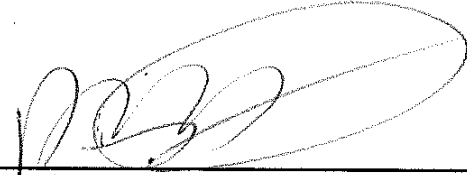
to the attorneys and/or parties in proper person listed below:

Jamie S. Cogburn, Esq.
COGBURN LAW OFFICES
2879 St. Rose Parkway, Suite 200
Henderson, Nevada 89052
Attorneys for Plaintiff

Ariel E. Stern, Esq.
AKERMAN, LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

Richard J. Vilkin, Esq.
LAW OFFICES OF RICHARD VILKIN, P.C.
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Attorneys for Nevada Association Services

Joseph P. Hardy, Esq.
GORDON & REES, LLP
3770 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Attorneys for Madiera Canyon Homeowners Association



An Employee of The Wright Law Group, PC

EXHIBIT A

Electronically Filed
07/16/2013 10:12:57 AM


CLERK OF THE COURT

1 **COMP**
2 **COGBURN LAW OFFICES**
3 **JAMIE S. COGBURN, ESQ.**
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9 2879 St. Rose Parkway, Suite 200
10 Las Vegas, Nevada 89052
11 Tel: (702) 384-3616
12 Fax: (702) 943-1936
13 Attorneys for Plaintiff

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

24 Defendant.

Case No: A - 13 - 685203 - C

Dept. No.: XXXII

COMPLAINT

25 **COMPLAINT**

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

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Henderson, NV 89052
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THE PARTIES, JURISDICTION, & VENUE

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

2. Mediera 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").

COGBURN LAW OFFICES

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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 Mediera 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

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Henderson, NV 89052
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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

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

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

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

25 ///

26 ///

THIRD CLAIM FOR RELIEF
(Breach of Contract against Mediera 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 Mediera, 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.

///

COGBURN LAW OFFICES
2879 St. Rose Pkwy, Suite 200
Henderson, NV 89052
(702) 384-3616 FAX: (702) 943-1936

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.

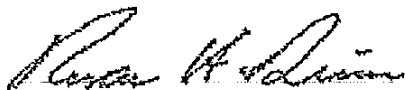
1 59. As a direct, foreseeable and proximate result, Plaintiff has suffered significant
2 loss and damages, including injury to reputation, humiliation, embarrassment, mental suffering
3 and inconvenience.

4 WHEREFORE, Plaintiff prays for relief and judgment as follows:

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

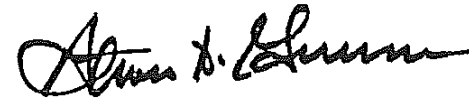
9 DATED this 16th day of June, 2013.

10 COGBURN LAW OFFICES

11
12 By: 
13 Janice S. Cogburn, Esq.
14 Nevada State Bar No. 8409
15 Ryan H. Devine, Esq.
16 Nevada State Bar No. 12953
17 2879 St. Rose Pkwy. Suite 200
18 Las Vegas, Nevada 89052
19 Attorneys for Plaintiff
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EXHIBIT B



CLERK OF THE COURT

1 **COMP**
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3 Nevada Bar No. 6182
4 THE WRIGHT LAW GROUP, P.C.
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6 Las Vegas, Nevada 89102
7 Telephone: (702) 405-0001
8 Facsimile: (702) 405-8454
9 Email: john@wrightlawgroupnv.com
10 Attorney for NV EAGLES, LLC

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

9 NV EAGLES LLC, a Nevada Limited
10 Liability Company,

11 Plaintiff,

12 vs.

13 PULTE MORTGAGE, LLC, a New York
14 Corporation, MELISSA N. LIEBERMAN,
15 an individual and DOES I through X,
16 inclusive; ROE ENTITIES XI through XX,

17 Defendants.

CASE NO. A-13-690944-C

DEPT. NO. X

**Exempt from Arbitration: Concerns Title
to Real Property**

16 **COMPLAINT**

17 Plaintiff NV EAGLES, LLC, a Nevada Corporation ("Plaintiff") files its complaint and
18 alleges against above-named defendants as follows:

19 **I. Parties**

- 20 1. Plaintiff is a Nevada Limited Liability Company with its principal place of business in
21 Clark County, Nevada and the current title owner of the property commonly known as 2184
22 Pont National Drive, Henderson, NV 89044, APN # 190-20-311-033 (the "Property").
23 2. Upon information and belief, Defendant Pulte Mortgage, LLC, a Delaware corporation
24 ("Pulte"), may claim an interest in the Property via a deed of trust securing a loan originated
25 by Pulte in 2008.
26 3. Upon information and belief, Defendant MELISSA N. LIEBERMAN ("LIEBERMAN"),
27 is and/or was a Nevada resident and former title owner to the Property.
28 4. Upon information and belief, each of the defendants sued herein as DOES I through X,





1 inclusive claim an interest in the Property or are responsible in some manner for the events
2 and action that plaintiff seeks to enjoin; that when the true names capacities of such
3 defendants become known, plaintiff will ask leave of this Court to amend this complaint
4 to insert the true names, identities and capacities together with proper charges and
5 allegations.

- 6 5. Upon information and belief, each of the defendants sued herein as ROES
7 CORPORATIONS I through X, inclusive claim an interest in the Property or are
8 responsible in some manner for the events an happenings herein that plaintiff seeks to
9 enjoin; that when the true names capacities of such defendants become known, plaintiff will
10 ask leave of this Court to amend this complaint to insert the true names, identities and
11 capacities together with proper charges and allegations.

12 II. General Allegations

13 *Plaintiff Acquired Title to the Property through Foreclosure of an Association Lien with* 14 *Super Priority Amounts*

- 15 6. The Property was acquired by Underwood Partners, LLC on June 7, 2013, by successfully
16 bidding on the Property at a publicly-held foreclosure auction in accordance with NRS
17 116.3116, *et. seq.* ("Association foreclosure sale").
- 18 7. On or about July 3, 2013, the resulting foreclosure deed was recorded in the Official
19 Records of the Clark County Recorder as Instrument Number 201307030002523
20 ("Foreclosure Deed").
- 21 8. On or about October 18, 2013, Underwood sold its interest to Plaintiff by Grant, Bargain,
22 Sale Deed recorded at instrument number 201310180001137. Since the Association
23 foreclosure sale, Plaintiff has expended additional funds and resources in relation to the
24 Property.
- 25 9. The foreclosure sale was conducted by Nevada Association Services ("NAS"), agent for
26 Madeira Canyon, a planned community (the "Association") pursuant to the powers
27 conferred by the Nevada Revised Statutes 116.3116, 116.31162-116.31168, the
28 Association's governing documents (CC&R's) and a Notice of Delinquent Assessments,



recorded on October 27, 2010 in the Official Records of the Clark County Recorder as Instrument Number 201010270002037 ("Association Lien").

10. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessments and Notice of Default, and the recording, posting and publication of the Notice of Sale.

11. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and encumbrances of unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

12. NRS 116.3116(2) further provides that a portion of the Association Lien, up to a maximum of nine months, has priority over even a first security interest [first deed of trust] in the Property:

[the Association Lien] is also prior to all security interests described in paragraph (b) 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[.]

13. Upon information and belief, the Association took the necessary action to trigger the super-priority portion of the Association Lien.



- 1 14. Upon information and belief, no party still claiming an interest in the Property recorded a
2 lien or encumbrance prior to the declaration creating the Association.
- 3 15. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount
4 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.
- 5 16. Upon information and belief, the Association or its agent Absolute distributed or should
6 have distributed the excess funds to lien holders in order of priority pursuant to NRS
7 116.3114(c).
- 8 17. Upon information and belief, Defendants had actual or constructive notice of the
9 requirement to pay assessments to the Association and of the Association Lien.
- 10 18. Upon information and belief, Defendants had actual or constructive notice of the
11 Association's foreclosure proceedings.
- 12 19. Upon information and belief, prior to the Association foreclosure sale, no individual or
13 entity paid the full amount of delinquent assessments described in the Notice of Default.
- 14 20. Upon information and belief, Pulte had actual or constructive notice of the super priority
15 portion of the Association Lien.
- 16 21. Upon information and belief, Pulte knew or should have known that its interest in the
17 Property could be extinguished through foreclosure if it failed to cure the super-priority
18 portion of the Association Lien representing 9 months of assessments for common expenses
19 based on the periodic budget adopted by the association which would have become due in
20 the absence of acceleration for the relevant time period.
- 21 22. Upon information and belief, prior to the Association foreclosure sale, no individual or
22 entity paid the super priority portion of the Association Lien representing 9 months of
23 assessments for common expenses based on the periodic budget adopted by the association
24 which would have become due in the absence of acceleration for the relevant time period.
- 25 23. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff "without equity or
26 right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
27 owner, his or her heirs and assigns, and all other persons."

28 *Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien*



- 1 24. Upon information and belief, LIEBERMAN obtained title to the Property with no status
2 through a Grant Bargain Sale Deed in November of 2006.
- 3 25. The Property was financed through Pulte in or around November of 2006. Pulte recorded
4 a deed of trust against the Property in the Official Records of the Clark County Recorder
5 as Instrument No. 200611270002922 ("First Deed of Trust").
- 6 26. Upon information and belief, the Association was formed and its declaration of CC&Rs
7 was recorded in the Official Records of the Clark County Recorder prior to the recordation
8 of the First Deed of Trust.
- 9 27. Upon information and belief, Pulte had actual or constructive notice of the Association Lien
10 and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.
- 11 28. Upon information and belief, the Notice of Trustee's Sale has not been recorded in the
12 Official Records of the Clark County Recorder.
- 13 29. Defendant LIEBERMAN's ownership interest in the Property was extinguished by the
14 foreclosure of the Association Lien.
- 15 30. Defendant Pulte's security interest in the Property, if any, was extinguished by the
16 foreclosure of the Association Lien.

17 **III. FIRST CLAIM FOR RELIEF**

18 **(Declaratory Relief/Quiet Title Pursuant to**

19 **NRS 30.010, *et. seq.*, NRS 40.10 & NRS 116.3116)**

- 20 31. Plaintiff repeats and realleges the allegations of paragraphs 1-31 as though fully set forth
21 herein and incorporates the same by reference.
- 22 32. Pursuant to NRS 30.010, *et. seq.* and NRS 40.10, this Court has the power and authority
23 to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants'
24 adverse claims in the Property.
- 25 33. Plaintiff acquired the Property on June 7, 2013 through the successful bid of Underwood
26 Partners, LLC at the Property at a publicly-held foreclosure auction in accordance with
27 NRS 116.3116, *et. seq.* and the resulting Foreclosure Deed vesting title in Underwood
28 Partners, LLC was recorded on July 3, 2013 and the Grant, Bargain, Sale Deed to Plaintiff



1 was recorded on October 18, 2013.

2 34. Upon information and belief, Defendant Pulte may claim an interest in the Property through
3 the First Deed of Trust even after the Association foreclosure sale.

4 35. Upon information and belief, Defendant LIEBERMAN, as former owner of the Property
5 may claim an ownership interest in the Property.

6 36. A foreclosure sale conducted pursuant to NRS 116.31162-116.31168, like all foreclosure
7 sales, extinguishes the title owner's interest in the Property and all junior liens and
8 encumbrances, including deeds of trust.

9 37. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has
10 priority over the First Deed of Trust.

11 38. Defendants were duly notified of the Association foreclosure sale and failed to act to
12 protect their interests in the Property, if any legitimately existed.

13 39. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is
14 the title owner of the Property; (2) the Foreclosure Deed is valid and enforceable; (3) the
15 Association foreclosure sale extinguished Defendants' ownership and security interests in
16 the Property; and (4) Plaintiff's rights and interest in the Property are superior to any
17 adverse interest claimed by Defendants.

18 40. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

19 **IV. SECOND CLAIM FOR RELIEF**

20 **(Unjust Enrichment)**

21 41. Plaintiff repeats and realleges the allegations of paragraphs 1- 41 as though fully set forth
22 herein and incorporate the same by reference.

23 42. Plaintiff has expended funds and resources in connection with the acquisition and
24 maintenance of the Property.

25 43. Defendants have benefitted or will benefit from the funds and resources expended by
26 Plaintiff, including, but not limited to excess proceeds distributed after the Association
27 foreclosure sale.

28 ///



44. If Plaintiff does not maintain title to and possession of the Property, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

45. Plaintiff will be damaged if Defendants retain the benefit of the funds and resources expended by Plaintiff.

46. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

47. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

V. THIRD CLAIM FOR RELIEF

(Preliminary and Permanent Injunction)

48. Plaintiff repeats and realleges the allegations of paragraphs 1-48 as though fully set forth herein and incorporate the same by reference.

49. Plaintiff properly acquired title to the Property at the Association foreclosure sale on June 7, 2013.

50. Defendant Pulte may claim that it maintained an interest in the Property through the First Deed of Trust which was extinguished by the Association foreclosure sale.

51. Defendant LIEBERMAN may claim an ownership interest in the Property.

52. A foreclosure sale based on the First Deed of Trust is invalid as Defendant Pulte lost its interest in the Property, if any, at the Association foreclosure sale.

53. Any sale or transfer of title to the Property by Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

54. Any attempt to take or maintain possession of the Property by Defendants would be invalid because Defendants' interest in the Property, if any, was extinguished by the Association foreclosure sale.

55. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Defendants would be invalid because Defendants' interest in the Property, if any, was extinguished by the Association foreclosure sale, including any attempt to re-key the doors to the Property or seek summary eviction of any person(s) residing therein or communicating therewith.

///



1 56. On the basis of the facts described herein, Plaintiff has a reasonable probability of success
2 on the merits of its claims and has no other adequate remedies at law.

3 57. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
4 Defendants from beginning or continuing any eviction proceedings that would affect
5 Plaintiff's possession of the Property.

6 58. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
7 Defendants from any sale or transfer that would affect the title to the Property.

8 59. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
9 Defendants from communicating with or harassing any person(s) residing at the Property
10 or taking any action to claim ownership or possession including attempting to re-key or
11 change the locks at the Property.

12 **VI. PRAYER FOR RELIEF**

13 Plaintiff requests judgment against Defendants as follows:

14 1. For a declaration and determination that NV EAGLES, LLC is the rightful owner
15 of title to the Property, and that Defendants be declared to have no right, title or interest in the
16 Property

17 2. For a preliminary and permanent injunction that Defendants, their successors,
18 assigns and agents are prohibited from initiating or continuing foreclosure proceedings, and from
19 selling, encumbering or transferring the Property;

20 3. For a preliminary and permanent injunction that Defendants, their successors,
21 assigns and agents are prohibited from initiating or continuing communications with any person(s)
22 residing at the Property or taking any action to possess or claim ownership in the Property
23 including, but not limited to re-keying or changing the locks at the Property;

24 4. For general and special damages in excess of \$10,000.00

25 5. For an award of attorney's fees and costs of suit; and

26 ///

27


28

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



1 6. For any further relief that the Court may deem just and proper.
2 Dated this 29th day of October, 2013.

3 THE WRIGHT LAW GROUP, PC

4
5
6 
7 JOHN HENRY WRIGHT, ESQ.
8 Nevada Bar No. 6182
9 THE WRIGHT LAW GROUP, PC.
10 2340 Paseo Del Prado, Suite D-305
11 Las Vegas, Nevada 89102
12 Telephone: (702) 405-0001
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14 Attorneys for Plaintiff
15 NV EAGLES, LLC
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 ORIGINAL


CLERK OF THE COURT

ORD
JOHN HENRY WRIGHT
Nevada Bar No. 6182
THE WRIGHT LAW GROUP
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Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com
Attorney for Defendant
UNDERWOOD PARTNERS, LLC,

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,
Defendants.

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

**ORDER GRANTING DEFENDANT UNDERWOOD PARTNERS, LLC,'S
MOTION TO CONSOLIDATE**

Defendant UNDERWOOD PARTNERS, LLC's Motion to Consolidate having been heard
in Chambers on March 18, 2014 by the Honorable Judge Rob Bare, having examined the Motion,
noting the Notice of Non-Opposition and good cause appearing therefore.

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IT IS HEREBY ORDERED that Defendant UNDERWOOD PARTNERS, LLC's Motion to Consolidate is GRANTED. Case A-13-690944-C shall be consolidated with the lower numbered case, A-13-685203-C

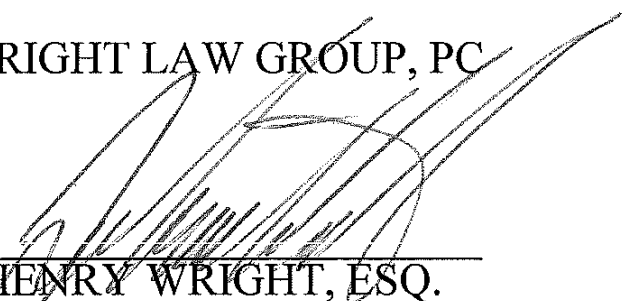
DATED: this 26 day of March, 2014.


DISTRICT COURT JUDGE

Respectfully Submitted by:

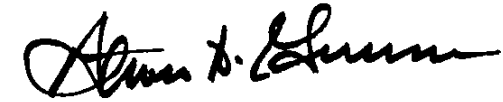
THE WRIGHT LAW GROUP, PC

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32


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UNDERWOOD PARTNERS, LLC

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CLERK OF THE COURT

ORDR
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Email: christina.wang@fnf.com
Attorneys for Third-Party Defendant
Lawyers Title of Nevada, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,)

vs.)

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

Defendants.)

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

Counterclaimant,)

vs.)

MELISSA LEIBERMAN, an individual)

Counterdefendant.)

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

Third Party Complainant,)

Case No.: A-13-685203-C

Dept. No.: XXXII

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

1 vs.)
2 COGBURN LAW OFFICE, a Nevada domestic)
3 limited liability company; NORMA TERAN, an)
4 individual; LAWYERS TITLE OF NEVADA,)
5 INC., a Nevada corporation, AS TRUSTEE FOR)
6 MORTGAGE ELECTRONIC REGISTRATION)
7 SYSTEMS, INC. ("MERS") AS NOMINEE FOR)
8 PULTE MORTGAGE, LLC; THE BANK OF)
9 NEW YORK MELLON FKA THE BANK OF)
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 Third-Party Defendant LAWYERS TITLE OF NEVADA, INC.'s Motion to Dismiss
18 NEVADA ASSOCIATION SERVICES, INC.'s Third-Party Complaint with prejudice pursuant
19 to Nevada Rule of Civil Procedure 12(b)(5) for failure to state a claim upon which relief can be
20 granted, having been filed and served on August 26, 2015; Notices of Non-Opposition having
21 been filed on September 16, 2015 and October 18, 2015; the Court having reviewed the
22 pleadings and papers on file, being fully advised in the premises, and good cause appearing
23 therefore;

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

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

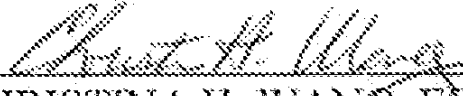
DATED this 3 day of Nov, 2015.



DISTRICT COURT JUDGE

RON GARE
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.
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17 Henderson, Nevada 89012
18 *Attorneys for Nevada Association Services,*
19 *Inc.*

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Attorneys for Bank of America, N.A. and
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20 Approved as to form and content by:

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23
24 Jamie S. Cogburn, Esq.
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Attorneys for Cogburn Law Offices and
Norma Teran

1 Respectfully submitted by:

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

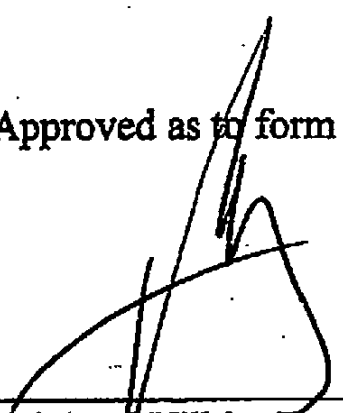
8

9 Approved as to form and content by:

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14 Richard Vilkin, Esq.
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18 *Attorneys for Nevada Association Services,*
19 *Inc.*

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24 Jamie S. Cogburn, Esq.
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28 Las Vegas, Nevada 89052
Attorneys for Cogburn Law Offices and
Norma Teran

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Approved as to form and content by:

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Steven Shevorski, Esq.
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Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

Approved as to form and content by:

1 Respectfully submitted by:

2

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8 Henderson, Nevada 89074
9 *Attorneys for Third-Party Defendant*
10 *Lawyers Title of Nevada, Inc.*

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9 Approved as to form and content by:

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13 Richard Vilkin, Esq.
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Attorneys for Bank of America, N.A. and
BNY Mellon, as Trustee

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Ryan H. Devine, Esq.
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Attorneys for Cogburn Law Offices and
Norma Teran

1 Respectfully submitted by:

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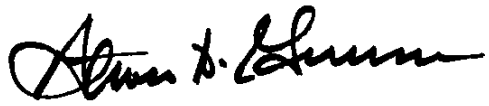
20 Approved as to form and content by:

21

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23

24 Jamie S. Cogburn, Esq.
25 Ryan H. Devine, Esq.
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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
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

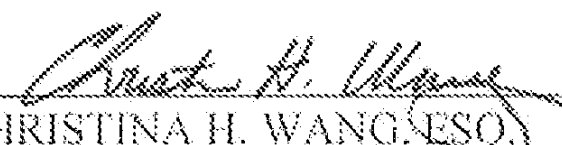
Dept. No.: XXXII

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

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

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

1 CERTIFICATE OF SERVICE

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

9
10 Richard Vilkin, Esq.
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12 1286 Crimson Sage Ave.
13 Henderson, Nevada 89012
14 *Attorneys for Nevada Association Services,*
15 *Inc.*

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16 Ryan H. Devine, Esq.
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19 Las Vegas, Nevada 89052
20 *Attorneys for Cogburn Law Offices and Norma*
21 *Teran*

22 DATED: 11/18/15

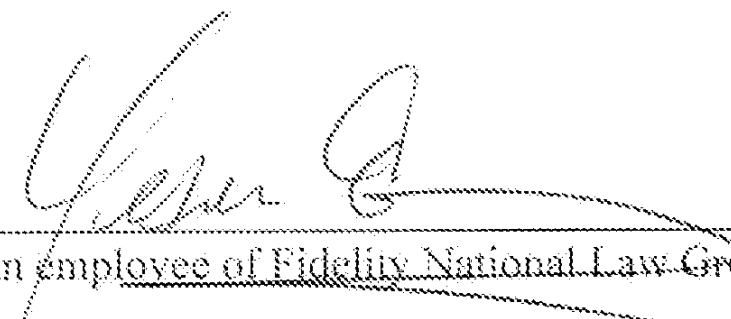
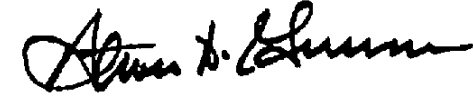
23 
24 An employee of Fidelity National Law Group
25
26
27
28

EXHIBIT A



CLERK OF THE COURT

ORDR
CHRISTINA H. WANG, ESQ.
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Henderson, Nevada 89074
Tel: (702) 667-3000
Fax: (702) 697-2020
Email: christina.wang@fnf.com
Attorneys for Third-Party Defendant
Lawyers Title of Nevada, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,)

vs.)

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

Defendants.)

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

Counterclaimant,)

vs.)

MELISSA LEIBERMAN, an individual)

Counterdefendant.)

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

Third Party Complainant,)

Case No.: A-13-685203-C

Dept. No.: XXXII

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


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

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

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

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

29 DATED this 3 day of Nov, 2015.

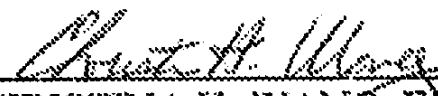
30 
 31 DISTRICT COURT JUDGE

32 JUDGE
 33 JUDGE DISTRICT COURT, DEPARTMENT 3

1 Respectfully submitted by:

2

3

4 
CHRISTINA H. WANG, ESQ.
5 Nevada Bar No. 9713
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7 *Lawyers Title of Nevada, Inc.*

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9 Approved as to form and content by:

Approved as to form and content by:

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13 Richard Vilkin, Esq.
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1 **ORDD**
2 JOHN HENRY WRIGHT
3 Nevada Bar No. 6182
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6 Las Vegas, Nevada 89102
7 Telephone: (702) 405-0001
8 Facsimile: (702) 405-8454
9 Email: john@wrightlawgroupnv.com
10 Attorney for Defendant
11 UNDERWOOD PARTNERS, LLC, and
12 NV EAGLES, LLC

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

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

18 Plaintiff,

19 vs.

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

Defendants.

CASE NO. A-13-685203-C

DEPT. NO. XXXII

Date of Hearing: September 6, 2016

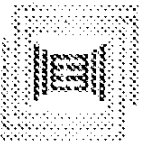
Time of Hearing: Chambers

21 **ORDER DENYING ORDER DENYING DEFENDANT NV EAGLES, LLC'S**
22 **MOTION FOR SUMMARY JUDGMENT**

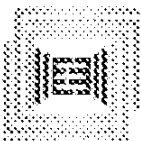
23 **AND**

24 **ORDER DENYING DEFENDANT BANK OF AMERICA, N.A.'S**
25 **COUNTERMOTION FOR SUMMARY JUDGMENT**

26 Defendant NV EAGLES, LLC'S Motion for Summary Judgment and Defendant BANK
27 OF AMERICA, N.A.'S Countermotion for Summary Judgment having come on for decision on
28 the Court's chambers calendar on September 6, 2016 with no parties present, the matter having
been orally argued before the Court on August 18, 2016 and the Court seeking and receiving
additional briefing and having reviewed the initial Motion, Countermotion, Oppositions and



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



1 Replies thereto the Court finding that there is a genuine issue of material fact as to whether there
2 was a proper tender by Defendant BANK OF AMERICAN, N.A., if the amount tendered was the
3 super-priority amount, if Defendant MADEIRA CANYON HOMEOWNERS' ASSOCIATION
4 acted properly in rejecting the attempted tender and whether Defendant NV EAGLES, LLC is an
5 innocent bona fide purchaser or that it had inquiry notice of Defendant BANK OF AMERICA,
6 N.A.'s tender and good cause appearing therefore:

7 IT IS HEREBY ORDERED that Defendant NV EAGLES, LLC'S Motion for Summary
8 Judgment is hereby denied

9 IT IS HEREBY FURTHER ORDERED that Defendant BANK OF AMERICA, N.A.'s
10 Countermotion for Summary Judgment is denied

11 DATED this _____ day of _____, 2016.

12
13
14 _____
HONORABLE ROB BARE

15 Respectfully Submitted by:

16 THE WRIGHT LAW GROUP, PC

17
18 _____
JOHN HENRY WRIGHT, ESQ.
19 2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
20 Attorneys for Defendant NV EAGLES, LLC

21
22
23
24 Approved as to form and content:
AKERMAN LLP

25
26 _____
REBEKKAH BODOFF, Esq.
27 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
28 Attorney for Defendant BANK OF AMERICA, N.A.

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Tel: (702) 405-0001 Fax: (702) 405-8454

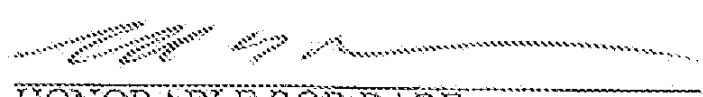


Replies thereto the Court finding that there is a genuine issue of material fact as to whether there was a proper tender by Defendant BANK OF AMERICAN, N.A., if the amount tendered was the super-priority amount, if Defendant MADEIRA CANYON HOMEOWNERS' ASSOCIATION acted properly in rejecting the attempted tender and whether Defendant NV EAGLES, LLC is an innocent bona fide purchaser or that it had inquiry notice of Defendant BANK OF AMERICA, N.A.'s tender and good cause appearing therefore:

IT IS HEREBY ORDERED that Defendant NV EAGLES, LLC'S Motion for Summary Judgment is hereby denied

IT IS HEREBY FURTHER ORDERED that Defendant BANK OF AMERICA, N.A.'s Countermotion for Summary Judgment is denied

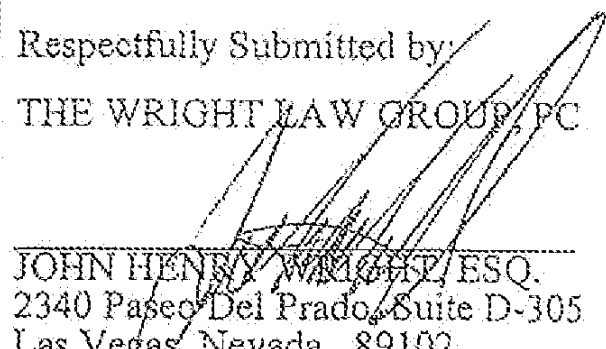
DATED this 27 day of October, 2016.


HONORABLE ROB BARE

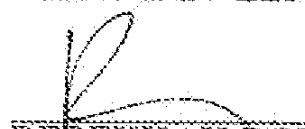
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Respectfully Submitted by:

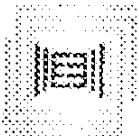
THE WRIGHT LAW GROUP, PC


JOHN HENRY WRIGHT, ESQ.
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Attorneys for Defendant NV EAGLES, LLC

Approved as to form and content:
AKERMAN LLP


REBEKKAH BODOFF, Esq.
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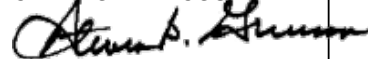
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GORDON & REES *Dismissed per order*
filed on 2/15/14

ROBERT LARSEN, Esq.
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Attorneys for Defendant
Madeira Canyon HOA

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5 Facsimile: (702) 966-3880
Attorneys for Plaintiff

6
7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

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

18 Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with A-13-690944

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

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

23 ...

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25 ...

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...

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

Dated this 21st day of November, 2018.

COGBURN LAW OFFICES

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

CERTIFICATE OF SERVICE

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

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

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

Law Offices of Richard Vilkin, P.C.

Richard J. Vilkin
1286 Crimson Sage Avenue
Henderson, NV 89012

*Attorneys for Nevada Association Services and Madeira Canyon
Homeowners Association*

The Wright Law Group

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

Akerman LLP

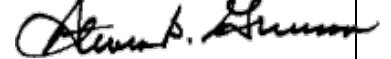
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*Attorneys for Bank of America, N.A. and The Bank of
New York Mellon FKA The Bank of New York, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2006 J-8, Mortgage Pass-
Through Certificates, Series 2006-J8*

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).¹

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

¹ 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 ...

34. Even if Miles Bauer's tender did not accurately calculate the entire superpriority amount, the tender was still valid because NAS would not accept any payment that did not include all its collection costs in satisfaction of the superpriority portion of the HOA's Lien.

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

36. The HOA's sale of the property for less than 7% of the property's fair market value is grossly inadequate to the extent the HOA foreclosed on the superpriority portion of its Lien.

37. To the extent the HOA's foreclosure sale is construed as a superpriority foreclosure, the sale was unfair and oppressive because the HOA and NAS did not conduct the sale in such a way to attract proper prospective purchasers, thus leading, in part, to the grossly inadequate sales price.

38. The HOA's foreclosure sale was unfair and oppressive because NAS represented to BANA, in litigation that is a matter of public record, that the foreclosure of an association's lien could not extinguish a senior deed of trust.

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.

FIRST CAUSE OF ACTION

(Quiet Title / Declaratory Relief against NV Eagles)

40. BoNYM repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

41. Under NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and authority to declare BoNYM's rights and interests in the property and to resolve NV Eagles' adverse claim in the property.

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.

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, BoNYM prays for the following:

1. A declaration establishing the Deed of Trust is the senior lien encumbering 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 12th day of July, 2019.

AKERMAN LLP

/s/ Natalie L. Winslow

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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 12th 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:

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Hong & Hong, APLC

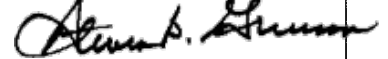
Debbie Batesel	dbhonglaw@hotmail.com
Joseph Y. Hong, Esq	yosuphonglaw@gmail.com

☐ **(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 CRCM

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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

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

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

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

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

10 WHEREFORE, Plaintiff prays for Judgment as follows:

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

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

22 3. For attorney's fees and costs; and

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4. For such other relief this Court deems proper.

DATED this 15th day of July, 2017.



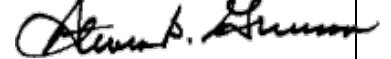
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CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b)(2)(D), I certify that I am an employee of Joseph Y. Hong, Esq., and that on this 15th day of July, 2019, I served a true and correct copy of the foregoing **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** by electronic transmission through the Eighth Judicial District Court EFP system (Odyssey eFileNV) pursuant to NEFCR 9 upon each party in this case who is registered as an electronic case filing user with the Clerk.

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



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Nevada Bar No. 8386
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7 *Attorneys for Bank of America, N.A. and The Bank of*
8 *New York Mellon FKA The Bank of New York, as*
9 *Trustee for the Certificateholders of CWALT, Inc.,*
Alternative Loan Trust 2006 J-8, Mortgage Pass-
Through Certificates, Series 2006-J8

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 v.

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

22 Defendants.

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

Consolidated with: A-13-690944-C

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

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

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

27 ...

28 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 16. Denied.

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

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

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

18 19. Denied.

19 20. Denied.

20 21. Denied.

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

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

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

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

27 25. Denied.

28 26. Denied.

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

PRAYER FOR RELIEF

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

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

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

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

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

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

SECOND AFFIRMATIVE DEFENSE
(Void for Vagueness)

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

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

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

...

...

1 **FOURTH AFFIRMATIVE DEFENSE**
2 **(Tender, Estoppel, Laches, and Waiver)**

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

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

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

9 **SIXTH AFFIRMATIVE DEFENSE**
10 **(Failure to Mitigate Damages)**

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

13 **SEVENTH AFFIRMATIVE DEFENSE**
14 **(No Standing)**

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

16 **EIGHTH AFFIRMATIVE DEFENSE**
17 **(Unclean Hands)**

18 BANA avers the affirmative defense of unclean hands.

19 **NINTH AFFIRMATIVE DEFENSE**
20 **(Plaintiff is Not Entitled to Relief)**

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

22 **TENTH AFFIRMATIVE DEFENSE**
23 **(Failure to Do Equity)**

24 BANA avers the affirmative defense of failure to do equity.

25 **ELEVENTH AFFIRMATIVE DEFENSE**
26 **(Failure to Provide Notice)**

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

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

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

THIRTEENTH AFFIRMATIVE DEFENSE
(No Super-Priority Sale)

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

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

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

Dated: July 30, 2019.

AKERMAN LLP

/s/Natalie L. Winslow

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Circle, Suite 200
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Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

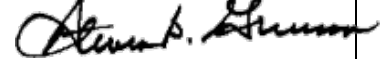
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 30th day of July, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWER TO NV EAGLES, LLC'S CROSS-CLAIMS**, in the following manner:

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

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/s/ Jill Sallade

An employee of AKERMAN LLP



ANS

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

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

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

...

...

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

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

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

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

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

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

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

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

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

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

28 ...

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

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

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

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

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

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

16. Denied.

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

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

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

19. Denied.

20. Denied.

21. Denied.

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

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

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

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

1 25. Denied.

2 26. Denied.

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

4 **PRAYER FOR RELIEF**

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

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

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

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

13 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

1 **FOURTH AFFIRMATIVE DEFENSE**
2 **(Tender, Estoppel, Laches, and Waiver)**

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

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

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

9 **SIXTH AFFIRMATIVE DEFENSE**
10 **(Failure to Mitigate Damages)**

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

13 **SEVENTH AFFIRMATIVE DEFENSE**
14 **(No Standing)**

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

16 **EIGHTH AFFIRMATIVE DEFENSE**
17 **(Unclean Hands)**

18 BoNYM avers the affirmative defense of unclean hands.

19 **NINTH AFFIRMATIVE DEFENSE**
20 **(Plaintiff is Not Entitled to Relief)**

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

22 **TENTH AFFIRMATIVE DEFENSE**
23 **(Failure to Do Equity)**

24 BoNYM avers the affirmative defense of failure to do equity.

25 **ELEVENTH AFFIRMATIVE DEFENSE**
26 **(Failure to Provide Notice)**

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

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

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

THIRTEENTH AFFIRMATIVE DEFENSE
(No Super-Priority Sale)

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

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

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

Dated: July 30, 2019.

AKERMAN LLP

/s/Natalie L. Winslow
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

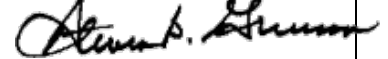
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 30th day of July, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON, AS TRUSTEE'S ANSWER TO NV EAGLES, LLC'S CROSS-CLAIMS**, in the following manner:

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

Cogburn Law Offices		
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	Contact	Email
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/s/ Jill Sallade

An employee of AKERMAN LLP



JPTM

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8286

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

AKERMAN LLP

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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.

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-J8, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-J8

Crossclaimant,

v.

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

**INDIVIDUAL PRETRIAL
MEMORANDUM**

NV EAGLES, LLC; DOES 1 THROUGH 10;
AND ROE CORPORATIONS 1 THROUGH 10,

Crossdefendant,

NV EAGLES, LLC,

Crossclaimant,

v.

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-J8, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-J8
and BANK OF AMERICA, N.A.,

Crossdefendants.

Trial of this matter is scheduled to commence during a five-week stack beginning on October 14, 2019. This pretrial memorandum is submitted pursuant to EDCR 2.67. The EDCR 2.67 conference occurred on December 11, 2018 with Jamie Cogburn appearing on behalf of Melissa Lieberman (**Lieberman** or **borrower**), Joseph Hong appearing on behalf of NV Eagles, LLC, and Natalie L. Winslow attending on behalf of Bank of America, N.A. (**BANA**) and The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8 (**BoNYM**).¹

A. Statement of Facts

1. This matter concerns title to real property located at 2184 Pont National Drive, Henderson, Nevada 89044; Parcel No. 190-20-311-033 (**property**).

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

3. On or about November 20, 2006, Lieberman executed a \$511,576.00 promissory note in favor of Pulte Mortgage, LLC, which was secured by a deed of trust (**deed of trust**) recorded in the

¹ BoNYM and BANA attempted to obtain party consent to file a joint pretrial memorandum. To date, the remaining parties in the lawsuit have not consented.

1 Clark County Recorder's Office as Instrument Number 20061127-0002922.

2 4. On or about September 14, 2011, the deed of trust was assigned to BoNYM via an
3 assignment of deed of trust recorded in the Clark County Recorder's Office as Instrument Number
4 20110919-0000030.

5 5. After the borrower defaulted on her obligations to the HOA, the HOA retained Nevada
6 Association Services, Inc. (NAS) to collect the delinquency.

7 6. On October 27, 2010, NAS recorded a Notice of Delinquent Assessment Lien (**lien**) in
8 the Clark County Recorder's Office as Instrument Number 20101027-0002037.

9 7. On December 21, 2010, NAS recorded a Notice of Default and Election to Sell Under
10 Homeowners Association lien in the Clark County Recorder's Office as Instrument Number
11 20101221-0000548.

12 8. After it received the Notice of Default, BANA, which serviced the loan secured by the
13 deed of trust on behalf of BoNYM, retained Miles, Bauer, Bergstrom & Winters, LLP to satisfy the
14 superpriority portion of the lien to protect the deed of trust.

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

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

21 11. On or about April 1, 2011, Miles Bauer sent a \$486.00 check to NAS, enclosed by a
22 letter explaining the check was equal to "9 months worth of delinquent assessments" and intended to
23 satisfy BoNYM's "obligations to the HOA as a holder of the first deed of trust against a property."

24 12. NAS rejected the \$486.00 check.

25 13. On April 1, 2013, NAS recorded a Notice of Foreclosure Sale in the Clark County
26 Recorder's Office as Instrument Number 20130401-0000723, which set the sale for April 26, 2013.

27 14. No sale occurred on that date.

28 15. On June 7, 2013, NAS foreclosed on some portion of the HOA's lien, selling the

1 property to Underwood Partners, LLC for \$30,000.00, as reflected in the Foreclosure Deed recorded
2 in the Clark County Recorder's Office as Instrument Number 20130703-0002523.

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

6 17. BANA and BoNYM retained expert appraiser Matthew Lubawy to perform a
7 retroactive Fair Market Value Appraisal of the property at the time of the June 7, 2013 HOA
8 foreclosure sale, as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the
9 Restatement (third) of property § 8.3. Mr. Lubawy is qualified to render an opinion regarding the Fair
10 Market Value of the property on June 7, 2013. As stated in Mr. Lubawy's expert report, Mr. Lubawy
11 opines that the Fair Market Value at the time of the HOA sale was \$430,000.00.

12 18. For the purposes of this calculation, Mr. Lubawy did not consider the fair "forced sale"
13 value of the real estate or the price of other comparable HOA non-judicial foreclosure sales, but the
14 price which would result from negotiation and mutual agreement, after ample time to find a purchaser,
15 between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but
16 not compelled to take a particular piece of real estate.

17 **B. Claims for Relief**

18 BoNYM has asserted the following claims against NV Eagles:

- 19 1. Quiet Title
20 2. Declaratory Relief

21 NV Eagles has asserted the following claims against BANA and BoNYM:

- 22 1. Quiet Title
23 2. Cancellation of Instruments
24 3. Injunctive Relief

25 **C. Affirmative Defenses**

26 BoNYM asserted the following affirmative defenses to NV Eagles' claims:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

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

SECOND AFFIRMATIVE DEFENSE
(Void for Vagueness)

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

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

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

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

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

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

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

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

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

SEVENTH AFFIRMATIVE DEFENSE
(No Standing)

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

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

BoNYM avers the affirmative defense of unclean hands.

1 **NINTH AFFIRMATIVE DEFENSE**
2 **(Plaintiff is Not Entitled to Relief)**

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

4 **TENTH AFFIRMATIVE DEFENSE**
5 **(Failure to Do Equity)**

6 BoNYM avers the affirmative defense of failure to do equity.

7 **ELEVENTH AFFIRMATIVE DEFENSE**
8 **(Failure to Provide Notice)**

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

12 **TWELFTH AFFIRMATIVE DEFENSE**
13 **(Void Foreclosure Sale)**

14 The HOA's foreclosure sale is void for failure to comply with the provisions of NRS Chapter
15 116, and other provisions of law.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**
17 **(No Super-Priority Sale)**

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

20 **FOURTEENTH AFFIRMATIVE DEFENSE**
21 **(Additional Affirmative Defenses)**

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

24 BANA asserted the following affirmative defenses to NV Eagles' claims:

25 **FIRST AFFIRMATIVE DEFENSE**
26 **(Failure to State a Claim)**

27 NV Eagles failed to state facts sufficient to constitute any cause of action against BANA.
28

SECOND AFFIRMATIVE DEFENSE
(Void for Vagueness)

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

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

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

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

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

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

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

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

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

SEVENTH AFFIRMATIVE DEFENSE
(No Standing)

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

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

BANA avers the affirmative defense of unclean hands.

NINTH AFFIRMATIVE DEFENSE
(Plaintiff is Not Entitled to Relief)

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

1
2 **TENTH AFFIRMATIVE DEFENSE**
3 **(Failure to Do Equity)**

4 BANA avers the affirmative defense of failure to do equity.

5 **ELEVENTH AFFIRMATIVE DEFENSE**
6 **(Failure to Provide Notice)**

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

10 **TWELFTH AFFIRMATIVE DEFENSE**
11 **(Void Foreclosure Sale)**

12 The HOA's foreclosure sale is void for failure to comply with the provisions of NRS Chapter
13 116, and other provisions of law.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**
15 **(No Super-Priority Sale)**

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

18 **FOURTEENTH AFFIRMATIVE DEFENSE**
19 **(Additional Affirmative Defenses)**

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

22 **D. Abandoned Claims or Defenses**

23 No claims or defenses have been abandoned by any party at this time.

24 **E. Proposed Amendments to the Pleadings**

25 **BANA and BoNYM's 's View:**

26 BANA and BoNYM do not anticipate any amendments to the pleadings at this time; however,
27 they reserve the right to make any and all trial amendments as supported by the evidence and allowed
28 by law.

1 **F. List of Exhibits**

2 BANA and BoNYM submit the following exhibits:

- 3 1. Deed of Trust, BANA 000001-000019.
- 4 2. Notice of Delinquent Assessment Lien, BANA 000020.
- 5 3. Notice of Default and Election to Sell Under Homeowners Association Lien, BANA
- 6 000021-000022.
- 7 4. Assignment of Deed of Trust, BANA 000023-000024.
- 8 5. Notice of Foreclosure Sale, BANA 000025-000026.
- 9 6. Foreclosure Deed, BANA 000027-BANA 000029.
- 10 7. Grant, Bargain Sale Deed, BANA-000030-000033.
- 11 8. Notice of Lis Pendens, BANA 000034-000036.
- 12 9. CC&Rs, BANA 000037-000108.
- 13 10. Payoff Statement, BANA 000109-000111.
- 14 11. Title Policy, BANA 000112-000126.
- 15 12. Miles Bauer Affidavits, BANA 000127-000149.
- 16 13. Nevada Association Services, Inc.'s Initial Disclosures, BANA 000150-000337.
- 17 14. Reporter's Declaration Regarding Failure of Witness to Appear for the Taking of
- 18 Deposition, BANA 000338-000344.
- 19 15. May 24th Transcript of Proceeding from Case No. A-14-695770-C, *TRP Fund IV, LLC*
- 20 *v. Bank of America, N.A.*, Bench Trial, Day One, Testimony of Chris Yergensen and Paterno Jurani,
- 21 BANA 000345-000490.
- 22 16. Client Letter from David Stone Regarding Foreclosure Sales (Dated March 2008),
- 23 BANA 000491-000492.
- 24 17. NAS Response To Subpoena Duces Tecum, Eighth Judicial District Court, Clark
- 25 County, Nevada Case A-15-712829-C, *Rick Salomon v. Tam A. Dao, et al.* (Affidavit of Custodian of
- 26 Records, "HOA Seminar Advises On Foreclosures, Warns Of Fraud"), BANA 000493-000495.
- 27
- 28

18. Findings of Fact and Conclusions of Law And Judgment; Eighth Judicial District Court, Clark County, Nevada Case A-14-695770-C, *TRP Fund IV, LLC v. Bank of America, N.A. et al.* (Filed July 19, 2017), BANA 000496-000534.

19. Trial Testimony of Chris Yergensen; Eighth Judicial District Court, Clark County, Nevada Case No A-14-707392-C, *Paradise Harbor Trust Place v. U.S. Bank, N.A., et al.* (Dated November 15, 2017), BANA 000535-000622.

20. White Lake Ranch Association, Inc.'s Response to U.S. Bank, N.A.'s Subpoena *Duces Tecum*; Second Judicial District Court, Washoe County, Nevada Case CV14-01151, *SFR Investments Pool I, LLC v. U.S. Bank, N.A., et al.*, BANA 000623-000705.

21. Non-Binding Arbitration Award; State of Nevada Department of Business and Industry, Real Estate Division Alternative Dispute Resolution No. 12-58, *Bank of America v. Stonefield HOA, et al.* (Filed September 18, 2012), BANA 000706-000714.

22. Various Pleadings from the Docket; United States District Court, District of Nevada Case 2:11-cv-00167, *BAC Home Loan Servicing, LP v. Stonefield II Homeowners Association, et al.*, BANA 000715-000909.

23. Alessi & Koenig, LLC's Arbitration Brief; State of Nevada Department of Business and Industry, Real Estate Division Alternative Dispute Resolution No. 12-58, *Bank of America v. Stonefield HOA, et al.* (Filed September 7, 2012), BANA 000910-000993.

24. NAS's Joinder to Brief Submitted by LJS&G; State of Nevada Department of Business and Industry, Real Estate Division Alternative Dispute Resolution No. 12-58, *Bank of America v. Stonefield HOA, et al.* (Filed September 10, 2012), BANA 000994.

25. Arbitration Brief; State of Nevada Department of Business and Industry, Real Estate Division Alternative Dispute Resolution No. 12-58, *Bank of America v. Stonefield HOA, et al.* (Filed September 7, 2012), BANA 000995-001010.

26. Non-Binding Arbitration Award; State of Nevada Department of Business and Industry, Real Estate Division Alternative Dispute Resolution No. 12-58, *Bank of America v. Stonefield HOA, et al.* (Filed September 18, 2012), BANA 001011-001019.

27. NRED Advisory Opinion – Super Priority Lien – Advisory No. 13-01; State of Nevada

1 Department of Business and Industry, Real Estate Division (Issued December 12, 2012), BANA
2 001020-001039.

3 28. LJS&G Arbitration Brief; State of Nevada Department of Business and Industry, Real
4 Estate Division Alternative Dispute Resolution No. 12-58, *Bank Of America v. Stonefield HOA, et al.*
5 (Filed September 7, 2012), BANA 001040-001154.

6 29. Expert Report, BANA 001155-001184.

7 BANA and BoNYM may offer the following documents, data compilations, and tangible things:

- 8 1. Grant, Bargain, Sale Deed, BANA 001185-001188.
- 9 2. Grant, Bargain, Sale Deed, BANA 001189-001191.
- 10 3. Notice of Delinquent Assessment Lien, BANA 001192.
- 11 4. Release of Notice of Delinquent Assessment Lien, BANA 001193.

12 BANA and BoNYM reserve the right to offer additional exhibits as necessary and for
13 impeachment and/or rebuttal purposes.

14 BANA and BoNYM also designate all discovery served and pleadings, motions, and orders
15 filed in this case up to and through trial.

16 BANA and BoNYM reserve the right to offer any and all discovery responses, including:
17 Responses to Requests for Admission; Responses to Interrogatories; Responses to Requests for
18 Production of Documents. BANA and BoNYM reserve the right to call any witnesses or offer any
19 and all documents disclosed by any party to this action, including, without limitation, the documents
20 disclosed in the Pretrial Disclosures of all parties pursuant to N.R.C.P. 16.1(a)(3).

21 **G. List of Witnesses**

22 BANA and BoNYM's Witnesses:

23 BANA and BoNYM expect to call the following witnesses:

- 24 1. Diane Deloney, Jessica Woodbridge, Shawn Look, Matt LaBrie, and/or
25 other Corporate Representative(s) or Document Custodian(s) for BANA²
26 800 Samoset Drive
Mail Code DE5-024-02-08
Newark, Delaware, 19713

27 _____
28 ² No party is to engage in ex parte communications without Akerman's consent.

2. Diane Deloney, Jessica Woodbridge, Shawn Look, Matt LaBrie, and/or other Corporate Representative(s) or Document Custodian(s) for BoNYM³
800 Samoset Drive
Mail Code DE5-024-02-08
Newark, Delaware, 19713
3. Jonathan Sussman and/or other Corporate Representative(s) or Document Custodian(s) for NV Eagle, LLC
c/o HONG & HONG, PLLC
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
4. Corporate Representative(s) or Document Custodian(s) for Underwood Partners, LLC
c/o Paracorp Inc.
318 North Carson Street, Suite 208
Carson City, Nevada 89701
5. Corporate Representative(s) and/or Document Custodian(s) for Madeira Canyon Homeowners Association
c/o Associa Nevada South
3675 West Cheyenne Avenue, Suite 100
North Las Vegas, Nevada 89032
6. Susan Moses, Chris Yergensen, Esq., Brandon Wood, Kia Jacoway, and/or other Corporate Representative(s) or Document Custodian(s) for Nevada Association Services, Inc.
6224 West Desert Inn Road, Suite A
Las Vegas, Nevada 89146
7. Doug Miles, Esq. and/or Corporate Representative(s) or Document Custodian(s) for MILES, BAUER, & WINTERS, LLP
f/k/a MILES, BAUER, BERGSTROM & WINTERS, LLP
555 Anton Boulevard, Suite 150
Costa Mesa, CA 92626
8. Rock K. Jung, Esq.
WRIGHT, FINLAY & ZAK LLP
7785 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
9. Chris Yergensen, Esq.
1797 Mezza Court
Henderson, NV 89012
10. Matthew Lubawy, MAI
Valbridge Property Advisors
3034 South Durango Drive #100
Las Vegas, Nevada 89117

H. Contested Issues of Law

1. Whether Miles Bauer's superpriority tender cured the default as to that portion of the HOA's lien before the HOA's foreclosure sale, or whether tender was futile.

³ No party is to engage in ex parte communications without Akerman's consent.

1 a. BANA and BoNYM's Position: Miles Bauer's superpriority tender cured the default as
2 to that portion of the HOA's lien, meaning Underwood purchased the property subject to the deed of
3 trust as a matter of law. *See Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv.
4 Op. 72, 427 P.3d 113, 116 (2018) (holding "a first deed of trust holder's unconditional tender of the
5 superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of
6 trust"). To the extent the amount tendered was incorrect, the tender still cured the default as to the
7 superpriority portion of the lien because knowledge of the exact superpriority amount depended on
8 accounts only accessible to NAS. *See* 74 AM. JUR. 2d *Tender* § 4 (explaining that tender is "excused"
9 if "the amount depends on the balance shown by accounts that are inaccessible to the party from whom
10 the tender would otherwise be required ... and such information is ascertainable only from the
11 accounts of the creditor, who does not disclose the required information to the debtor[.]"); *In re*
12 *Campbell*, 105 F.2d 197, 200 (9th Cir. 1939) (holding a debtor was excused from submitting payment
13 for the specific amount due under a promissory note because of the creditor's "failure to inform the
14 debtor as to the net amount which had accrued under the agreement"). Similarly, NAS's rejection of
15 thousands of other superpriority payments that Miles Bauer submitted shows NAS would accept
16 nothing less than the entire lien amount to satisfy only the superpriority portion of the lien. *See Bank*
17 *of America, N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. Adv. Op. 7, 435 P.3d 1217, 1220 (2019)
18 (holding that under the tender doctrine, submitting an actual payment is "excused" if the creditor
19 "would reject any such tender if attempted"); *id.*, at 1219-20 (citing *Guthrie v. Curnutt*, 417 F.2d 764,
20 765-66 (10th Cir. 1969) ("[W]hen a party, able and willing to do so, offers to pay another a sum of
21 money and is told that it will not be accepted, the offer is a tender without the money being
22 produced."); *Mark Turner Props., Inc. v. Evans*, 554 S.E. 2d 492, 495 (Ga. 2001) ("Tender of an
23 amount due is waived when the party entitled to payment, by declaration *or by conduct*, proclaims
24 that, if the tender of the amount due is made, an acceptance of it will be refused.") (emphasis in
25 original); *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear ... that
26 any affirmative tender of performance is excused when performance has in effect been prevented by
27 the other party to the contract.")).

28 2. Whether the HOA elected to foreclose on only the subpriority portion of its lien.

1 a. BANA and BoNYM's Position: The HOA elected to foreclose on only the subpriority
2 portion of its lien. The Nevada Supreme Court has explained an association can foreclose on either
3 the sub-priority or super-priority portion of its lien. *See Shadow Wood Homeowners Ass'n v. New*
4 *York Cmty. Bancorp*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association
5 forecloses on its superpriority lien portion, the sale also would extinguish other subordinate interests
6 in the property."). In fact, the Supreme Court recently affirmed summary judgment in favor of a senior
7 lender in an NRS 116 quiet-title action because the association elected to foreclose on only the
8 subpriority portion of its lien. *See Prestige Rentals, LLC v. Nationstar Mortg., LLC*, 437 P.3d 1058
9 (Table), 2019 WL 1458793, at *1 (Nev. Mar. 29, 2019) (unpublished) (rejecting HOA-sale purchaser's
10 argument that "an HOA cannot foreclose on only the subpriority portion of its lien when the
11 superpriority portion has not been satisfied," noting the purchaser did "not identif[y] any provision in
12 the Uniform Common Interest Ownership Act that prohibits the HOA from making such a choice");
13 *see also U.S. Bank, N.A. as Tr. for Cert. Holders of Structured Asset Mortg. Invs., Inc. v. Bourne*
14 *Valley Court Trust*, 433 P.3d 263 (Table), 2019 WL 292980, at *1 (Nev. Jan. 17, 2019) (unpublished)
15 (reversing summary judgment in HOA-sale purchaser's favor because lender "introduced prima facie
16 evidence that the HOA ... foreclosed on only the subpriority portion of [its] lien"). Here, neither the
17 HOA nor NAS believed the superpriority portion of the HOA's lien existed at the time of the
18 foreclosure sale, and thus could not have elected to foreclose on that portion of the lien. Further,
19 NAS's distribution of the foreclosure-sale proceeds – where it satisfied the subpriority portion of the
20 HOA's lien without providing BoNYM with any proceeds – confirms this was a subpriority
21 foreclosure. *See JPMorgan Chase Bank, N.A. v. 1209 Village Walk Trust, LLC*, 2018 WL 1448805,
22 at *3 (Nev. March 20, 2018) (unpublished) (holding it was improper for the foreclosing association to
23 recover the sub-priority portion of its lien before paying off the senior deed of trust in full).

24 3. If the HOA's foreclosure is construed as a superpriority foreclosure, whether the deed
25 of trust survived as a matter of equity because it was unfair and oppressive.

26 a. BANA and BoNYM's Position: The deed of trust survived as a matter of equity because
27 the HOA sold the property for 7% of its fair market value after (1) NAS rejected Miles Bauer's
28 superpriority tender, and (2) NAS had taken the position in litigation against BANA that its

1 association-lien foreclosures could not extinguish senior deeds of trust. *See Nationstar Mortgage,*
2 *LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 642
3 (2017) (explaining one example "of fraud, unfairness, or oppression" is "an HOA's representation that
4 the foreclosure sale will not extinguish the first deed of trust," and whether a mortgagee attempted to
5 pay the super-priority amount is "significant" to the effect of an association's foreclosure sale); *San*
6 *Florentine Ave. Trust v. JPMorgan Acquisition Corp.*, 427 P.3d 125 (Table), 2018 WL 4697260, at
7 *1 (Nev. Sep. 28, 2018) (unpublished) (affirming summary judgment in senior lender's favor because
8 the association's agent mailed the senior lender "letters stating that the HOA's lien was subordinate to
9 respondent's deed of trust, with the implication being that any ensuing foreclosure sale would not
10 extinguish respondent's deed of trust") (citing *Shadow Canyon*, 405 P.3d at 647); *Nationstar Mortg.*
11 *LLC v. Melvin Group, LLC*, 422 P.3d 711 (Table), 2018 WL 3544972, at *1 (Nev. Jul. 20, 2018)
12 (unpublished) (explaining an association's efforts to "thwart[]" a senior lender's "efforts to tender the
13 superpriority amount" can provide evidence of "unfairness or oppression").

14 4. Whether NV Eagles was a bona fide purchaser.

15 a. BANA and BoNYM's Position: NV Eagles' bona fide purchaser status is irrelevant
16 because its predecessor and affiliate, Underwood, took title subject to the deed of trust was a matter
17 of law. *See Bank of America*, 427 P.3d at 121 (holding bona fide purchaser doctrine is irrelevant if
18 senior lender tenders the superpriority amount before the association's foreclosure sale). Even if this
19 Court determines it must look to the equities, NV Eagles is not protected by the bona fide purchaser
20 doctrine because neither it nor Underwood was a bona fide purchaser, as the publicly-recorded deed
21 of trust explicitly stated the beneficiary could pay off the HOA's liens to protect the deed of trust,
22 providing NV Eagles and Underwood with inquiry notice of Miles Bauer's superpriority tender and
23 thus presumed knowledge of the tender unless they conducted a due investigation and did not discover
24 it. *See Shadow Wood*, 366 P.3d at 1116 (explaining to be a bona fide purchaser, one must take property
25 "for a valuable consideration and without notice of the prior equity, and without notice of facts which
26 upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed
27 to make such inquiry") (quoting *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)). NV
28 Eagles and Underwood made no such investigation. Further, the warranty-less deed Underwood

accepted leaves no room for bona fide purchaser status, and NV Eagles and Underwood's sophistication confirms neither was a bona fide purchaser.

I. Time Required for Trial

Two days.

K. Other Matters

None.

Dated this __ day of September, 2019.	Dated this 25th day of September, 2019.
HONG & HONG, APLC	AKERMAN LLP
<u>/s/ NO RESPONSE</u> JOSEPH Y. HONG, ESQ. Nevada Bar No. 5995 10781 West Twain Avenue Las Vegas, Nevada 89135 <i>Attorney for NV Eagles, LLC</i>	<u>/s/ Natalie L. Winslow</u> DARREN T. BRENNER, ESQ. Nevada Bar No. 8286 NATALIE L. WINSLOW, ESQ. Nevada Bar No. 12125 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 <i>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</i>
Dated this __ day of September, 2019.	
MELISSA LIEBERMAN	
<u>/s/ NO RESPONSE</u> MELISSA LIEBERMAN 2184 Pont National Drive Henderson, Nevada 89044 <i>Appearing Pro Se</i>	

CERTIFICATE OF SERVICE

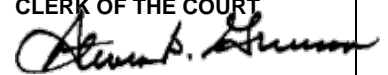
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 25th day of September, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **INDIVIDUAL PRETRIAL MEMORANDUM**, in the following manner:

(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.

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The Bank of New York Mellon FKA The
Bank of New York, as Trustee for the
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Alternative Loan Trust 2006 J-8, Mortgage
Pass-Through Certificates, Series 2006-J8*

EIGHTH JUDICIAL 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

STIPULATED FACTS FOR TRIAL

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC., ALTERNATIVE LOAN TRUST
2006-J8, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-J8

Crossclaimant,

v.

NV EAGLES, LLC; DOES 1 THROUGH 10;
AND ROE CORPORATIONS 1 THROUGH 10,

Crossdefendant,

NV EAGLES, LLC,

Crossclaimant,

v.

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC., ALTERNATIVE LOAN TRUST
2006-J8, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-J8 and BANK
OF AMERICA, N.A.,

Crossdefendants.

NV Eagles, LLC (**NV Eagles**), 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 (**BONY**), and Bank of America, N.A. (**BANA**) (collectively with BONY, **Bank Defendants**) stipulate as follows in advance of the upcoming bench trial:

1. This matter concerns title to real property located at 2184 Pont National Drive, Henderson, Nevada 89044; Parcel No. 190-20-311-033 (**Property**).

2. The Property is governed by the Declaration of Covenants, Conditions, and Restrictions (**CC&Rs**) of Madeira Canyon Homeowners Association (**HOA**), which were recorded in the Clark County Recorder's Office as Instrument Number 20050524-0002414. **Trial Ex. 8.**

///

///

1 3. Melissa Lieberman (**Borrower**) borrowed \$511,576.00 to finance her purchase of the
2 Property in 2006, which loan was secured by a deed of trust recorded in the Clark County Recorder's
3 Office as Instrument Number 20061127-0002922 (**Deed of Trust**). **Trial Ex. 1.**

4 4. On or about September 14, 2011, the Deed of Trust was assigned to BONY via an
5 Assignment of Deed of Trust recorded in the Clark County Recorder's Office as Instrument Number
6 20110919-0000030. **Trial Ex. 2.**

7 5. After the Borrower defaulted on her obligations to the HOA, the HOA retained Nevada
8 Association Services, Inc. (**NAS**) to collect the delinquency.

9 6. On October 27, 2010, NAS recorded a Notice of Delinquent Assessment Lien in the
10 Clark County Recorder's Office as Instrument Number 20101027-0002037. **Trial Ex. 3.**

11 7. On December 21, 2010, NAS recorded a Notice of Default and Election to Sell Under
12 Homeowners Association Lien in the Clark County Recorder's Office as Instrument Number
13 20101221-0000548. **Trial Ex. 4.**

14 8. After it received the Notice of Default, BANA, who serviced the loan secured by the
15 Deed of Trust, retained Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**). **Trial Ex. 9.**

16 9. On or about February 22, 2011, Rock Jung, an attorney at Miles Bauer, sent a letter to
17 NAS. *Id.*, at BANA000131–32.

18 10. On or about March 12, 2011, NAS sent Jung a payoff ledger showing the total amount
19 the Borrower owed. *Id.*, at BANA000134–35.

20 11. The ledger did not show the HOA had incurred any maintenance or nuisance-abatement
21 charges. *Id.*

22 12. On April 1, 2013, NAS recorded a Notice of Foreclosure Sale in the Clark County
23 Recorder's Office as Instrument Number 20130401-0000723, which set the sale for April 26, 2013.
24 **Trial Ex. 5.**

25 13. No sale occurred on that date.

26 14. On June 7, 2013, NAS conducted an auction and Underwood Partners, LLC
27 (**Underwood**) was the highest bidder and paid \$30,000.00, as reflected in the Foreclosure Deed
28

recorded in the Clark County Recorder's Office as Instrument Number 20130703-0002523. **Trial Ex. 6.**

15. On September 18, 2013, Underwood conveyed its interest in the Property to NV Eagles via a Grant, Bargain, and Sale Deed recorded in the Clark County Recorder's Office as Instrument Number 20131018-0001137. **Trial Ex. 7.**

16. BANA retained expert appraiser Matthew Lubawy to perform a retroactive Fair Market Value Appraisal of the Property at the time of the June 7, 2013 foreclosure sale, as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement (third) of Property § 8.3. Mr. Lubawy is qualified to render an opinion regarding the fair market value of the Property on June 7, 2013. As Mr. Lubawy opines in the expert report, the Property's fair market value at the time of the HOA's sale was \$430,000.00. **Trial Ex. 12.**

17. For the purposes of this calculation, Mr. Lubawy did not consider the fair "forced sale" value of the real estate or the price of other comparable HOA non-judicial foreclosure sales, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

18. The Parties stipulate to admit Joint Exhibits 1–16. The Joint Exhibit List is attached as **Exhibit A.**

Dated this 27th day of December 2019.	Dated this 27th day of December, 2019.
HONG & HONG PLLC	AKERMAN LLP
<u>/s/ Joseph Y. Hong</u>	<u>/s/ Rex D. Garner</u>
JOSEPH Y. HONG, ESQ. Nevada Bar No. 5995 1980 Festival Plaza Drive, Suite 650 Las Vegas, Nevada 89135	DARREN T. BRENNER, ESQ. Nevada Bar No. 8386 NATALIE L. WINSLOW, ESQ. Nevada Bar No. 12125 REX D. GARNER, ESQ. Nevada Bar No. 9401 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134
<i>Attorney for NV Eagles, LLC</i>	<i>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</i>

EXHIBIT A

EXHIBIT(S) LIST

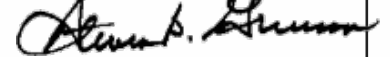
Case No.: A-13-685203-C Dept. No.: XXXII Plaintiff: <div style="text-align: center;">NV EAGLES LLC</div> <div style="text-align: center;">vs.</div> Defendant: <div style="text-align: center;">MADEIRA CANYON HOMEOWNERS' ASSOCIATION et al</div>	Civil Trial Date: <u>January 14, 2020</u> Judge: <u>Rob Bare</u> Court Clerk: _____ Recorder: _____ Counsel for Plaintiff: _____ <u>Joseph Y Hong, Esq.</u> Counsel for Defendant: <u>Bank of America, N.A.</u> <u>Bank of New York Mellon</u> <u>Darren Brenner, Esq., Rex Garner, Esq.</u>
--	--

CIVIL TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Deed of Trust BANA000001-000019			
2	Assignment of Deed of Trust BANA000023-000024			
3	Notice of Delinquent Assessment Lien BANA000020			
4	Notice of Default and Election to Sell BANA000021-000022			
5	Notice of Foreclosure Sale BANA000025-000026			
6	Foreclosure Deed BANA000027-000029			
7	Grant, Bargain Sale Deed BANA000030-000033			
8	Covenants, Conditions, and Restrictions BANA000037-0000108			
9	Miles Bauer Tender Affidavit BANA000127-000143			
10	Miles Bauer Letter Affidavit BANA000144-000149			
11	NAS Collection File BANA000150-000337			
12	Expert Report of Matthew Lubawy BANA001155-001184			

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
13	Pleadings and Order from Case No. 2:11-cv-00167 BANA000715-000750; BANA000783-000819			
14	Briefing and Arbitration Award from NRED Case No. 12-58 BANA000910-000927; BANA000994; BANA001011-001015			
15	Payoff Statement BANA000109-000111			
16	Lis Pendens BANA000034-000036			



MJUD
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Attorney for NV Eagles, LLC.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

MADIERA CANYON HOMEOWNERS'
ASSOCIATION, et al.,

Defendants.

And All Related Claims.


CASE NO.: A-13-685203-C

DEPT. NO.: XXXII

**NV EAGLES, LLC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW
PURSUANT TO NRCP RULE 50**

COMES NOW, NV Eagles, LLC. ("NVE"), by and through its attorney of record,
JOSEPH Y. HONG, ESQ. of HONG & HONG, and hereby submits its Motion for Judgment as a
Matter of Law Pursuant to NRCP Rule 50.

DATED this 14th day of January, 2020.



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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **1. Summary of Motion**

4 NRCF Rule 50 states as follows: “a motion for judgment as a matter of law
5 may be made at any time before the case is submitted to the jury. The motion must specify the
6 judgment sought and the law and facts that entitle the movant to the judgment.” The trial for this
7 matter commenced on Tuesday, January 14, 2020 at 1:00 p.m. wherein Joint Trial Exhibits 1-16
8 were admitted into as evidence pursuant to the parties’ filed Stipulated Facts. As the Court is
9 aware, this case, like hundreds presently pending in the Eighth Judicial District Courts, involves
10 a HOA’s superpriority lien pursuant to NRS Chapter 116 and the HOA’s foreclosure of same
11 extinguishing a bank’s first deed of trust encumbering a property. As the Court is also aware,
12 pursuant to the seminal case of *SFR*, an HOA foreclosure sale conducted pursuant to NRS
13 Chapter 116 extinguishes a bank’s deed of trust as a matter of Nevada law. In the present case,
14 like in all of these HOA superpriority lien cases, the burden shifts to Bank of America, N.A. and
15 Bank of New York Mellon (collectively “Banks”) in seeking post HOA sale relief, i.e.
16 satisfaction of the superpriority portion of the HOA lien. Thus, the present case, like in all HOA
17 superpriority lien cases, “[t]he burden of demonstrating that the delinquency was cured presale,
18 rendering the sale void, [is] on the party challenging the foreclosure.” *Resources Group, LLC. v.*
19 *Nevada Association Services, Inc.*, 437 P. 3d 154, 156 (Nev. March 14, 2019).

20 As will be discussed in further detail hereinbelow, NVE is entitled to a judgment as a
21 matter of law for two (2) reasons: (1) the applicable statute of limitations has expired as to the
22 Banks’ cross-claim based on tender and the Banks’ affirmative defense of tender; and (2)
23 notwithstanding, there was no valid tender as a matter of Nevada law per *Diamond Spur*, 134
24 Nev. Adv. Op. 72 (September 13, 2018) since the amount tendered was less than the
25 superpriority portion of the HOA’s lien.

1 **2. Argument**

2
3 **A. It is Undisputed that the Banks are Time-Barred by the Statute of Limitations**

4 First, it is undisputed that the HOA foreclosure sale occurred on June 7, 2013. *See*
5 *Foreclosure Deed which has been admitted into as evidence as Joint Trial Exhibit # 6.*

6 The only Answers and/or Cross-Claims filed by the Banks were on: September 12, 2013,
7 *see Exhibit "A" attached hereto —Answers—*; July 12, 2019, *see Exhibit "B" attached*
8 *hereto— Cross-Claim; July 30, 2019, see Exhibit "C" attached hereto — Answers.* The first
9 time a claim/affirmative defense of tender was pled by the Banks was via its Cross-Claim filed
10 on July 12, 2019. *See Exhibit "B."* The Banks, thereafter pled tender as an affirmative defense
11 on July 30, 2019. *See Exhibit "C."*

12 It is undisputed that this tender claim/ affirmative defense is based on the premise
13 that only the subpriority portion of the HOA lien pursuant to NRS Chapter 116 was foreclosed
14 upon. As the Court is aware, an affirmative defense, if proven by the evidence, defeats a
15 plaintiff's claim in its entirety.

16 Thus, as to the Banks' claim/affirmative defense of tender, the 3 year statute of limitation
17 applies under NRS 11.190(3)(a). As the Nevada Supreme Court noted in *Torrealba v. Kesmetis*,
18 124 Nev. 95, 178 P. 3d 716, 723 (2008), "[t]he phrase 'liability created by statute' means a
19 liability which would not exist but for the statute." *Id.* 178 P. 3d at 722. The Court further noted,
20 "[w]here a duty exists only by virtue of a statute... the obligation is one created by statute." *Id.*
21 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F. Supp. 1012, 1015 (D. Nev. 1951) (quoting
22 *Abram v. San Joaquin Cotton Oil Co.*, 46 F. Supp. 969, 976 (D. Cal. 1942) (internal citations and
23 quotations omitted).

24 The Banks' subpriority claim via their claim/affirmative defense of tender is simple: the
25 HOA foreclosed on only its subpriority portion of the lien pursuant to NRS Chapter 116 since the
26 the Banks, through their counsel, Miles Bauer, allegedly tendered the superpriority portion.
27 Thus, by virtue of the HOA foreclosing on allegedly only its subpriority portion, the Banks'

1 claim/affirmative defense claim the “liability” is a void sale as to the superpriority lien and,
2 therefore, resulting in NVE taking title subject to the Deed of Trust. This
3 split of a superpriority and subpriority arises implicitly from NRS 116 because as the Nevada
4 Supreme Court noted, it is the statute, i.e. NRS 116.3116 that governs liens against units for
5 HOA assessments and details the portion of the lien that has superpriority status. *Bank of*
6 *America, N.A. v. SFR Investments Pool 1, LLC*, 427 P. 3d 113, 116 (Nev. 2018).

7 Thus, but for the statute — NRS Chapter 116---, there would be no superpriority and
8 subpriority portions. Moreover, but for the HOA having foreclosed on the subpriority portion,
9 there would be no liability on the part of the Banks as to NVE’s claim that the Deed of Trust was
10 extinguished. Thus, the HOA’s lien is created by statute —NRS Chapter 116---; the
11 superpriority and subpriority mechanisms of an HOA lien are created by statute —NRS Chapter
12 116---; the superpriority and subpriority portions are fixed by statute —NRS Chapter 116---; and
13 the HOA foreclosing on only the subpriority portion is created by statute —NRS Chapter 116.
14 *See Torrealba*, 178 P. 3d at 723.

15 Based on the foregoing, the Banks’ subpriority claim/affirmative defense based on tender
16 is subject to the 3 year statute of limitations prescribed by NRS 11.190(3)(a). The HOA
17 foreclosure sale occurred on **June 7, 2013. This is undisputed.** Thus, the date by which the
18 Banks had to file their subpriority claim/affirmative defense of tender was June 7, 2016.

19 This Court, in an identical HOA case involving a bank’s affirmative defense of tender —
20 *TWT v. Nationstar Mortgage*, case # A-14-703846-C---, just recently held that the applicable
21 statute of limitations for an affirmative defense of tender was 5 years from the HOA foreclosure
22 sale. This Court expressly held as follows: “As for tender claim, under NRS 11.070 and 080,
23 the applicable statute of limitations is 5 years. Here, if the Court does not consider the period
24 while the case was stayed between October 26, 2015 and May 31, 2019, a period of
25 approximately 43 months as tolled for the purposes of statute of limitations, Plaintiff is correct
26 that Defendant’s federal foreclosure bar and tender claims will be barred by the statute of
27 limitations because Defendant failed to allege them until August 19, 2019, when it filed its
28

1 Amended Answer.” Emphasis added. See December 31, 2019 Minute Order in *the case of TWT*
2 *v. Nationstar Mortgage*, case # A-14-703846-C, —the written FFCL has not yet been entered by
3 the Court—, attached hereto as **Exhibit “D.”** This Court, therefore, as recently as December 31,
4 2019, has unequivocally held that an affirmative defense of tender was subject to a 5 year statute
5 of limitations from the date of the HOA foreclosure sale.

6 In the present case, it is undisputed that the HOA foreclosure sale occurred on **June 7,**
7 **2013.** Thus, pursuant to this Court’s recent December 31, 2019 unequivocal holding on the
8 identical issue, see **Exhibit “D,”** the 5 year statute of limitations expired on **June 7, 2018.**
9 It is undisputed that the first time the Banks alleged the claim/affirmative defense of
10 tender was on July 12, 2019 –Cross Claim— and on July 30, 2019 –Answer to NVE’s Cross
11 Claim— which were both **over a year AFTER** the expiration of the 5 year statute of limitations.

12 .NVE anticipates that the Banks will attempt to argue that their Cross-Claim filed
13 on July 12, 2019 and Answers filed on July 30, 2019 somehow relate-back to their original
14 Answers filed on September 12, 2013. This contemplated argument, however, fails as a matter
15 of law wherein this Court, in its December 31, 2019 holding in the *TWT* case, did not apply
16 the relations back argument.

17 NRCP 15 (c) states that “[w]henver the claim or defense asserted in the
18 amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted
19 to be set forth in the original pleading, the amendment relates back to the date of the original
20 pleading.” However, “where the original pleading does **NOT** give a defendant ‘fair notice of
21 what the plaintiff’s [amended] claim is and the grounds upon which it rests,’ the purpose of
22 the statute of limitations has not been satisfied and it is ‘not an original pleading that [can]
23 be rehabilitated by invoking Rule 15 (c).’” Emphasis added. *Baldwin County Welcome Center v.*
24 *Brown*, 466 U.S. 147, 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). See also,
25 *Glover v. F.D.I.C.*, 698 F. 3d 139, 146 (3d Cir. 2012).

26 In other words, the analysis under 15 (c) is “whether the original complaint adequately
27 notified the defendants of the basis for liability the plaintiffs would later advance in the
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1 amended complaint.” *Meijer, Inc. v. Biovail Corp.*, 533 F. 3d 857, 866 (D.C. Cir. 2008).

2 Similarly, Nevada law will not allow a new claim based upon a new theory of liability asserted in
3 an amended pleading to relate-back under NRCP 15 (c) after the statute of limitations has run.
4 *Nelson v. City of Las Vegas*, 99 Nev. 548, 556-57, 665 P. 2d 1141, 1146 (1983).

5 Here, the Banks’ original Answers made no allegations whatsoever that
6 the superpriority portion was cured and/or not foreclosed upon via a tender. Compare this to
7 the Banks’ Cross-Claim and Answers to NVE’s Cross-Claim, the Banks completely changed the
8 basis –via their new claim/affirmative defense --- for which they were challenging the HOA sale,
9 i.e. tender. Because of this, there is no relation-back as a matter of law. See *Nutton v. Sunset*
10 *Station, Inc.*, 357 P. 3d 966 (Nev. 2015).

11 NVE also anticipates that the Banks will argue that the statute of limitations does not
12 apply to affirmative defenses and will cite to a string of cases leading with the *Dredge* case.
13 However, the Nevada Supreme Court in *Dredge* never held that affirmative defenses are not
14 subject to the applicable statute of limitations. Rather, the Nevada Supreme Court held that if a
15 party is seeking *coercive relief* — as in the instant case of the Banks seeking a declaration that
16 their deed of trust was not extinguished via their new affirmative defense — the statute of
17 limitations applies. The Banks may then cite to the *Nevada State Bank* case. In that case, the
18 Nevada Supreme Court confirmed that affirmative defenses are subject to the applicable statute
19 of limitations and only the unique affirmative defense of “equitable recoupment” was not subject
20 to the statute of limitations. This Court, in its recent December 31, 2019 holding in the TWT
21 case, absolutely held that affirmative defenses are subject to the applicable statute of limitations.
22 See Exhibit “D.”

23 The Banks, therefore, as a matter of Nevada law and as confirmed by this Court on
24 December 31, 2019, are time-barred from obtaining any relief pursuant to their new
25 claim/affirmative defense of tender.

1 **B. The Banks Failed to Tender the Full Amount of the Superpriority Portion of**
2 **the HOA Lien**

3 The Banks' tender claim is based on the Nevada Supreme Court's holding in *Diamond*
4 *Spur* and their attempted tender, via Miles Bauer, of the superpriority portion of the HOA lien.
5 Miles Bauer, on February 22, 2011, requested a payoff from the HOA trustee. *See Joint Trial*
6 *Exhibit "9,"* bate stamped #000131-132 that has been admitted into evidence. Miles Bauer then
7 received the ledger in or about February 2011 from the HOA trustee. *See Joint Trial Exhibit*
8 *"9,"* bate stamped #000134 admitted into as evidence. The ledger reflected a quarterly
9 assessment of \$162.00 for the year of **2011** and, therefore, the 9 months of assessments totaled
10 \$486.00. Miles Bauer then attempted to tender a check in the amount of \$486.00 on April 1,
11 2011. *See Joint Trial Exhibit "9,"* bate stamped #000137-139.

12 However, this was NOT the full amount of the superpriority portion of the HOA lien.
13 The Notice of Delinquent Assessment Lien was recorded on 10-27-**2010**. *See Joint Trial*
14 *Exhibit "3" admitted into as evidence.* As a matter of Nevada law, the superpriority portion of
15 the HOA lien consisted of the 9 months preceding the 10-27-2010 Notice of Delinquent
16 Assessment Lien, which were the months of January through September 2010. The quarterly
17 assessment for the year of 2010 was \$180.00 and, therefore, the 9 months of assessments
18 totaled **\$540.00**. *See Joint Trial Exhibit "11,"* bate stamped #000215. The superpriority portion
19 of the HOA's lien, therefore, was \$540.00 and **not** \$486.00. Miles Bauer failed to tender the full
20 amount of the superpriority portion and, therefore, the attempted tender was NOT a valid tender
21 pursuant to *Diamond Spur*. As the Court is aware, the Nevada Supreme Court in *Diamond Spur*
22 expressly held that a "[v]alid tender requires payment in full." There are no ifs, ands or buts
23 about it.

24 Finally, any argument by the Banks as to the HOA foreclosure notices not having
25 specified the superpriority amount is wholly without merit and directly contrary to the Nevada
26 Supreme Court's holding in the seminal *SFR* case where the Nevada Supreme Court expressly
27 held that the applicable provisions of NRS Chapter 116 did not require the foreclosure notices
28 to specify that the superpriority component was being foreclosed. *SFR*, 130 Nev. at 757, 334 P.

1 3d at 418 (observing that it was “appropriate” for the notices to state the total lien amount
2 because they are sent to the homeowner and other junior lienholders).

3 **CONCLUSION**

4 Thus, notwithstanding the fact that the Banks are time-barred by the 5 year statute of
5 limitations from obtaining any relief via their Cross-Claim/affirmative defense of tender, there
6 was no valid tender as a matter of Nevada law. *See Diamond Spur*. NVE, therefore, submits that
7 the Court must enter that Judgment for Quiet Title/Declaratory Relief as to the Banks’ deed of
8 trust having been extinguished at the time of the HOA foreclosure sale.

9 DATED this 14th day of January, 2020.



10
11 JOSEPH Y. HONG, ESQ.
12 Nevada Bar No. 5995
13 1980 Festival Plaza Dr., Suite 650
14 Las Vegas, Nevada 89135
15 Attorney for NV Eagles, LLC.
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CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b)(2)(D), I certify that I am an employee of Joseph Y. Hong, Esq., and that on this 14th day of January, 2020, I served a true and correct copy of the foregoing

**NV EAGLES, LLC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW
PURSUANT TO NRCP RULE 50**

by electronic transmission through the Eighth Judicial District Court EFP system (Odyssey eFileNV) pursuant to NEFCR 9 upon each party in this case who is registered as an electronic case filing user with the Clerk.

By /s/ Debra L. Batesel

An employee of Joseph Y. Hong, Esq.



CLERK OF THE COURT

1 **ANAC**
2 **ARIEL E. STERN, ESQ.**
3 Nevada Bar No. 8276
4 **STEVEN SHEVORSKI, ESQ.**
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13 *Attorneys for Bank of America, N.A. and*
14 *BNY Mellon, as Trustee*

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

17 **MELISSA LIEBERMAN,**
18
19 **Plaintiff,**

20 **v.**

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

Defendants, et al.

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

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

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

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

///

///

{27060360;1}

"A"

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

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

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

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

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

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

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

23 GENERAL ALLEGATIONS

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

27 10. BANA admits the allegations contained in paragraph 10.

28 ///

1 11-21. BANA is without sufficient knowledge or information sufficient to form a belief as to
2 the allegations contained in Paragraph 11-21 of the Plaintiff's complaint, and therefore denies each
3 allegation contained therein.

4 FIRST CLAIM FOR RELIEF

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

7 23-28. BANA denies the allegations contained in Paragraphs 23 through 28 of the Plaintiff's
8 complaint.

9 SECOND CLAIM FOR RELIEF

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

12 30-35. BANA denies the allegations contained in Paragraphs 30 through 35 of the Plaintiff's
13 complaint.

14 THIRD CLAIM FOR RELIEF

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

17 37-41. BANA denies the allegations contained in Paragraphs 30 through 41 of the Plaintiff's
18 complaint.

19 FOURTH CLAIM FOR RELIEF

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

22 43-47. BANA denies the allegations contained in Paragraphs 43 through 47 of the Plaintiff's
23 complaint.

24 FIFTH CLAIM FOR RELIEF

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

27 49-54. BANA denies the allegations contained in Paragraphs 49 through 54 of the Plaintiff's
28 complaint.

1 **SIXTH CLAIM FOR RELIEF**

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

4 56-59. BANA denies the allegations contained in Paragraphs 56 through 59 of the Plaintiff's
5 complaint.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

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

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Underwood is not a Bona Fide Purchaser for Value)**

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

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Violation of Procedural Due Process)**

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

20 **FOURTH AFFIRMATIVE DEFENSE**

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

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

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FIFTH AFFIRMATIVE DEFENSE

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

DATED this 12th day of September, 2013.

AKERMAN SENTERFITT LLP

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of September, 2013, and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**, postage prepaid and addressed to:

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

Attorneys for Plaintiff

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

Attorneys for Nevada Association Services, Inc.

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

Attorneys for Underwood Partners, LLC

/s/ Eloisa Nuñez
An employee of AKERMAN SENTERFITT LLP



CLERK OF THE COURT

1 **ANTC**
2 **ARIEL E. STERN, ESQ.**
3 Nevada Bar No. 8276
4 **STEVEN SHEVORSKI, ESQ.**
5 Nevada Bar No. 8256
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13 *Attorneys for Bank of America, N.A. and*
14 *BNY Mellon, as Trustee*

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

17 **MELISSA LIEBERMAN,**
18
19 Plaintiff,

20 v.

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

Defendants, et al.

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

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

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

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

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

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

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

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

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

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

20 **FIRST CLAIM FOR RELIEF**

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

23 9-11. BNY Mellon, as Trustee, is without sufficient knowledge or information sufficient to
24 form a belief as to the allegations contained in Paragraph 9-11 of Third Party Plaintiff's complaint,
25 and therefore denies each allegation contained therein.

26 ///

27 ///

28 ///

SECOND CLAIM FOR RELIEF

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

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

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

///

///

1 **FOURTH AFFIRMATIVE DEFENSE**

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

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

5 **FIFTH AFFIRMATIVE DEFENSE**

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

9 DATED this 12th day of September, 2013.

10 **AKERMAN SENTERFITT LLP**

11 /s/ Steven G. Shevorski, Esq.

12 ARIEL E. STERN, ESQ.

13 Nevada Bar No. 8276

14 STEVEN G. SHEVORSKI, ESQ.

15 Nevada Bar No. 8256

16 1160 Town Center Drive, Suite 330

17 Las Vegas, Nevada 89144

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

CERTIFICATE OF SERVICE

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

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

Attorneys for Plaintiff

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

Attorneys for Nevada Association Services, Inc.

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

Attorneys for Underwood Partners, LLC

/s/ Eloisa Nuñez
 An employee of AKERMAN SENTERFITT LLP



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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.

...

...

"B"

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).¹

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

¹ 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 ...

34. Even if Miles Bauer's tender did not accurately calculate the entire superpriority amount, the tender was still valid because NAS would not accept any payment that did not include all its collection costs in satisfaction of the superpriority portion of the HOA's Lien.

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

36. The HOA's sale of the property for less than 7% of the property's fair market value is grossly inadequate to the extent the HOA foreclosed on the superpriority portion of its Lien.

37. To the extent the HOA's foreclosure sale is construed as a superpriority foreclosure, the sale was unfair and oppressive because the HOA and NAS did not conduct the sale in such a way to attract proper prospective purchasers, thus leading, in part, to the grossly inadequate sales price.

38. The HOA's foreclosure sale was unfair and oppressive because NAS represented to BANA, in litigation that is a matter of public record, that the foreclosure of an association's lien could not extinguish a senior deed of trust.

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.

FIRST CAUSE OF ACTION

(Quiet Title / Declaratory Relief against NV Eagles)

40. BoNYM repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

41. Under NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and authority to declare BoNYM's rights and interests in the property and to resolve NV Eagles' adverse claim in the property.

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;

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL: (702) 634-5000 - FAX: (702) 380-8572

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th 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
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Cogburn Law Offices

Jamie Cogburn	jsc@cogburnlaw.com
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Hong & Hong, APLC

Debbie Batesel	dbhonglaw@hotmail.com
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☐ **(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



ANS

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

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

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

...

...

u c "

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

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

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

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

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

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

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

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

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

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

28 ...

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

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

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

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

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

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

16. Denied.

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

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

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

19. Denied.

20. Denied.

21. Denied.

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

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

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

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

1 25. Denied.

2 26. Denied.

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

4 **PRAYER FOR RELIEF**

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

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

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

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

13 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

27

28

1 **FOURTH AFFIRMATIVE DEFENSE**
2 **(Tender, Estoppel, Laches, and Waiver)**

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

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

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

9 **SIXTH AFFIRMATIVE DEFENSE**
10 **(Failure to Mitigate Damages)**

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

13 **SEVENTH AFFIRMATIVE DEFENSE**
14 **(No Standing)**

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

16 **EIGHTH AFFIRMATIVE DEFENSE**
17 **(Unclean Hands)**

18 BoNYM avers the affirmative defense of unclean hands.

19 **NINTH AFFIRMATIVE DEFENSE**
20 **(Plaintiff is Not Entitled to Relief)**

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

22 **TENTH AFFIRMATIVE DEFENSE**
23 **(Failure to Do Equity)**

24 BoNYM avers the affirmative defense of failure to do equity.

25 **ELEVENTH AFFIRMATIVE DEFENSE**
26 **(Failure to Provide Notice)**

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

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

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

THIRTEENTH AFFIRMATIVE DEFENSE
(No Super-Priority Sale)

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

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

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

Dated: July 30, 2019.

AKERMAN LLP

/s/ Natalie L. Winslow

DARREN T. BRENNER, ESQ.

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NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

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Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

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

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

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

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

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

...

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 16. Denied.

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

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

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

18 19. Denied.

19 20. Denied.

20 21. Denied.

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

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

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

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

27 25. Denied.

28 26. Denied.

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

2 **PRAYER FOR RELIEF**

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

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

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

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

11 **AFFIRMATIVE DEFENSES**

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

15 **FIRST AFFIRMATIVE DEFENSE**
16 **(Failure to State a Claim)**

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

18 **SECOND AFFIRMATIVE DEFENSE**
19 **(Void for Vagueness)**

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

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

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

25 ...

26 ...

1 **FOURTH AFFIRMATIVE DEFENSE**
2 **(Tender, Estoppel, Laches, and Waiver)**

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

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

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11 NV Eagles' claims are barred in whole or in part because of its failure to take reasonable steps
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15 NV Eagles lacks standing to bring some or all of its claims and causes of action.

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18 BANA avers the affirmative defense of unclean hands.

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24 BANA avers the affirmative defense of failure to do equity.

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26 **(Failure to Provide Notice)**

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

TWELFTH AFFIRMATIVE DEFENSE
(Void Foreclosure Sale)

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

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

FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

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

Dated: July 30, 2019.

AKERMAN LLP

/s/ Natalie L. Winslow

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

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Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

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

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

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/s/ Jill Sallade

An employee of AKERMAN LLP

Skip to: Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine Search Close

Location: District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. A-14-703846-C

TWT Investments LLC, Plaintiff(s) vs. Nationstar Mortgage LLC,
Defendant(s)

§
§
§
§
§
§
§

Case Type: Other Title to Property
Date Filed: 07/15/2014
Location: Department 32
Cross-Reference Case Number: A703846

PARTY INFORMATION

Defendant Nationstar Mortgage LLC

Lead Attorneys
Ariel E. Stern
Retained
702-634-5000(W)

Plaintiff TWT Investments LLC

Joseph Y. Hong
Retained
702-870-1777(W)

EVENTS & ORDERS OF THE COURT

12/17/2019 Motion for Summary Judgment (9:30 AM) (Judicial Officer Bare, Rob)

12/17/2019, 12/31/2019

Nationstar Mortgage LLC's Motion For Summary Judgment

Minutes

10/29/2019 9:30 AM

11/19/2019 9:30 AM

12/17/2019 9:30 AM

- Court noted this is a Homeowners Association (HOA) case with the tender and Federal Foreclosure Bar issue. Court stated the recent Federal case, Federal Housing Finance Agency- 2019 Westlaw 6828293 (12/13/19) regarding the 6 year statute of limitations on the Freddie Mac cases. Court referred to the recent Supreme Court case Daisy Trust and stated the banks no longer need the loan servicing documents or the original promissory note, however would need the proper business records. Colloquy regarding the tender issue, discovery, sufficient notice, statute of limitations and the case stayed for 43 1/2 months. Arguments by Counsel. Court noted the bank meets the initial burden on the merits, however Court ORDERED, Matter CONTINUED to Chambers for decision. Court to review the stipulation and order for the stay and the tender issue and other issues as well. Court noted it would issue a minute order with its decision. 01/08/20 (CHAMBERS) DECISION: NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT CLERK'S NOTE: Court Clerk-Thomas completed this minute order by way of the JAV's recording and was not present in Court. kt 12/24/19

12/31/2019 9:30 AM

- A703846 TWT Investments v. Nationstar Mortgage This matter came before the Court for Defendant Nationstar Mortgage LLC's Motion for Summary Judgment on December 17, 2019. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT and set the matter on the chamber calendar for January 8, 2020. After carefully considering the evidence and arguments submitted, COURT FINDS and ORDERS the following: The Court FINDS that Defendant's analysis regarding federal foreclosure bar and tender, under Daisy Trust v. Wells Fargo Bank, N.A., 45 P.3d 846, 135 Nev. Adv. Op. 30 (July 25, 2019) and Bank of America, N.A. v. SFR Investments Pool 1, LLC, 134 Nev. 604, 427 P.3d 113 (2018), are appropriate and adopts the arguments made in its pleadings. However, Plaintiff's opposition raising the concern over the statute of limitation needed to be addressed before the Court can grant the summary

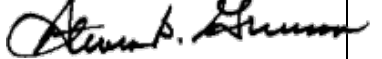
"D"

judgment. Here, the HOA foreclosure sale took place on May 15, 2013. The Complaint was filed on July 15, 2014. Defendant filed its Answer on August 21, 2014. On October 26, 2015, the Court STAYED the case while the Nevada Supreme Court issued a ruling regarding superpriority lien payment. On May 31, 2019, the parties entered into a stipulation and order lifting the stay. Defendant filed an Amended Answer on August 19, 2019. The Amended Answer included an affirmative defenses of federal foreclosure bar and tender, which were not included in the original Answer. The Court FINDS that the statute of limitation for federal foreclosure bar, under the Housing and Economic Recovery Act of 2008 (HERA), for an action brought by the Federal Housing Finance Agency (FHFA) as the conservator for Freddie Mac, is 6 years. Federal Housing Finance Agency v. LNC Management LLC, Series 2937 Barboursville, 369 F.Supp.3d 1101 (D. Nev. March 11, 2019). Furthermore, since HERA authorized the FHFA, as a conservator, to delegate operational decisions to Freddie Mac's management and Freddie Mac's servicer, HERA's extended statute also applies to Freddie Mac and its servicer. Federal Housing Finance Agency v. LNC Management LLC, Series 2937 Barboursville, 2019 WL6828293 (D. Nev. December 13, 2019). Thus, the appropriate statute of limitation for an action brought by Freddie Mac and/or its servicer for federal foreclosure bar claim is also 6 years, not 3 years under NRS 11.190(3)(a) as Plaintiff has argued. As for tender claim, under NRS 11.070 and 080, the applicable statute of limitation is 5 years. Here, if the Court does not consider the period while the case was stayed between October 26, 2015 and May 31, 2019, a period of approximately 43 months, as tolled for the purposes of statute of limitations, Plaintiff is correct that Defendant's federal foreclosure bar and tender claims will be barred by statute of limitation because Defendant failed to allege them until August 19, 2019, when it filed its Amended Answer. However, if the Court considers the above-mentioned 43 months of stay as tolling the statute of limitations, Defendant's federal foreclosure bar and tender claims are brought within the applicable statute of limitations. The Court FINDS that the court ordered stay, while it await for guidance from the Nevada Supreme Court, tolled the statute of limitations. See Branch Banking & Trust Company v. Gerrard, 134 Nev. 871, 432 P.3d 736 (2018) (stay of remitter stays the statute of limitation on the case while a party pursued a discretionary appeal to the United States Supreme Court); Copeland v. Desert Inn. Hotel, 99 Nev. 823, 673 P.2d 490 (1983) (statute of limitation is subject to waiver, estoppel, and equitable tolling); Kim v. Dickinson Wright, PLLC, 135 Nev. 161, 442 P.3d 1070 (2019) (if a state-law claim is filed in the federal court under supplemental jurisdiction, while the state-law claim is pending before the federal court, the state-law claim is tolled); Kee v. Terrible's Primm Valley Casino Resorts, 2015 WL 280830 (Ct. App. 2015) (in examining the federal bankruptcy code, 11 USC 108(c), if the state statute of limitation has not expired when the debtor files for bankruptcy but expires when the stay is lifted, the time for filing such an action expires 30 days after notice of the termination or expiration of the bankruptcy stay.) Accordingly, because the statute of limitation was tolled, the Court FINDS that Defendant timely brought federal foreclosure bar and tender claims and for all the arguments made in Defendant's pleadings, Defendant is entitled to summary judgment under federal foreclosure bar and tender claims because there are no genuine issues of material fact. Therefore, the Court ORDERS that Defendant Nationstar Mortgage LLC's Motion for Summary Judgment be GRANTED. Counsel for Defendant directed to submit the Order. The Order is to be consistent with this Minute Order and the submitted briefing. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Counsel is directed to have the proposed Order submitted to chambers within 10 days.

01/08/2020 3:00 AM

Parties Present

[Return to Register of Actions](#)



OPP

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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.

And all related claims.

Case No.: A-13-685203-C

Dept. No.: XXXII

Consolidated with: A-13-690944-C

**BANK OF AMERICA AND THE BANK
OF NEW YORK MELLON, AS
TRUSTEE'S OPPOSITION TO NV
EAGLES' RULE 50 MOTION**

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**) and Bank of America, N.A. (**BANA**) submit opposition to NV
Eagles, LLC's Motion for Judgment as a Matter of Law Pursuant to Rule 50.

1 **I. INTRODUCTION**

2 On the first day of trial, NV Eagles raised for the very first time in over five years of litigation
3 the argument that BoNYM's cross-claims against it were barred by the statute of limitations, arguing
4 first that the time period is three years, then arguing in its written motion that the period could be five
5 years. Under any scenario, NV Eagles' motion should be denied.

6 **II. PROCEDURAL HISTORY**

7 This case began on July 16, 2013 when the former homeowner, Melissa Lieberman, filed suit
8 over the HOA's foreclosure, naming the HOA, NAS, and Underwood Partners among the defendants.
9 Two months later, Underwood Partners transferred its interest in the property to NV Eagles.

10 In October 2013, despite the pending lawsuit by Lieberman, NV Eagles sued Pulte and others
11 for clear title. Pulte was never the record beneficiary of the deed of trust, and NV Eagles voluntarily
12 dismissed it from that lawsuit in January 2014. The two cases were also consolidated.

13 In 2016, NV Eagles and BANA filed competing summary judgment motions, with BANA
14 arguing tender preserved the deed of trust and attaching the evidence thereof. NV Eagles did *not* argue
15 then that BANA's tender defense was untimely.

16 At calendar call on May 9, 2016, the parties discussed the fact that although they had been
17 litigating as though quiet title/declaratory relief claims existed between them, the pleadings did not
18 actually contain them, so the Court granted the parties leave to amend their pleadings by July 15,
19 which they both did.

20 BoNYM/BANA's answer to NV Eagles' cross-claims included an affirmative defense of
21 tender. NV Eagles never answered BoNYM's cross-claim, so it asserted *zero* affirmative defenses
22 until the day of trial.

23 **III. ARGUMENT**

24 **A. The Court should deny the motion outright or defer ruling to close of trial.**

25 Rule 52(c) governs motions for judgment at bench trials. The rule permits a court to defer
26 ruling on the motion until after both parties rest: "The court may, however, decline to render any
27 judgment until the close of the evidence." To spare the waste of the remaining witness's time, BoNYM
28

1 and BANA request deferral of NV Eagles' motion until closing arguments. And for the reasons below,
2 the Court should deny the motion on its merits.

3 **B. NV Eagles waived any statute of limitations defense.**

4 Rule 8(c) requires a party to affirmatively state statute of limitations in its responsive pleading.
5 NV Eagles has never filed a responsive pleading to BoNYM's cross-claim, meaning NV Eagles waived
6 the defense.

7 NV Eagles also waived the defense by having first filed its claims against the proper defendant
8 in 2019. NV Eagles' cross-claims against BoNYM/BANA are not amendments to prior claims; all
9 those claims had been dismissed voluntarily years before. Hence, if BoNYM's cross-claim is untimely,
10 so is NV Eagles' cross-claim.

11 **C. Statutes of Limitations do not apply to defenses.**

12 Decades ago, the Nevada Supreme Court examined the issue of applying statute of limitations
13 to defenses and concluded: "Limitations do not run against defenses." *Dredge Corp. v. Wells Cargo,*
14 *Inc.*, 389 P.2d 394, 396 (Nev. 1964).¹ The reasoning behind this statement follows in the next sentence
15 of the opinion: "The statute is available only as a shield, not a sword." *Id.* Statutes of limitations are
16 themselves affirmative defenses to offensive claims, so a defense's application to another defense
17 makes little sense, but that is precisely what NV Eagles advocates here.

18 *Dredge*, in turn, cited to a Second Circuit case called *Luckenbach Steamship Co. v. United*
19 *States*, 312 F.2d 545, 548 (2d Cir. 1963), which held that "[l]imitations statutes do not apply to
20 declaratory judgments as such. Declaratory relief is a mere procedural device by which various types
21 of substantive claims may be vindicated. There are no statutes which provide that declaratory relief
22 will be barred after a certain period of time."

23 Even if they did, however, BANA argued tender in summary judgment briefing on June 6,
24 2016—well within five years after the HOA sale on June 7, 2013 *and* within the hypothetical three-
25 year statute NV Eagles argues.

26
27
28 ¹ NV Eagles' attempt to distinguish *Dredge Corp.* is not coherently explained.

1 And in the minute order of the TWT Investments case cited and attached by NV Eagles,
2 nothing in the minute order applies a statute of limitations to *defenses*. Instead, the court's minute
3 order discusses application of same to Nationstar's *claims* based on HERA and tender. Ex. D to NV
4 Eagles' Mot.

5 **D. NV Eagles' tender amount arguments are addressed in other pleadings.**

6 As to NV Eagles' argument that Miles Bauer tendered the incorrect amount, this also has never
7 been raised before. In NV Eagles's 2016 summary judgment briefing, that argument was *not* raised.
8 Instead, NV Eagles argued over the alleged conditions in the Miles Bauer letter and the application of
9 *Ikon Holdings*.

10 In any event, BoNYM and BANA's trial brief addresses this issue, and it will be argued in
11 closings after the evidence.

12 **IV. CONCLUSION**

13 BoNYM/BANA ask the Court to defer ruling until after evidence, to the extent the Court does
14 not deny NV Eagles' motion outright. And whenever the Court makes a ruling on this motion, for any
15 or all of the reasons stated above, the Court should deny this motion.

16 DATED this 15th day of January, 2020.

17 **AKERMAN LLP**

18 /s/ Rex D. Garner

19 DARREN T. BRENNER, ESQ.

20 Nevada Bar No. 8386

21 REX D. GARNER, ESQ.

22 Nevada Bar No. 9401

23 1635 Village Center Circle, Suite 200

24 Las Vegas, Nevada 89134

25 *Attorneys for BoNYM and BANA*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2020, and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **BANK OF AMERICA AND THE BANK OF NEW YORK MELLON, AS TRUSTEE'S OPPOSITION TO NV EAGLES' RULE 50 MOTION**, addressed to:

Gordon & Rees LLP	gangulo@gordonrees.com
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Marie Ogella	mogella@gordonrees.com
Robert Larsen	rlarsen@gordonrees.com
Hong & Hong Law Office	
Joseph Y. Hong, Esq.	yosuphonglaw@gmail.com
Debbie Batesel	dbhonglaw@hotmail.com

/s/ Doug J. Layne

An employee of Akerman LLP