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Steven D. Grierson
CLERK OF THE COURT

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Jun 13 2019 02:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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(702) 485-3300 FAX (702) 485-3301

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; MERIDIANA / RUBICON HOMEOWNERS ASSOCIATION, a domestic non-profit corporation; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX inclusive,

Defendants,

and

DITECH FINANCIAL LLC,

Intervenor-Defendant.

DITECH FINANCIAL LLC,

Third-Party Plaintiff,

vs.

Case No.: A-13-690490-C
Dept. No.: XXXI

NOTICE OF APPEAL (AMENDED)

Docket 77469 Document 2019-25681

Case Number: A-13-690490-C

SFR INVESTMENTS POOL 1, LLC,

Third-Party Defendant.

SFR INVESTMENTS POOL 1, LLC,

Counterclaimant/Cross-Claimant,

vs.

DITECH FINANCIAL LLC; MICHAEL WEISS, an individual; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX, inclusive,

Counter-Defendant/Cross-Defendants.

NOTICE OF APPEAL (AMENDED)

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC hereby appeals from the following orders and/or judgments:

1. Findings of Fact, Conclusions of Law, and Judgement, entered on October 12, 2018, Notice of Entry of which was entered on the same day; and
2. All other orders made appealable thereby; and
3. Stipulation and Order for Rule 54(b) Certification entered on May 7, 2019; and
4. All other orders made appealable thereby.

DATED this 6th day of June, 2019.

KIM GILBERT EBRON

By: */s/ Jacqueline A. Gilbert*

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2019, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing **NOTICE OF APPEAL (AMENDED)** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

Eservice Irvine - wiznet@wolfewyman.com

HOALG E-Serve - eserve@nrs116.com

LaShanda R. Satterwhite - LRSatterwhite@wolfewyman.com

Andrew A. Bao - aabao@wolfewyman.com

Jamie C. Soquena - jcsoquena@wolfewyman.com

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT,
an employee of KIM GILBERT EBRON

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Attorney for Third-Party Defendant/Counterclaimant/Cross-Claimant, SFR Investments Pool 1, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; MERIDIANA / RUBICON HOMEOWNERS ASSOCIATION, a domestic non-profit corporation; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX inclusive,

Defendants,

and

DITECH FINANCIAL LLC,

Intervenor-Defendant.

DITECH FINANCIAL LLC,

Third-Party Plaintiff,

vs.

Case No.: A-13-690490-C
Dept. No.: XXXI

CASE APPEAL STATEMENT (AMENDED)

KIMGILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

Case Number: A-13-690490-C

SFR INVESTMENTS POOL 1, LLC,

Third-Party Defendant.

SFR INVESTMENTS POOL 1, LLC,

Counterclaimant/Cross-Claimant,

vs.

DITECH FINANCIAL LLC; MICHAEL WEISS, an individual; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX, inclusive,

Counter-Defendant/Cross-Defendants.

CASE APPEAL STATEMENT (AMENDED)

1. **Name of appellant filing this case appeal statement**:

   SFR Investments Pool 1, LLC

2. **Identify the judge issuing the decision, judgment, or order appealed from**:

   The Hon. Joanna S. Kishner

3. **Identify each appellant and the name and address of counsel for each appellant**:

   SFR Investments Pool 1, LLC

   Appeal Counsel for SFR
   KIM GILBERT EBRON
   Jacqueline A. Gilbert, Esq.
   Diana S. Ebron, Esq.
   Karen L. Hanks, Esq.
   7625 Dean Martin Drive, Suite 110
   Las Vegas, NV 89139
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   Email: jackie@kgelegal.com
   Email: diana@kgelegal.com
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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Ditech Financial, LLC

Trial Counsel:

WOLFE & WYMAN LLP
Andrew A. Bao, Esq.
6757 Spencer Street
Las Vegas, NV 89119
Telephone: 702-476-0100
Facsimile: 702-476-0101
Email: aabao@wolfewyman.com

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

N/A

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

October 21, 2013 (complaint in interpleader)

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case started as a complaint in interpleader to distribute excess proceeds filed by

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Alessi & Koenig following a homeowners association foreclosure sale at which SFR obtained title to the subject property. The Interpleader named Everbank as a defendant. Ditech was granted leave to intervene and, in its answer Ditech named SFR as a third-party defendant. Ditech brought claims for quiet title and declaratory relief under 12 USC 4617(j)(3), among others. SFR brought a counterclaim against Ditech for quiet title.

Following a bench trial, the district court entered judgment in favor of Ditech and against SFR on October 12, 2018, notice of entry of which was docketed on that same date. The district court ordered that the deed of trust survived the Association foreclosure sale under 4617(j)(3). The district court expunged the lis pendens.

SFR timely filed its notice of appeal and case appeal statement on November 13, 2018. The Supreme Court of Nevada thereafter, on January 24, 2019, entered its *Order to Show Cause* as Alessi & Koenig, LLC's interpleader remained before the district court, which made SFR's Notice of Appeal filed on November 13, 2018 premature. (Nev.; Case No. 77469).

On February 26, 2019, Ditech filed notice of its bankruptcy filing in, and related automatic stay under 11 U.S.C. § 362(a) issued by, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (Bankr. S.D.N.Y.; *see* Lead Case No. 19-10412). Ditech's individual bankruptcy case is 19-10414 but is being jointly administered under the lead case number listed above.

Also on February 26, 2019, SFR filed its *Response to Order to Show Cause* issued by the Supreme Court of Nevada alerting the Supreme Court that the Parties here were in the process of stipulating to relief under NRCP 54(b) at the time Ditech filed its chapter 11 bankruptcy case. In its response, SFR requested that the Supreme Court enter a stay in Case No. 77469 while the Parties obtained an NRCP 54(b) certification with respect to the district court's order of October 12, 2018.

On March 7, 2019, Ditech filed an amended notice of its bankruptcy case and automatic stay order with the Nevada Supreme Court. Thereafter, the Supreme Court of Nevada issued its *Order Dismissing Appeal* on March 25, 2019 (the "Initial Dismissal Order") dismissing the appeal, subject to later reinstatement, in light of Ditech's bankruptcy.

On April 1, 2019, Ditch filed another notice with the Nevada Supreme Court advising that court of the Bankruptcy Court's entry of a revised order lifting the automatic stay in Ditech's bankruptcy case.

On April 17, 2019, the Nevada Supreme Court issued its *Order* modifying its Initial Dismissal Order. The April 17th Order alerted the Parties that the Bankruptcy Court's entry of its order lifting the automatic stay did not "state with specificity which claims resolved below, if any may proceed under the Bankruptcy Court's order, nor does it request reinstatement of [SFR's] appeal." *See Order* at pg. 1 of 2. The April 17th Order gave the Parties until May 1, 2019 to respond to the Order and request reinstatement of SFR's appeal pursuant to the terms of the Order.

On May 1, 2019, the Parties filed an amended stipulation with the Nevada Supreme

Court, (the "Amended Stipulation"), pursuant to which the Parties stipulated that, in light of the Bankruptcy Court's lifting of the automatic stay in Ditech's bankruptcy case and upon the district court's entry of its NRCP 54(b) certification, "[SFR's] appeal will be ripe and vest jurisdiction in [the Nevada Supreme Court]." *See Amended Stipulation*, pg. 2 of 3. The Amended Stipulation also extended the time by which SFR could file its motion seeking to reinstate its appeal until May 31, 2019.

On May 7, 2019, the district court entered its order including the Parties' requested NRCP 54(b) certification. On May 10, 2019, the Nevada Supreme Court entered its order approving the Parties' Amended Stipulation pursuant to which the Parties stipulated that the district court's NRCP 54(b) certification rendered SFR"s appeal in Case No. 77469 ripe for review and vested jurisdiction in the Nevada Supreme Court.

Finally, on May 31, 2019 and pursuant to the Amended Stipulation previously approved by the Nevada Supreme Court, SFR filed its motion seeking reinstatement of its previously filed appeal. The Nevada Supreme Court has yet to rule on that motion.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:
N/A

12. Indicate whether this appeal involves child custody or visitation:

N/A

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

SFR is always willing to address settlement of the case.

DATED this 6th day of June, 2019.

KIM GILBERT EBRON

By: */s/ Jacqueline A. Gilbert*

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2019, pursuant to NRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing **CASE APPEAL STATEMENT (AMENDED)** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

Eservice Irvine - wiznet@wolfewyman.com

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LaShanda R. Satterwhite - LRSatterwhite@wolfewyman.com

Andrew A. Bao - aabao@wolfewyman.com

Jamie C. Soquena - jcsoquena@wolfewyman.com

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT,
an employee of KIM GILBERT EBRON

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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-13-690490-C

Alessi and Koenig LLC, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Michael Weiss, Defendant(s)	§	Filed on:	**10/21/2013**
	§	Cross-Reference Case Number:	**A690490**
	§	Supreme Court No.:	**77469**

CASE INFORMATION

Statistical Closures
10/16/2018 Judgment Reached (bench trial)
03/17/2017 Transferred (before trial)
09/25/2015 Voluntary Dismissal

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**

Case Status: **10/16/2018 Closed**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-690490-C
Court	Department 31
Date Assigned	10/21/2013
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Alessi and Koenig LLC**	
Defendant	**Everbank**	
	Meridiana / Rubicon Homeowners Association	
	Republic Silver State Disposal Inc	
	Weiss, Michael	
Counter Claimant	**SFR Investments Pool I LLC**	**Cline, Diana S.** *Retained* 702-485-3300(W)
Counter Defendant	**Ditech Financial LLC**	**Bao, Andrew A.** *Retained* 702-476-0100(W)
Cross Claimant	**SFR Investments Pool I LLC** Removed: 07/17/2018 Dismissed	**Cline, Diana S.** *Retained* 702-485-3300(W)
Cross Defendant	**Weiss, Michael** Removed: 07/17/2018 Dismissed	
Third Party Defendant	**SFR Investments Pool I LLC**	**Cline, Diana S.** *Retained* 702-485-3300(W)
Third Party Plaintiff	**Ditech Financial LLC**	**Bao, Andrew A.** *Retained* 702-476-0100(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

10/21/2013	Complaint Filed By: Plaintiff Alessi and Koenig LLC *Complaint In Interpleader*
10/21/2013	Case Opened
11/27/2013	Affidavit of Service Filed By: Plaintiff Alessi and Koenig LLC *Affidavit of Service: Michael Weiss, An Individual*
11/27/2013	Proof of Service Filed by: Plaintiff Alessi and Koenig LLC *Delaration Of Service*
12/03/2013	Affidavit of Service Filed By: Plaintiff Alessi and Koenig LLC *Affidavit of Service*
12/23/2013	Initial Appearance Fee Disclosure Filed By: Defendant Everbank *Initial Appearance and Fee Disclosure*
12/23/2013	Answer Filed By: Defendant Everbank *Answer and Claim to Complaint in Interpleader*
01/06/2014	Default Filed By: Plaintiff Alessi and Koenig LLC *Default (as to Michael Weiss)*
01/14/2014	Notice of Early Case Conference Filed By: Plaintiff Alessi and Koenig LLC *Notice of Early Case Conference*
02/04/2014	Motion to Amend Complaint Filed By: Plaintiff Alessi and Koenig LLC *Motion for Leave to Amend Complaint*
02/06/2014	Notice of Hearing Filed By: Plaintiff Alessi and Koenig LLC *Notice of Hearing*
03/28/2014	Order Filed By: Plaintiff Alessi and Koenig LLC *Order Granting Motion for Leave to Amend Complaint*
04/01/2014	Notice of Entry of Order Filed By: Plaintiff Alessi and Koenig LLC *Notice of Entry of Order Granting Motion for Leave to Amend Complaint*
04/08/2014	Amended Complaint Filed By: Plaintiff Alessi and Koenig LLC
04/16/2014	

	Affidavit of Attempted Service Filed By: Plaintiff Alessi and Koenig LLC *Affidavit of Attempted Service: Meridiana/Rubicon Homeowners Association*
04/22/2014	Affidavit of Service Filed By: Plaintiff Alessi and Koenig LLC *Affidavit of Service*
04/22/2014	Acceptance of Service Filed By: Plaintiff Alessi and Koenig LLC *Acceptance of Service*
07/16/2014	Three Day Notice of Intent to Default Filed by: Plaintiff Alessi and Koenig LLC *Three Day Notice of Intent to Take Default*
11/19/2014	Default Filed By: Plaintiff Alessi and Koenig LLC *Default (as to Meridiana / Rubicon Homeowners Association)*
09/21/2015	Request Filed by: Plaintiff Alessi and Koenig LLC *Request for Reinstatement Pursuant to EDCR 2.90(C)*
09/21/2015	Order to Statistically Close Case *Civil Order to Statistically Close Case*
09/25/2015	Order Filed By: Plaintiff Alessi and Koenig LLC *Order for Reinstatement Pursuant to EDCR 2.90(c)*
05/05/2016	Notice of Change of Address *Notice of Change of Address - Strike*
05/25/2016	Motion to Intervene Party: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Motion to Intervene*
08/17/2016	Order Granting Filed By: Counter Defendant Ditech Financial LLC *Order Granting Motion to Intervene*
08/17/2016	Answer Filed By: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Answer to Alessi & Koenig, LLC's Complaint in Interpleader and Third-Party Complaint*
08/17/2016	Initial Appearance Fee Disclosure Filed By: Counter Defendant Ditech Financial LLC *Initial Appearance Fee Disclosure*
09/23/2016	Motion to Withdraw As Counsel Filed By: Defendant Everbank *Motion to Withdraw As Counsel Of Record For Everbank; Declaration of Kevin Hahn*

11/11/2016	Motion Filed By: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Motion for Deposit of Funds in Court Pursuant to Nev. R. Civ. P. 67*
11/28/2016	Affidavit of Service Filed By: Counter Defendant Ditech Financial LLC *Affidavit of Service*
11/28/2016	Demand for Security of Costs Filed By: Counter Claimant SFR Investments Pool I LLC *SFR Investments Pool 1, LLC's Demand for Security of Costs Pursuant to NRS 18.130(1)*
12/13/2016	Notice of Non Opposition Filed By: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Notice of Non-Opposition to Motion for Deposit of Funds in Court Pursuant to Nev. R. Cov. P. 67*
12/15/2016	Suggestion of Bankruptcy Filed By: Plaintiff Alessi and Koenig LLC *Suggestion of Bankruptcy*
12/16/2016	Substitution of Attorney Filed by: Plaintiff Alessi and Koenig LLC *Substitution of Attorneys*
12/28/2016	Notice of Posting Non-Resident Cost Bond Filed by: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Notice of Deposit of Non-Resident Security Bond for Costs*
01/04/2017	Transcript of Proceedings *Transcript of Proceedings: Ditech Financial LLC's Motion for Deposit of Funds in Court Pursuant to Nev. R. Civ. P. 67 -- 12-15-16*
01/13/2017	Motion to Dismiss Filed By: Counter Claimant SFR Investments Pool I LLC *SFR Investments Pool 1, LLC's Motion to Dismiss Third-Party Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)*
01/30/2017	Notice Filed By: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Notice to Attorney General of Constitutional Challenge to State Statute NRS 116.3116 Et Seq.*
01/31/2017	Initial Appearance Fee Disclosure Filed By: Counter Defendant Ditech Financial LLC *Initial Appearance Fee Disclosure*
02/02/2017	Opposition to Motion Filed By: Counter Defendant Ditech Financial LLC *Ditech Financial LLC's Opposition To SFR Investment Pool 1 LLC's Motion to Dismiss Third-Party Complaint*
02/06/2017	Reply in Support

Filed By: Third Party Defendant SFR Investment Pool 1 LLC
SFR Investments Pool 1, LLC's Reply in Support of Motion to Dismiss Third Party Complaint Pursuant to NRCP 12(b)(6)

02/13/2017 Answer to Third Party Complaint
Filed By: Counter Claimant SFR Investments Pool I LLC
SFR Investments Pool 1, LLC's Answer to Third-Party Complaint, Counterclaim and Cross-Claim

02/14/2017 Notice of Lis Pendens
Filed by: Counter Claimant SFR Investments Pool I LLC
Notice of Lis Pendens

02/14/2017 Affidavit of Service
Filed By: Plaintiff Alessi and Koenig LLC
Affidavit of Service

02/15/2017 Motion to Intervene
Party: Intervenor Midby-Weiss, Stacey
Stacey Midby-Weiss Motion to Intervene

02/17/2017 Order Granting Motion
Filed By: Defendant Everbank
Order Granting Motion to Withdraw As Counsel

03/05/2017 Notice
Filed By: Counter Defendant Ditech Financial LLC
Notice of Filing of Petition for Removal

03/17/2017 Order to Statistically Close Case
Civil Order to Statistically Close Case

09/06/2017 Notice
Notice to Adverse Parties and to the Eighth Judicial District Court of Remand of Previously-Removed Case to this Court

09/06/2017 Notice
Filed By: Counter Claimant SFR Investments Pool I LLC
Notice to Adverse Parties and to the Eighth Judicial District Court of Remand of Previously-Removed Case to this Court

09/14/2017 Order of Remand from Federal Court
Order Remanding Cases to State Court for Lack of Jurisdiction, and Alternatively, on Equitable Grounds

09/14/2017 Order of Remand from Federal Court
Order Remanding Cases to State Court for Lack of Jurisdiction, and Alternatively, on Equitable Grounds

02/12/2018 Order Scheduling Status Check
Order Scheduling Status Check

03/16/2018 Amended Order Setting Civil Non-Jury Trial
Amended Order Setting Non Jury Trial, Pre Trial Conference, and Calendar Call

03/20/2018	Notice Filed By: Counter Defendant Ditech Financial LLC *Notice of Change of Handling Attorney and Designation of Counsel for Service*
04/20/2018	Motion to Withdraw As Counsel Filed By: Plaintiff Alessi and Koenig LLC *Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC*
06/07/2018	Affidavit of Service Filed By: Counter Claimant SFR Investments Pool I LLC *Affidavit of Service*
06/07/2018	Motion for Summary Judgment Filed By: Counter Claimant SFR Investments Pool I LLC *SFR Investments Pool1, LLC's Motion for Summary Judgment*
06/07/2018	Default Filed By: Counter Claimant SFR Investments Pool I LLC *Default Against Michael Weiss*
06/07/2018	Motion for Summary Judgment Filed By: Counter Defendant Ditech Financial LLC *Third Party Plaintiff/Counter-Defendant Ditech Financial LLC's Motion for Summary Judgment*
06/07/2018	Appendix Filed By: Counter Defendant Ditech Financial LLC *Third Party Plaintiff/Counter-Defendant Ditech Financial LLC's Appendix to its Motion for Summary Judgment*
06/25/2018	Opposition to Motion For Summary Judgment Filed By: Counter Defendant Ditech Financial LLC *Third Party Plaintiff/Counter-Defendant Ditech's Opposition to Third-Party Defendant SFR Investments Pool 1, LLC's Motion for Summary Judgment*
06/25/2018	Opposition to Motion For Summary Judgment Filed By: Counter Claimant SFR Investments Pool I LLC *SFR Investments Pool 1, LLC's Opposition to Ditech Financial LLC's Motion for Summary Judgment and Counter-Motion to Strike*
06/28/2018	Order Filed By: Plaintiff Alessi and Koenig LLC *Order Granting Steven Loizzi, Jr., Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC*
06/28/2018	Notice of Entry Filed By: Plaintiff Alessi and Koenig LLC *Notice of Entry of Order Granting Steven Loizzi, Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC*
06/29/2018	Reply in Support Filed By: Counter Claimant SFR Investments Pool I LLC *SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment*

07/02/2018 Reply to Opposition
Filed by: Counter Defendant Ditech Financial LLC
Third Party Plaintiff/Counter Defendant Ditech Financial LLC's Reply to SFR Investments Pool 1, LLC's Opposition to its Motion for Summary Judgment

07/12/2018 Notice
Filed By: Plaintiff Alessi and Koenig LLC
Counsel's Notice of Compliance with Sanctions Order

07/17/2018 Stipulation and Order
Filed by: Counter Claimant SFR Investments Pool I LLC
Stipulation and Order Dismissing Michael Weiss Without Prejudice

07/18/2018 Notice of Entry of Stipulation and Order
Filed By: Counter Claimant SFR Investments Pool I LLC
Notice of Entry of Stipulation and Order Dismissing Michael Weiss Without Prejudice

07/30/2018 Order Denying
Filed By: Counter Defendant Ditech Financial LLC
Order Denying Motions for Summary Judgment and Motion to Strike

07/30/2018 Notice of Entry of Order
Filed By: Counter Defendant Ditech Financial LLC
Notice of Entry of Order Denying Motion for Summary Judgment and Motion to Strike

07/31/2018 Notice of Intent
Filed By: Counter Defendant Ditech Financial LLC
Defendant Ditech Financial LLC's Notice of Intent to Offer N.R.S. 52.260 Certificate of Custodian of Records

08/02/2018 Pre-Trial Disclosure
SFR Investments Pool 1, LLC's Pre-Trial Disclosures

08/03/2018 Pre-Trial Disclosure
Party: Counter Defendant Ditech Financial LLC
Intervenor/Third Party Plaintiff Ditech Financial LLC's Pre-Trial Disclosures

08/13/2018 Audiovisual Transmission Equipment Appearance Request
Party: Counter Defendant Ditech Financial LLC
Intervenor / Third Party Plaintiff Ditech Financial LLC's Audiovisual Transmission Equipment Appearance Request

08/20/2018 Objection
Objections to Pre-Trial Disclosures

08/21/2018 Joint Pre-Trial Memorandum
Filed By: Counter Defendant Ditech Financial LLC
Joint Pre-Trial Memorandum

08/27/2018 Motion to Intervene
Party: Intervenor Midby-Weiss, Stacey
Motion to Intervene

08/27/2018 Notice of Motion

Filed By: Intervenor Midby-Weiss, Stacey

08/29/2018 Trial Subpoena
Filed by: Counter Defendant Ditech Financial LLC
Ditech Financial LLC's Trial Subpoena to PMK and/or Custodian of Records for Everbank

08/31/2018 Proof of Service by Mail
Proof Of Service By Mail

09/05/2018 Brief
SFR Investments Pool 1, LLC's Trial Brief re Property

09/05/2018 Brief
SFR Investments Pool 1, LLC's Trial Brief re Procedural Due Process

09/05/2018 Trial Brief
Filed By: Counter Claimant SFR Investments Pool I LLC
SFR Investments Pool 1, LLC's Trial Brief re: Best Evidence Rule

09/20/2018 Opposition to Motion
SFR Investments Pool 1, LLC's Opposition to Motion to Intervene

10/11/2018 Findings of Fact, Conclusions of Law and Judgment
Findings of Fact, Conclusions of Law and Judgment

10/12/2018 Findings of Fact, Conclusions of Law and Judgment
Filed by: Counter Defendant Ditech Financial LLC
(10/12/18 Duplicate See 10/11/18) Findings of Fact, Conclusions of Law, and Judgment

10/12/2018 Notice of Entry of Order
Filed By: Counter Defendant Ditech Financial LLC
Notice of Entry of Finding of Facts, Conclusions of Law and Judgment

10/16/2018 Order to Statistically Close Case
Civil Order to Statistically Close Case

10/19/2018 Order Denying
Filed By: Counter Claimant SFR Investments Pool I LLC
Order Denying Motion to Intervene

10/22/2018 Notice of Entry of Order
Filed By: Counter Claimant SFR Investments Pool I LLC
Notice of Entry of Order Denying Motion to Intervene

10/29/2018 Recorders Transcript of Hearing
Transcript - Bench Trial - Day Three 9/6/18

11/13/2018 Notice of Appeal
Filed By: Counter Claimant SFR Investments Pool I LLC
Notice of Appeal

11/13/2018 Case Appeal Statement
Filed By: Counter Claimant SFR Investments Pool I LLC

Case Appeal Statement

11/14/2018 Certificate of Service
Filed by: Counter Claimant SFR Investments Pool I LLC
Certificate of Service

11/20/2018 Recorders Transcript of Hearing
Transcript - Bench Trial Day One 9/4/18

11/20/2018 Recorders Transcript of Hearing
Transcript - Bench Trial Day Two 9/5/18

01/03/2019 Request
Filed by: Counter Claimant SFR Investments Pool I LLC
Request for Transcript of Proceedings

01/03/2019 Request
Filed by: Counter Claimant SFR Investments Pool I LLC
Amended Request for Transcript of Proceeding

01/24/2019 Stipulation and Order
Filed by: Counter Claimant SFR Investments Pool I LLC
Stipulation and Order Dismissing Michael Weiss Without Prejudice

01/29/2019 Notice of Entry of Stipulation and Order
Filed By: Counter Claimant SFR Investments Pool I LLC
Notice of Entry of Stipulation and Order Dismissing Michael Weiss Without Prejudice

02/01/2019 Recorders Transcript of Hearing
Transcript - All Pending Motions 7/10/18

02/25/2019 Notice of Bankruptcy
Filed By: Counter Defendant Ditech Financial LLC
Intervenor / Third-Party Plaintiff Ditech Financial LLC's Notice of Bankruptcy

03/06/2019 Notice of Bankruptcy
Filed By: Counter Defendant Ditech Financial LLC
Intervenor/Third Party Plaintiff Ditech Financial LLC's First Amended Notice of Bankruptcy Filing and Imposition of Automatic Stay

04/01/2019 Notice
Filed By: Counter Defendant Ditech Financial LLC
Intervenor/Third Party Plaintiff Ditech Financial LLC's Notice of Order Lifting Automatic Stay

05/07/2019 Stipulation and Order
Filed by: Counter Claimant SFR Investments Pool I LLC
Stipulation and Order for Rule 54(b) Certification

06/06/2019 Amended Notice of Appeal
Party: Counter Claimant SFR Investments Pool I LLC
Amended Notice of Appeal

06/06/2019

Amended Case Appeal Statement
Party: Counter Claimant SFR Investments Pool I LLC
Amended Case Appeal Statement

DISPOSITIONS

07/17/2018 **Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.)
Debtors: Michael Weiss (Cross Defendant)
Creditors: SFR Investments Pool I LLC (Cross Claimant)
Judgment: 07/17/2018, Docketed: 07/17/2018

10/11/2018 **Judgment** (Judicial Officer: Kishner, Joanna S.)
Debtors: SFR Investments Pool I LLC (Third Party Defendant)
Creditors: Ditech Financial LLC (Third Party Plaintiff)
Judgment: 10/11/2018, Docketed: 10/12/2018
Comment: Quiet Title

01/24/2019 **Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.)
Debtors: SFR Investments Pool I LLC (Cross Claimant)
Creditors: SFR Investments Pool I LLC (Cross Claimant)
Judgment: 01/24/2019, Docketed: 01/24/2019

HEARINGS

03/11/2014 **Motion for Leave** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Plaintiff's Motion for Leave to Amend Complaint
Granted;
Journal Entry Details:
There being no opposition, COURT ORDERED, Plaintiff's Motion for Leave to Amend Complaint is GRANTED pursuant to EDCR 2.20 and for good cause. Plaintiff's counsel to prepare the Order, circulating to all parties. Matter SET for Status Check regarding receipt of proposed order. 3/28/14 STATUS CHECK: ORDER (CHAMBERS) ;

03/28/2014 *CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated
Status Check: Order 3/11/14

07/08/2016 **Motion to Intervene** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Ditech Financial LLC's Motion to Intervene
Granted;
Journal Entry Details:
DITECH FINANCIAL LLC'S MOTION TO INTERVENE On May 25, 2016, a Motion to Intervene was filed by Ditech Financial, LLC. The matter was subsequently placed on the Chambers Calendar of Department XXXI. There being no opposition to the motion, and the time to oppose having passed, pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS the Motion to Intervene. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Counsel Ditech Financial, LLC to prepare the Order and submit to Chambers for consideration within ten (10) days in accordance with EDCR 7.21. CLERK'S NOTE: The above minute order has been distributed via e-mail to: Cort Dodrill, Esq., Huong Lam, Esq. and Kevin Hahn, Esq.\sjh;

11/04/2016 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Malcolm and Cisneros' Motion to Withdraw As Counsel Of Record For Everbank; Declaration of Kevin Hahn
Granted;
Journal Entry Details:
MALCOLM AND CISNEROS' MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR EVERBANK; DECLARATION OF KEVIN HAHN On September 23, 2016, a Motion to Withdraw was filed by Malcom Cisneros counsel for Defendant Everbank. The matter was subsequently placed on the Chambers Calendar of Department XXXI. There being no

Opposition to the Motion, and the time to oppose having passed, pursuant to EDCR 2.20 and for good cause showing that a withdrawal would be proper in accordance with applicable law, the Court hereby GRANTS the Motion to Withdraw. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Defendant's Counsel to prepare the Order and submit to Chambers for consideration within ten (10) days in accordance with EDCR 7.21, notifying the former clients of all pending dates and providing the last known address and telephone number of Plaintiffs within the proposed Order. CLERK'S NOTE: The above minute order has been distributed via e-mail to: Kevin Hahn, Esq.\sjh 11-4-16;

12/15/2016 **Motion** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Ditech Financial LLC's Motion for Deposit of Funds in Court Pursuant to Nev. R. Civ. P. 67
Granted;
Journal Entry Details:
Counsel for Plaintiff not present. Court notes may be challenges in this underlying case. Upon Court's inquiry, Mr. Miles states Alessi & Koenig are holding the funds. Mr. Miles states bringing this motion in order to preserve the funds as it has come to their attention that Alessi & Koenig may be insolvent at this point. Matter trailed. Matter recalled. Ms. Hanks now present on behalf of SFR. Mr. Miles states this Court does have jurisdiction. Ms. Hanks states she sent a text message to Mr. Loizzi and received no response. Court notes it has been stated in another courtroom that the Alessi & Koening firm has filed bankruptcy, however, no personal knowledge. Both Mr. Miles and Ms. Hanks state they were unaware. COURT ORDERED, Ditech Financial LLC's Motion for Deposit of Funds in Court Pursuant to Nev. R. Civ. P. 67 is GRANTED based on what is currently before the Court. Court notes if information is presented, the Court may not sign the Order if it has no jurisdiction to do so. Mr. Miles to prepare the Order, circulating to all counsel for approval as to form and content in accordance with EDCR 7.21.;

02/14/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
SFR Investments Pool 1, LLC's Motion to Dismiss Third-Party Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)
Withdrawn;
Journal Entry Details:
Zachary Clayton Esq. present on behalf of SFR Investment POOL 1 LLC. Andrew Bao Esq. present on behalf of Ditech Financial LLC. Court summarized the bankruptcy filing of Alessi and Koenig. Upon Court's inquiry, Mr. Clayton indicated SFR has or will put in a notice to withdraw their motion based upon events that are unfolding, and orally stated that is SFR's intention. Mr. Bao indicated SFR filed an Answer and Crossclaim the previous day, and parties tried to remove this from calendar however it was too late in the day. COURT ORDERED, Motion to Dismiss WITHDRAWN. ;

03/15/2017 **Minute Order** (2:00 PM) (Judicial Officer: Kishner, Joanna S.)
Minute Order - No Hearing Held;
Journal Entry Details:
MINUTE ORDER - NO HEARING HELD The Court is in receipt of the Notice of Removal to the United States Bankruptcy Court filed on March 5, 2017. Given the removal, the District Court case is statistically closed and any pending matters are vacated from the Court's calendar as they need to be addressed to the Bankruptcy Court unless and/or until this Court receives different notification from the Bankruptcy Court. CLERK'S NOTE: The above minute order has been distributed via e-mail to: Colt Dodrill, Esq., Diana Ebron, Esq. and Stacey Midby-Weiss.\sjh 3-15-17;

04/18/2017 *CANCELED* **Motion to Intervene** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - Moot
Stacey Midby-Weiss Motion to Intervene

02/22/2018 **Status Check: Status of Case** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Trial Date Set;
Journal Entry Details:

Court noted matter remanded back from Bankruptcy Court. Mr. Clayton advised interpleader

filed in 2013, bank came in and then SFR served right before bankruptcy. Ms. Foley-Peak advised JCCR has not been filed, need to do discovery and need to do ECCR. Mr. Loizzi stated started as interpleader, do not have access proceeds to deposit and requested to stipulate to dismiss this portion of complaint. Ms. Foley-Peak advised Ditech Financial intervened. Court inquired as to Intervenor Stacey Midby-Weiss. Ms. Foley-Peak stated she does not thing she appeared in bankruptcy proceedings, have not noticed her on anything and believes she was on certificate of service regarding status check. Court noted Ms. Midby-Weiss not on certificate of service. Ms. Foley-Peak stated she will try to reach out to Ms. Midby-Weiss or her counsel. COURT ORDERED, oral request to dismiss DENIED. Counsel can file written motion. Mr. Loizzi stated do have funds but funds are with bankruptcy trustee. Mr. Clayton stated he is in process of serving Michael Weiss. Ms. Foley-Peak requested to continue to get a hold of Ms. Midby Weiss, do ECCR and JCCR. Colloquy regarding trial stacks. Mr. Clayton stated he believes five year rule was tolled when bankruptcy was filed. Court stated nothing has been provided to the Court as to tolling of the case and ORDERED, matter SET for trial. New trial order to issue. FURTHER ORDERED, matter SET for status check. 3/8/18 9:00 AM STATUS CHECK: NOTICE OF MS. MIDBY-WEISS 6/28/18 10:15 AM PRETRIAL CONFERENCE 7/31/18 9:00 AM CALENDAR CALL 8/6/18 9:00 AM BENCH TRIAL;

03/08/2018 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

03/08/2018, 03/23/2018

Status Check Re: Stacey Midby-Weiss Motion to Intervene
Matter Heard; Status Check Re: Stacey Midby-Weiss Motion to Intervene
Denied; Status Check Re: Stacey Midby-Weiss Motion to Intervene
Journal Entry Details:
This matter came on for hearing on February 22, 2018. That hearing was a status check following the remand of this matter from the Bankruptcy Court. At that hearing, it was brought to the Court s attention that on February 15, 2017, a document was filed by Stacey Midby-Weiss, pro se. That document is titled as a Motion to Intervene, and requests relief in the form of intervention and the appointment of a guardian ad litem. As no notice of motion was ever filed along with the Motion, it did not come before the Court for hearing. However, as all parties present at the status check have notice of the document, and receiving no objection from those parties, the Court finds it appropriate to rule on the Motion at this time, pursuant to EDCR 2.23(c). Based on a full review of all the papers, pleadings, documents on file, and all applicable statutes and case law, the Court finds as follows. NRCP 24 permits intervention in a matter, but requires a showing that the applicant has an interest which is the subject of the action and those actions are not adequately represented by existing parties. The Court does not find that the claimed interest in the action has been adequately stated in order for the Court to evaluate whether that interest is represented by existing parties. The Motion to Intervene is therefore DENIED without prejudice. With respect to the request to appoint a Guardian ad litem, the Court finds that movant has not named the guardian sought to appointed, and in so doing appears to misunderstand the purpose and role of a guardian ad litem. As no good cause has been shown for appointing a guardian, the Motion is also DENIED, without prejudice, in that respect. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Tena M. Jolley, to all registered parties for Odyssey File & Serve and via Email to Stacy Midby-Weiss (midby@yahoo.com). (tmj:3/23/18);
Matter Heard; Status Check Re: Stacey Midby-Weiss Motion to Intervene
Denied; Status Check Re: Stacey Midby-Weiss Motion to Intervene
Journal Entry Details:
Court noted there was no appearance by Alessi & Koenig as well as Ms. Stacey Midby-Weiss who filed a Motion to Intervene prior to the Bankruptcy Stay. MATTER TRAILED for counsel to reach out to counsel for Alessi & Koenig. MATTER RECALLED. Counsel for Alessi & Koenig not present and COURT ORDERED, ORDER TO SHOW CAUSE to issue for non-appearance. Matter heard with counsel present. Mr. Bao stated that Ditech and SFR drafted the Joint Case Conference Report but there was no signatures by Alessi & Koenig or Ms. Midby-Weiss. Mr. Bao stated they had no information why Ms. Midby-Weiss was seeking to intervene as the original borrower was Michael Weiss and unaware of the relationship. COURT ORDERED, Stacey Midby-Weiss' Motion to Intervene DEFERRED to Chambers for Decision. Court DIRECTED counsel to move the case forward and are compliant with the rules. COURT FINDS the two parties presently before this Court to be compliant with NRCP 16 based on counsel's representations. CONTINUED TO: 3/16/18 (CHAMBERS);

05/25/2018 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC
Motion Granted;

Journal Entry Details:
On April 20, 2018, Steven Loizzi, Jr., Esq., filed a Motion to Withdraw as Counsel of Record for Plaintiff Alessi & Koenig. This matter was subsequently placed on the May 25, 2018, Chambers Calendar of Department XXXI. There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown that a withdrawal would be proper in accordance with applicable law, the Court hereby GRANTS the Motion to Withdraw as Counsel both pursuant to EDCR 2.20 and on the merits. As Defendant is a corporate entity and cannot proceed in proper person, the Court is setting a status check for June 28, 2018, at 10:15 a.m., regarding retention of counsel for the Plaintiff Alessi & Koenig. Counsel is to notify the client and include that status check in the proposed order discussed below. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Plaintiff's Counsel to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21, and no later than June 29, 2018, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order. Said Order then must be filed in accordance with EDCR 7.24. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Tena M. Jolley, to all registered parties for Odyssey File & Serve. (tmj:5/25/18);

06/28/2018 **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;

06/28/2018 **Status Check** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Status Check: Counsel for Plaintiff
Matter Heard;

06/28/2018 **All Pending Motions** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
STATUS CHECK: COUNSEL FOR PLAINTIFF ... PRE-TRIAL CONFERENCE Jason Martinez, Esq.. present on behalf of SFR Investments. Court inquired as to the status of Mr. Loizzi's Order to Withdraw. Mr. Loizzi stated he has the Order. Order SIGNED IN OPEN COURT. COURT FINDS Mr. Loizzi is not in compliant with EDCR 7.21 and ORDERED, Mr. Loizzi is to donate $150.00 within 30 days of today's date with a receipt to be provided to the Court. Court noted if a receipt is not received by July 30, then the Court is going to set an Order to Show Cause. Colloquy regarding the pending Motions for Summary Judgment. Upon Court's inquiry, Counsel agreed trial will take 3-4 days. COURT FURTHER ORDERED, trial dates VACATED and RESET; Pre-trial Memo due 08/21/18; clarification for case caption is to be provided 07/10/18. 08/28/18 9:00 AM CALENDAR CALL 09/04/18 11:00 AM BENCH TRIAL;

07/10/2018 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Third Party Defendant/Counter Claimant SFR Investments Pool 1, LLC's Motion for Summary Judgment
Denied Without Prejudice; Third Party Defendant/Counter Claimant SFR Investments Pool 1, LLC's Motion for Summary Judgment

07/10/2018 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Third Party Plaintiff/Counter Defendant Ditech Financial LLC's Motion for Summary Judgment
Denied Without Prejudice; Third Party Plaintiff/Counter Defendant Ditech Financial LLC's Motion for Summary Judgment

07/10/2018 **Opposition and Countermotion** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Third Party Defendant/Counter Claimant SFR Investments Pool 1 LLC's Opposition to Ditech Financial LLC's Motion for Summary Judgment and Countermotion to Strike
Denied Without Prejudice; Third Party Defendant/Counter Claimant SFR Investments Pool 1 LLC's Opposition to Ditech Financial LLC's Motion for Summary Judgment and Countermotion to Strike

07/10/2018 **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)

	Matter Heard; Journal Entry Details: *THIRD PARTY DEFENDANT/COUNTER CLAIMANT SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT...THIRD PARTY PLAINTIFF/COUNTER DEFENDANT DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT...THIRD PARTY DEFENDANT/COUNTER CLAIMANT SFR INVESTMENTS POOL 1 LLC'S OPPOSITION TO DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO STRIKE Following arguments by Ms. Gilbert and Mr. Bao, COURT ORDERED, Third Party Defendant/Counter Claimant Sfr Investments Pool 1, Llc's Motion for Summary Judgment and Third Party Plaintiff/Counter Defendant Ditech Financial Llc's Motion for Summary Judgment DENIED WITHOUT PREJUDICE as there are issues of material fact as to both. COURT stated its FINDINGS, and FURTHER ORDERED, Third Party Defendant/Counter Claimant Sfr Investments Pool 1 Llc's Opposition to Ditech Financial Llc's Motion for Summary Judgment and Countermotion to Strike DENIED WITHOUT PREJUDICE. Upon Court's Inquiry, Mr. Bao advised he will prepare one order in regards to all Motions.;*
07/31/2018	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*
08/06/2018	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*
08/28/2018	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) Matter Heard; Journal Entry Details: *Colloquy regarding Motion to Intervene and trial checklist. Trial exhibits provided to the Court Clerk. Arguments by counsel regarding audio visual testimony request for Mr. Maltese. Court advised it would render a decision at the time of trial. COURT ORDERED, start time for 9/04/2018 bench trial RESCHEDULED to 1:00 pm; start time for 9/05/2018 bench trial RESCHEDULED to 1:00 pm. CLERK'S NOTE: The above Minute Order was completed by listening to a JAVS recording of the proceedings. kc//10-23-18;*
09/04/2018	**Bench Trial** (1:00 PM) (Judicial Officer: Kishner, Joanna S.) **09/04/2018-09/06/2018** Trial Continues; Trial Continues; Decision Pending; Journal Entry Details: *BENCH TRIAL CONTINUES. Testimony and exhibits presented (see worksheets). Third Party Plaintiff RESTED. Ms. Hanks made an Oral Motion under Rule 52(c) and provided Trial Briefs. Mr. Bao requested an opportunity to respond in writing to the Trial Briefs. Court declined to render its decision on SFR's Rule 52(c) motion until the close of all the evidence. Third Party Defendant RESTED. Third Party Plaintiff RESTED in rebuttal. The Court stated its FINDINGS and ORDERED SFR's 52(c) Motion on standing DENIED. Closing arguments by counsel. The Court DEFERRED RULING and DIRECTED counsel to submit Amended Findings of Fact and Conclusions of Law, incorporating its ruling on the 52(c) motion in Word format and hard copy to Chambers, due by September 14, 2018 and matter SET for Status Check for receipt of Amended Findings of Fact and Conclusions of Law and for Decision. 9/21/18 (CHAMBERS) FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECISION;* Trial Continues; Trial Continues; Decision Pending; Journal Entry Details: *BENCH TRIAL CONTINUES. Witness testimony and exhibits presented (see worksheets). Objections and Court's rulings thereon. COURT ORDERED, BENCH TRIAL CONTINUED. 9/6/18 1:30 PM BENCH TRIAL CONTINUES;* Trial Continues; Trial Continues; Decision Pending; Journal Entry Details: *Colloquy regarding which of the parties remain in the case and the funds interplead by the*

Alessi & Koenig firm and deposited into the Bankruptcy case. Upon the Court's inquiry, Mr. Bao stated the funds specifically allocated to the sale of the property in this case are included in the accounting of Alessi & Koenig in their Bankruptcy case and Ms. Hanks indicated that the Bankruptcy Court has directed the parties to litigate the case in State Court and if they receive an order stating that they are entitled to the excess sale proceeds, that Order would be provided to the Bankruptcy Court. The Court noted there were no party present representing Alessi & Koenig, Michael Weiss, Everbank, Republic Services, Meridiana/Rubicon Homeowners. Mr. Bao stated his position as defendant/intervenor was that if judgment is entered in favor of SFR, then Ditech would be entitled to the excess sale proceeds and would take that up with the Bankruptcy Court. The Court then confirmed with Mr. Bao on behalf of Ditech, the only parties present on the first party complaint, that for purposes of this trial, the Court need not address the first party complaint. The Court then addressed the Motion to Intervene by Stacey Midby-Weiss set to be heard on September 27, 2018, and inquired if there was anything the Court needs to be made aware of as to any communication with Ms. Midby-Weiss to determine if there was anything the Court needs to address in order to ensure all interests are taken care of. Both Ms. Hanks and Mr. Bao indicated there was no communication with Ms. Midby-Weiss other than the electronic notification of the motion having been filed. The Court then inquired if there was anything the parties were requesting to the Court to do with regard to Ms. Midby-Weiss. Ms. Hanks stated that Ms. Midby-Weiss is not a party in the case, that Mr. Weiss signed a stipulation to dismiss and Ms. Hanks was not requesting anything of the Court with regard to Ms. Midby-Weiss. Mr. Bao agreed with Ms. Hanks stating that Ms. Midby-Weiss was not a party to the loan at issue and clearly has notice of these proceedings and requested that they proceed with trial without her involvement. In light of the parties' representations, the chronology of events, the late filing of the Motion to Intervene, the request of counsel, and in the interests of justice, the Court stated it would move forward with the trial as scheduled. BENCH TRIAL COMMENCED. Opening statements by counsel. Witness Testimony and Exhibits presented (see worksheets). Colloquy regarding scheduling of witnesses. Ms. Hanks' objection to any testimony by an Everbank witness not properly disclosed. Arguments by counsel and the Court's ruling thereon. COURT ORDERED, Bench Trial CONTINUED. 9/5/18 1:00 PM BENCH TRIAL CONTINUES;

09/27/2018

Motion to Intervene (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Events: 08/27/2018 Notice of Motion
Intervenor Stacey Midby-Weiss' Motion to Intervene

MINUTES

Notice of Motion
Filed By: Intervenor Midby-Weiss, Stacey
Motion Denied;
Journal Entry Details:
Following arguments by Ms. Midby-Weiss and Mr. Martinez, COURT FINDS, Intervenor Stacey Midby-Weiss' Motion to Intervene untimely and lacks standing, and ORDERED, Motion DENIED. Mr. Martinez to prepare the Order and Ms. Midby-Weiss waived signing off on the proprosed Order.;

09/28/2018

Status Check (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Status Check: Amended Proposed Findings of Fact and Conclusion of Law due from counsel 9/14; Bench Trial Decision
Matter Heard;
Journal Entry Details:
Status check completed for Findings of Fact Conclusions of Law. In light of the Court's ruling denying the Motion to Intervene on September 27, 2018, the decision on the Bench Trial will be posted separately. ;

CIVIL COVER SHEET A-13-690490-C

Clark County, Nevada XXXI

Case No.
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Alessi & Koenig	Defendant(s) (name/address/phone): MICHAEL WEISS; EVERBANK; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES.
Attorney (name/address/phone):Huong Lam, Esq. & Brad Bace, Esq., ALESSI & KOENIG, 9500 W. Flamingo Rd., Ste. 205, Las Vegas, NV 89147 Phone: (702) 222-4033	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☒ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☒ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

10/21/13
Date

Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
10/12/2018 9:34 AM
Steven D. Grierson
CLERK OF THE COURT

FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, v. MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX inclusive, Defendants. DITECH FINANCIAL LLC, Intervenor.	CASE NO. A-13-690490-C DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**
DITECH FINANCIAL LLC, Third-Party Plaintiff, v. SFR INVESTMENTS POOL 1, LLC Third-Party Defendant.	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Based on the evidence admitted and arguments made in a bench trial on September 4, 2018, through September 6, 2018, the Court hereby makes the following Findings of Fact, Conclusions of Law and enters Judgment.

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FINDINGS OF FACT

A. The Subject Property, Promissory Note, and Deed of Trust.

1. A Deed of Trust listing Michael Weiss as the borrower ("Borrower"); Countrywide Bank, FSB as the lender ("Lender"); and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on December 24, 2007, and recorded on January 7, 2008, ("Deed of Trust"). The Deed of Trust granted the Lender a security interest in real property known as 2993 Via Della Amore, Henderson, Nevada 89052 (the "Property") to secure the repayment of a loan in the original amount of $356,000.00 to the Borrower (the "Note;" Note and Deed of Trust hereinafter referred to as the "Loan"). Joint Exhibits 1 and 2.[1]

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[1] The Court notes that Stacy Midby Weiss, an individual not named in the case and who did not participate in the litigation, filed a Motion to Intervene in 2017. At the time the Motion was filed, the matter was stayed due to the Bankruptcy filing of Alessi & Koenig LLC. Once the stay was lifted, although there were procedural defects in the Motion to Intervene including that there was not a Notice of Motion, the Court provided deference to Ms. Weiss and ruled on the Motion with the consent of the parties, finding that as she could not establish any right or ownership to the property and she did not have standing to intervene pursuant to NRCP 24 or on any other basis. (See Minutes of March 23, 2018, hearing.) Inadvertently, that ruling was not provided to the Court in a written order format by any of the parties to the action. Thereafter, on August 27, 2018, a week before the trial was to commence, and without providing the Court a courtesy copy, Ms. Weiss filed a Second Motion to Intervene raising the same arguments presented in her first Motion. The Motion was set to be heard after the trial commenced and there was no request to hear the matter on Order Shortening Time, nor was there any other request for expedited relief. The Motion was opposed by SFR Investments; and thus, a hearing was held on September 27, 2018. The instant Findings of Fact and Conclusions of Law and Judgment were not finalized in order for the Court to provide Ms. Weiss an opportunity to explain at the hearing if there was any reason her Motion to Intervene should be granted, as well as to ensure that prior to providing a final ruling the Court took into account if Ms. Weiss had any interest in the property or if any of her rights would be affected by the instant ruling. At the hearing on the Motion to Intervene, Ms. Weiss appeared and was not able to present evidence that she had any interest in the property at any of the relevant time periods or that she had standing to intervene. After providing every accommodation to Ms. Weiss as a pro-se litigant, and evaluating her Motion under the standards most favorable to her; given the absence of evidence, the Court DENIED her Motion to Intervene. Accordingly, as the Court has confirmed that the only remaining parties properly in the case were DITECH and SFR Investments, and they both participated in the trial, the Court finds it is appropriate to issue the Findings of Fact and Conclusions of Law and Judgment as set forth herein.

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2. In January 2008, Fannie Mae acquired ownership of the Loan and thereby obtained a property interest in the Deed of Trust. Joint Exhibit 40, 47.

3. On July 30, 2008, Congress enacted the Housing and Economic Recovery Act ("HERA") in response to the financial crisis of 2007-08, which established the Federal Housing Finance Agency ("FHFA") as an independent agency of the Federal Government that has supervisory and regulatory authority over Fannie Mae. 12 U.S.C. § 4511 (2008).

4. On September 6, 2008, pursuant to its authority under HERA, the FHFA placed Fannie Mae into conservatorship. *See* James B. Lockhart, Director, FHFA, Statement: Announcing Conservatorship of Fannie Mae and Freddie Mac (Sept. 7, 2008) (transcript available at https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Annnouncing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx)[2].

B. The HOA Foreclosure Sale and SFR's Purported Acquisition of the Property

5. On April 22, 2010, Alessi & Koenig, LLC, on behalf of Seven Hills Master Community Association ("HOA"), recorded a Notice of Delinquent Assessment Lien concerning past due homeowner association assessments on the Property ("Notice of Lien").

6. On October 18, 2010, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to BAC Home Loans Servicing LP ("BAC"). Joint Exhibit 12.

7. On February 10, 2011, the HOA recorded a Notice of Default and

[2] The FHFA's public statements are considered public records, and therefore the District Court takes judicial notice of this public record, pursuant to NRS 52.085.

Election to Sell on the Property.

8. Based on Fannie Mae's business records, the Borrower ceased to make monthly payments on the Loan beginning August 31, 2010, and continued to be delinquent until October 1, 2011, at which time the Loan was modified reflected by a significant change in the unpaid principal balance owed on the Loan. (Joint Exhibit 50.) Mr. Maltese testified that a loan cannot be modified if it remained in a securitized pool of loans, and therefore, would have been removed from any securitized pool of loans and placed into Fannie Mae's corporate portfolio prior to October 1, 2011.

9. There is no evidence the Loan was placed in a securitized pool after October 1, 2011.

10. On February 15, 2012, MERS, as nominee for Lender and Lender's successors and assigns, also recorded an assignment of the Deed of Trust to Bank of America, N.A. ("BANA"), as successor by merger to BAC. Bank of America was the servicer of the Loan for Fannie Mae at that time. Joint Exhibit 13, 42.

11. On September 5, 2013, BANA recorded an assignment of the Deed of Trust to Everbank. Everbank was the servicer of the Loan for Fannie Mae at that time. Joint Exhibit 14, 42.

12. On December 15, 2011, the HOA recorded a Notice of Trustee's Sale on the Property.

13. On August 13, 2013, the HOA recorded another Notice of Trustee' Sale on the Property.

14. On September 11, 2013, the HOA foreclosed on the Notice of Lien and sold the Property to SFR, which paid $18,000.00 according to the Foreclosure Deed recorded on September 17, 2013.

15. At the time of the HOA Sale on September 11, 2013, Everbank was the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 14. Pursuant to the effective version of the Guide at the time of the HOA Sale, Fannie

Mae's contractually authorized servicers, such as Everbank, often appeared as the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 42.

16. Ditech became the servicer of the Loan on behalf of Fannie Mae as of May 1, 2014, acquiring the servicing rights from Everbank. Ditech remains the servicer of the Loan on behalf of Fannie Mae. Joint Exhibit 34, 35, 47, 48, 50.

17. On February 2, 2015, Everbank recorded an assignment of the Deed of Trust to Ditech. Joint Exhibit 15. No further assignments were recorded.

18. Ditech and Everbank's role as Fannie Mae's authorized servicer is governed by the Fannie Mae Single Family Servicing Guide ("Guide"), which serves as the central document governing the contractual relationship between Fannie Mae and its loan servicers nationwide, including Ditech and Everbank. Joint Exhibit 42[3].

19. Fannie Mae contracts with a number of different loan servicers that handle all the day-to-day management of mortgage loans owned by Fannie Mae. Joint Exhibit 42.

20. There was no evidence that MERS, BANA, BAC, Everbank or Ditech claimed to be the owner of the Loan at any time after Fannie Mae acquired the Loan in January 2008.

21. Fannie Mae owned the Loan on September 11, 2013, the date of the HOA Sale. Joint Exhibit 35, 40, 47, 48, 50.

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[3] The Guide is publicly available on Fannie Mae's website. An interactive, current version is available at https://www.fanniemae.com/content/guide/servicing/index.html, and archived prior versions of the Guide are available at that URL by clicking "Show All" in the left hand column of that site. While some sections of the Guide have been amended over the course of Fannie Mae's ownership of the Loan, none of these amendments have materially changed the relevant sections. A static, PDF copy of the most recent version of the Guide is available at https://www.fanniemae.com/content/guide/svc121317.pdf. The Court may take judicial notice of the Guide. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

22. For any loans that Fannie Mae acquires and places into a securitized pool, Mr. Maltese testified that Fannie Mae always remains the Trustee of the pool with the control necessary to remove the loans from the securitized pool and to place into Fannie Mae's corporate portfolio.

23. If Fannie Mae owned the Loan, the servicer would provide monthly reports on the Loan. Joint Exhibit 50. Mr. Maltese testified that if Fannie Mae no longer owned the Loan, there would be no further Loan Activity History and there would be an action code to demonstrate such liquidation. Here, between September 1, 2013 and October 1, 2013, the servicer continued to report on the Loan to Fannie Mae and there is no action codes demonstrating Fannie Mae had ever relinquished ownership in the Loan. Joint Exhibit 50.

24. Mr. Maltese of Fannie Mae and Mr. Hardwick of Ditech testified that the business records of those entities would indicate something different if FHFA had consented to the extinguishment of the Deed of Trust. Their review of the records showed no evidence of such consent or that FHFA communicated with Fannie Mae or Ditech.

25. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

26. The FHFA has publicly supported invocation of the Federal Foreclosure Bar, codified as 12 U.S.C. § 4617(j)(3), by "authorized servicers," such as Ditech, in litigation such as this one. *See* FHFA's Statement on Servicer Reliance on HERA in HOA Foreclosure Litigation (Aug. 28, 2015), available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf.

CONCLUSIONS OF LAW

A. Standard of Proof

1. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

2. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered…").

B. The Federal Foreclosure Bar Preempts Contrary State Law

3. "The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Gonzales v. Raich*, 545 U.S. 1, 29, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (emphasis added). Indeed, "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (emphases added) (internal quotations and citations omitted).

4. As the Nevada Supreme Court and the Ninth Circuit recently held, the Federal Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA's foreclosure of its super priority lien to extinguish the Enterprises' interest in property while the Enterprises are under FHFA's

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conservatorship. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

5. A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights,* 112 F. Supp. 3d at 1153.

6. The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory of conflict preemption because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of their property interests. Accordingly, "the Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]." *Berezovsky*, 869 F.3d at 930; *see also Elmer*, 2017 WL 3822061, at *1 (following *Berezovsky*); *Flagstar*, 2017 WL 4712396, at *1 (same).

7. The Federal Foreclosure Bar necessarily protects the Deed of Trust because FHFA has succeeded by law to all of Fannie Mae's "rights, titles, powers,

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and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of [Fannie Mae] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA's "[a]uthority over" Fannie Mae and Freddie Mac when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

C. The Federal Foreclosure Bar Protected Fannie Mae's Property Interest at the Time of the HOA Sale

8. In January 2008, Fannie Mae purchased the Loan, and thereby acquired ownership of both the Promissory Note and the Deed of Trust. Joint Exhibit 40, 47. Fannie Mae maintained ownership of the Loan at the time of the HOA Sale. Joint Exhibits 47, 48, 50. At the time of the HOA Sale, Everbank was the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 14. Pursuant to the effective version of the Guide at the time of the HOA Sale, Fannie Mae's contractually-authorized servicers, such as Everbank, often appeared as the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 42. As Fannie Mae's servicer of the Loan, Everbank was in a contractual relationship with Fannie Mae requiring it, upon Fannie Mae's request, to assign all of its interest to Fannie Mae. Under Nevada law, Fannie Mae owned the Deed of Trust and thereby maintained a property interest in the underlying collateral at the time of the HOA Sale on September 11, 2013.

9. Fannie Mae's acquisition and continued ownership of the Loan at the time of the HOA Sale are amply supported by the business record's data, derived from SIR, a database that Fannie Mae uses in its everyday business to track millions

of loans that it acquires and owns nationwide. Joint Exhibits 47, 48, 50. Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records, including electronic database records, have "unusual reliability"). The Ninth Circuit's decisions in *Berezovsky* and *Elmer* confirmed that materially identical evidence is sufficient to establish an Enterprise's property interest. *See Berezovsky*, 869 F.3d at 932-33; *Elmer*, 2017 WL 3822061, at *1.

10. Fannie Mae is not required to produce the original wet-ink Note in order to prove that it owned the Loan at the time of the HOA Sale. And because Fannie Mae is not attempting to enforce the Note in this litigation, it need not produce the original Note to prove it currently has authority to enforce the Note. Fannie Mae does not need to show it has authority to enforce the Note at this time, much less at the time of the HOA Sale. *Cf. Leyva v. Nat'l Default Serv'g Corp.*, 255 P.3d 1275, 1280 (Nev. 2011) (explaining that once a note is properly endorsed, then the "'note holder,' with possession is entitled to enforce the note"). Thus, being a current holder of a note is irrelevant to proving Fannie Mae's ownership of the Loan *at the time of the HOA Sale*. Indeed, the *owner* and the *holder* of a note may be two different entities. A transfer of a note has no bearing on ownership: but, instead, "vests in the transferee any right of the transferor to enforce the instrument." NRS § 104.3203. Thus, under Nevada law, "[a] person may be a person entitled to enforce [a promissory note] even though the person is not the owner of the [note]." NRS § 104.3301(2). Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *3 n.9 (Nev. Dec. 20, 2011).

11. Under Nevada law, when Fannie Mae purchased the Loan in January 2008, Fannie Mae acquired ownership of the Note and Deed of Trust. *See In re Montierth*, 354 P.3d at 650-51 (citing Restatement (Third) of Property: Mortgages § 5.4 cmt. c (Am. Law. Inst. 1997). Restatement § 5.4 cmt. c. The *In re: Montierth* decision held that where the record beneficiary of the deed of trust has contractual or agency authority to foreclose on the note owner's behalf, the note-owner maintains a property interest in the collateral. *See id.*[4] The Restatement acknowledges that the assignment of a deed of trust to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note and deed of trust. The Restatement approach is also recognition of the realities of the mortgage industry: Fannie Mae and Freddie Mac can more efficiently support the national secondary mortgage market if they can contract with servicers to manage loans without relinquishing ownership of deeds of trust.

12. The Nevada Supreme Court recently confirmed that *Montierth*'s holding applies in a case involving materially the same facts and legal issues as here. *Nationstar Mortg., LLC v. Guberland LLC-Series 3*, No. 70546, 2018 WL 3025919 (Nev. June 15, 2018) (unpublished disposition). In *Guberland*, the Nevada Supreme Court cited *Montierth* and the Restatement and "conclude[d] that the district court erred in determining that the Federal Foreclosure Bar does not apply" in a situation when "Fannie Mae was not the beneficiary of the deed of trust" at the time of the HOA foreclosure sale. *Id.* at *2. In so doing, the Nevada Supreme Court emphasized

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[4] Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in *Edelstein v. Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58 (2012), which had discussed a general rule about what happens when a note and deed of trust are split without needing to consider the exception when a contractual or agency relationship exists between the entity who owns the loan and the entity who serves as record beneficiary of the deed of trust. *Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d at 651 ("Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions provided in the Restatement.").

that "different parties may hold the note and the deed of trust. Where that is the case, the note remains secured 'if there is *either* a principal-agent relationship between the note holder and the mortgage holder, *or* the mortgage holder 'otherwise has authority to foreclose in the [note holder]'s behalf.'" *Id.* (quoting *Montierth*, 354 P.3d at 650-51) (emphasis and alteration in original); *see also Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *1 (Nev. Mar. 15, 2018) (unpublished disposition) (characterizing *Montierth* as "recognizing that it is an acceptable practice for a loan servicer to serve as the beneficiary of record for the actual deed of trust beneficiary").

13. Nevada law further adopts the Uniform Commercial Code Article 3, which provides that "[a] person may be a person entitled to enforce [a promissory note] even though the person is not the owner of the [that note]." N.R.S. §104.3301. A "person entitled to enforce" a note may be a "holder" of the note or even a "nonholder in possession of the [note] who has the rights of the holder." *Id.* Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *1, 3 n.9 (Nev. Dec. 20, 2011). That is because "[o]wnership rights in instruments may be determined by principles of the law of property . . . which do not depend upon whether the instrument was transferred." UCC § 3-203 cmt. 1. For that reason, a transfer of a note has no bearing on ownership, but instead "vests in the transferee any right of the transferor

to enforce the instrument." Nev. Rev. Stat. § 104.3203.[5]

14. The ruling in *Montierth* is not limited to issues arising between mortgagees and mortgagors only. In *Guberland*, the Nevada Supreme Court cited *Montierth* and found that Fannie Mae maintained a protected property interest while its servicer appeared as the record beneficiary of the deed of trust at the time of an HOA sale to a third party purchaser. *Guberland*, 2018 WL 3025919 at *2; *see also 5312 La Quinta Hills, LLC BAC Home Loans Servicing, LP*, No. 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition). Moreover, the Ninth Circuit fully analyzed *Montierth* and Nevada law and found that "Nevada law . . . recognizes that . . . a note owner remains a secured creditor with a property interest in the collateral even if the recorded deed of trust names" a servicer. *Berezovsky*, 869 F.3d at 932. Thus, "[a]lthough the recorded deed of trust here omitted [Fannie Mae]'s name, [Fannie Mae]'s property interest is valid and enforceable under Nevada law," *id.*, as against third parties, including SFR.

D. Ditech Has Standing to Assert the Federal Foreclosure Bar

15. Ditech has standing to assert the Federal Foreclosure Bar as the current beneficiary of record for the Loan and has a contractual relationship as servicer to protect Fannie Mae's interest in litigation relating to the Loan. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, No. 69400, 133 Nev. Adv. Op. 34, 2017 WL 2709806 (Nev. June 22, 2017). *Nationstar* holds that "the servicer of a loan owned by [an Enterprise] may argue that the Federal Foreclosure Bar preempts NRS

[5] Similarly, Uniform Commercial Code Article 9 provides that, "[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security, mortgage or other lien." NRS § 104.9203(7). Thus, "a transferee of a mortgage note" such as Fannie Mae "whose property right in the note has attached also automatically *has an attached property right in the mortgage* that secures the note." Report of the Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) (emphasis added).

116.3116 and that neither [the Enterprise] nor the FHFA need be joined as a party." *Id.* at *2. The Nevada Supreme Court cited *Montierth*, which recognizes that when a noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See* 354 P.3d at 651 (citing Restatement § 5.4 cmt. c). *Nationstar* also confirmed that "private parties," like Ditech here, "may argue federal law preempts state law." *Nationstar*, 2017 WL 2709806, at *3. In cases where servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a claim properly before the court, in such circumstances "*judges are bound by federal law*." *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015)) (emphasis in *Nationstar*). Similarly, the Ninth Circuit found *Nationstar* persuasive and held that servicers may raise the Federal Foreclosure Bar to defend property interests of Fannie Mae and Freddie Mac in litigation. *Flagstar*, 2017 WL 4712396, at *1.

16. Ditech's role as Fannie Mae's authorized servicer is governed by the Guide, which serves as the central document governing the contractual relationship between Fannie Mae and its loan servicers nationwide, including Ditech. Pursuant to its contract with Fannie Mae, Ditech has the authority to represent Fannie Mae's interests in litigation with respect to the loans it services. The provisions of the Guide demonstrate that Fannie Mae and its loan servicers maintain the type of relationship described in the Restatement and *Montierth*. *See Berezovsky*, 869 F.3d at 932-33; *Montierth*, 354 P.3d at 651 (looking to whether a loan owner can "compel an assignment of the deed of trust"). The Nevada Supreme Court recognizes that the existence of a contractual relationship need not be proven by producing the actual contract and instead may be established through sworn testimony. *See Khan v. Bakhsh*, 306 P.3d 411, 413 (Nev. 2013). The Second Circuit Court of Appeals has held the same in evaluating the existence of a servicer's relationship with an Enterprise. *U.S. ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650,

653–54 n.5 (2d Cir. 2016) ("Although the specific Countrywide–Freddie Mac contract incorporating the selling guide does not appear in the record on appeal, there was trial testimony that Countrywide's contract obligated it to make the representations contained within Freddie Mac's selling guide.").

E. The Loan Was Not Securitized At The Time Of The HOA Sale

17. In the present case, the evidence established that the Loan was not securitized at the time of the HOA Sale. While Fannie Mae placed the Loan into a securitization trust after acquisition (Joint Exhibit 40), the Borrower ceased to make monthly payments on the Loan beginning August 31, 2010, and continued to be delinquent until October 1, 2011. Joint Exhibit 50. In October 2011, the Loan was modified, reflected by a significant change in the unpaid principal balance owed on the Loan. Joint Exhibit 50. Mr. Maltese testified that a Loan cannot be modified if it remained in a securitized pool of loans; and therefore, would have been removed from any securitized pool of loans and placed into Fannie Mae's corporate portfolio prior to October 1, 2011. There is no evidence the Loan was placed in a securitized pool after October 1, 2011. Given the loan was not securitized at the time of the sale, the Court does not find that its prior status as being part of a securitized pool impacts the application of the Federal Foreclosure Bar. *See, e.g.* 12 U.S.C. § 4617(b)(2)(A)(i) (the "Succession Provision"); *FHFA v. SFR*, 2018 WL 3097719, at *5-*6 ("Section 4617(b)(19)(B) nowhere disallows FHFA from 'succeed[ing] to' mortgages held it trust."); *Fannie Mae v. Villas at Huntington Homeowners Association*, No. 2:16-CV-2968-JCM-GWF, 2018 WL 2993532, at *4 (D. Nev. June 14, 2018) ("securitization of the loan does not alter [an Enterprise]'s ownership or FHFA's ability to 'succeed' to ownership of [the Enterprise]'s interest"); *see also Fannie Mae v. Keynote Properties, LLC*, 2:17-CV-1647-JCM-NJK, 2018 WL 2993530, at *4 (D. Nev. June 14, 2018) (holding same).

F. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

18. Because Fannie Mae had a protected property interest at the time of the HOA Sale, the Federal Foreclosure Bar precluded SFR from acquiring free-and-clear title unless SFR obtained FHFA's consent to the extinguishment of Fannie Mae's interest. The FHFA has publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens." Thus, "it is clear that FHFA did not consent to the extinguishment of [the Enterprise's] property interest through the HOA's foreclosure sale." *Alessi & Koenig*, 2017 WL 773872, at *3 (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent); *see also Berezovsky*, 869 F.3d at 929 (holding that FHFA's consent can only be manifested affirmatively).

19. Furthermore, SFR bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's ownership interest in the Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *See Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited). Here, SFR failed to provide any evidence or law to meet its burden.

G. The Federal Foreclosure Bar Does Not Violate Due Process

20. To the extent SFR contends that the Federal Foreclosure Bar violated Due Process, the Court does not find that argument compelling. Indeed, the

argument has been rejected by multiple courts, including the Ninth Circuit. *See FHFA. v. SFR*, 2018 WL 3097719, at *7 ("SFR's arguments lack merit."); *see also Skylights v. Byron*, 112 F. Supp. 1145, 1154 n.4 (D. Nev. 2015) (holding that "the protections of [the Federal Foreclosure Bar] were already in effect at the time of sales," and thus, HOA sale purchasers "all purchased real property subject to FHFA's lienhold interest, and there was no deprivation of property"); *Keynote*, 2018 WL 2993530, at *5 (similar); *Nationstar Mortg. LLC v. Tow Props., LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064, at *5 (D. Nev. Apr. 27, 2018) (similar). As the Ninth Circuit confirmed, the protections of the Federal Foreclosure Bar are automatic. *See FHFA v. SFR*, 2018 WL 3097719, at *9 ("SFR's characterization of FHFA's non-consent to the HOA foreclosure sales as affirmative declinations is incorrect."). Moreover, "[t]he Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional protection *unless or until* the Agency *affirmatively* relinquishes it.'" *Christine View*, 417 P.3d at 368 (quoting *Berezovsky*, 869 F.3d 929) (emphases added); *see also FHFA v. SFR*, 2018 WL 3097719, at *9 (citing *Berezovsky*). Thus, preservation of enterprise property interests is the default rule, with no action necessary from the Conservator for the statute to prevent a party from extinguishing a lien.

21. When SFR bought its interest in the Property, that purchase was governed by *both* state law and the protections of the Federal Foreclosure Bar. *See FHFA v. SFR*, 2018 WL 3097719, at *8. Thus, because the Federal Foreclosure Bar functioned to protect Fannie Mae's Deed of Trust from extinguishment, SFR was precluded from vesting free and clear title. *Id.* In other words, any interest SFR acquired at the time of the HOA Sale was, from the outset, subject to Fannie Mae's preexisting property interest, because the Federal Foreclosure Bar had already been enacted and protected Fannie Mae's property, thereby limiting the interest that SFR

could acquire at the HOA Sale. *Id.* SFR cannot be deprived of an interest it never had.

22. Even if SFR had some constitutionally protected property interest, SFR received all the procedural protections it was due. In analyzing the exact argument presented here, the Ninth Circuit concluded that any due process considerations arising out of an HOA Sale do not implicate the rights of the purchaser of a property such as SFR. *See FHFA v. SFR*, 2018 WL 3097719, at *9. Further, even assuming that an adjustment of property rights somehow occurred, that would not salvage SFR's argument. The action that "purportedly deprived . . . property was the enactment of HERA, which was undertaken by Congress in the normal manner prescribed by law." *Skylights*, 122 F. Supp. 3d at 1156; *see also FHFA v. SFR*, 2018 WL 3097719, at *9 (citing *Skylights*); *Tow*, 2018 WL 2014064, at *5. "When the action complained of is legislative in nature, due process is satisfied when the legislative body performs its responsibilities in the normal manner prescribed by law." *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012) (citation omitted). Thus, even if SFR had been deprived of some property interest, "the deprivation of property rights effected by [the Federal Foreclosure Bar] occurred with due process of law." *Skylights*, 112 F. Supp. 3d at 1154.

23. Furthermore, even if it were true that obtaining FHFA consent were impossible, this would be irrelevant to the due process analysis, as providing such a process would only provide an avenue for SFR to take a property interest away from Fannie Mae, not to prevent a deprivation of a property interest it already had. *FHFA v. SFR*, 2018 WL 3097719, at *10 ("SFR articulates no risk of erroneous deprivation of a buyer's interest under the statute's procedures, and any additional procedures so providing would burden the government's interest, as codified in the Federal Foreclosure Bar, in protecting the Enterprises' assets from foreclosure.") There is no requirement in the Federal Foreclosure Bar that FHFA create any more elaborate

processes to facilitate the destruction of the Enterprises' statutorily protected property in favor of private parties seeking to take away the conservatorships' property.

JUDGMENT

Based on the above Findings of Fact and Conclusions of Law, and good cause appearing, therefore;

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Judgment be entered in favor of Ditech and against SFR.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the HOA Sale that was conducted on September 11, 2013; and the Trustee's Deed Upon Sale recorded with the Clark County Recorder's Office on September 17, 2013, as Instrument No. 201309170000704, did not extinguish the Deed of Trust dated December 24, 2007, and recorded with the Clark County Recorder's Office on January 7, 2008, as Instrument No. 20080107-0001695 ("Deed of Trust"); and thus, the Deed of Trust, therefore, remains in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Title to the Property, commonly known as 2993 Via Della Amore, Henderson, NV 89052 (APN: #177-36-411-030), legally described as:

> PARCEL NO 1: LOT 104 IN BLOCK 2 OF SEVEN HILLS LOT D UNIT 1, as shown by map thereof on file in Book 79 of Maps, Page 82, in the Office of the County Recorder, Clark County, Nevada.
>
> PARCEL NO 2: Non-exclusive easements on and over the common elements (common area) as defined in the Declaration for Access, Use, Purpose, Enjoyment, Ingress and Egress subject to the terms and provisions of the Declaration. The easements are appurtenant to Parcel No. 1 above described. The common area is for the use of owners of residential lots which are subject to the Declaration, and is not for the use of the general public.

is hereby quieted; and the Deed of Trust recorded with the Clark County Recorder's Office on January 7, 2008, as Instrument No. 20080107-0001695, remains in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any and all Lis Pendens recorded against Title to the real property commonly known as 2993 Via Della Amore, Henderson, NV. 89052 (APN: #177-36-411-030), and as legally described herein, relating to the instant litigation is/are hereby **EXPUNGED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Judgment may be recorded against title to the real property commonly known as 2993 Via Della Amore, Henderson, NV. 89052 (APN: #177-36-411-030), and as legally described herein.

DATED this 10 day of October, 2018.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

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WOLFE & WYMAN, LLP.

DIANA S. EBRON, ESQ.
KAREN HANKS, ESQ.
KIM GILBERT EBRON



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

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Attorneys for Intervenor/ Third Party Plaintiff
DITECH FINANCIAL LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, v. MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX inclusive, Defendants. DITECH FINANCIAL LLC, Intervenor.	CASE NO. A-13-690490-C DEPT. NO.: XXXI **NOTICE OF ENTRY OF FINDING OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT**
DITECH FINANCIAL LLC, Third-Party Plaintiff, v. SFR INVESTMENTS POOL 1, LLC Third-Party Defendant.	

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

PLEASE TAKE NOTICE that on October 10, 2018, the court in the above-captioned action entered **FINDING OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT ("FFCL")**. The

Case Number: A-13-690490-C

FFCL is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

DATED: October 12, 2018

WOLFE & WYMAN LLP

By: */s/ Andrew A. Bao*
ANDREW A. BAO, ESQ.
Nevada Bar No. 10508
6757 Spencer Street
Las Vegas, NV 89119

Attorneys for Intervenor/
Third Party Plaintiff
DITECH FINANCIAL LLC
fka GREEN TREE SERVICING LLC

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Wolfe & Wyman LLP and that on the 12th day of October, 2018, the foregoing **NOTICE OF ENTRY OF FINDING OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT** was served via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System to:

- All Parties on the Court's E-Service List -

By: */s/ Tina M. Abrante*
Tina M. Abrante
An employee of Wolfe & Wyman LLP

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

EXHIBIT “A”

EXHIBIT “A”

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Steven D. Grierson
CLERK OF THE COURT

FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, v. MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX inclusive, Defendants. DITECH FINANCIAL LLC, Intervenor.	CASE NO. A-13-690490-C DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**
DITECH FINANCIAL LLC, Third-Party Plaintiff, v. SFR INVESTMENTS POOL 1, LLC Third-Party Defendant.	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Based on the evidence admitted and arguments made in a bench trial on September 4, 2018, through September 6, 2018, the Court hereby makes the following Findings of Fact, Conclusions of Law and enters Judgment.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

FINDINGS OF FACT

A. The Subject Property, Promissory Note, and Deed of Trust.

1. A Deed of Trust listing Michael Weiss as the borrower ("Borrower"); Countrywide Bank, FSB as the lender ("Lender"); and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on December 24, 2007, and recorded on January 7, 2008, ("Deed of Trust"). The Deed of Trust granted the Lender a security interest in real property known as 2993 Via Della Amore, Henderson, Nevada 89052 (the "Property") to secure the repayment of a loan in the original amount of $356,000.00 to the Borrower (the "Note;" Note and Deed of Trust hereinafter referred to as the "Loan"). Joint Exhibits 1 and 2.[1]

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[1] The Court notes that Stacy Midby Weiss, an individual not named in the case and who did not participate in the litigation, filed a Motion to Intervene in 2017. At the time the Motion was filed, the matter was stayed due to the Bankruptcy filing of Alessi & Koenig LLC. Once the stay was lifted, although there were procedural defects in the Motion to Intervene including that there was not a Notice of Motion, the Court provided deference to Ms. Weiss and ruled on the Motion with the consent of the parties, finding that as she could not establish any right or ownership to the property and she did not have standing to intervene pursuant to NRCP 24 or on any other basis. (See Minutes of March 23, 2018, hearing.) Inadvertently, that ruling was not provided to the Court in a written order format by any of the parties to the action. Thereafter, on August 27, 2018, a week before the trial was to commence, and without providing the Court a courtesy copy, Ms. Weiss filed a Second Motion to Intervene raising the same arguments presented in her first Motion. The Motion was set to be heard after the trial commenced and there was no request to hear the matter on Order Shortening Time, nor was there any other request for expedited relief. The Motion was opposed by SFR Investments; and thus, a hearing was held on September 27, 2018. The instant Findings of Fact and Conclusions of Law and Judgment were not finalized in order for the Court to provide Ms. Weiss an opportunity to explain at the hearing if there was any reason her Motion to Intervene should be granted, as well as to ensure that prior to providing a final ruling the Court took into account if Ms. Weiss had any interest in the property or if any of her rights would be affected by the instant ruling. At the hearing on the Motion to Intervene, Ms. Weiss appeared and was not able to present evidence that she had any interest in the property at any of the relevant time periods or that she had standing to intervene. After providing every accommodation to Ms. Weiss as a pro-se litigant, and evaluating her Motion under the standards most favorable to her; given the absence of evidence, the Court DENIED her Motion to Intervene. Accordingly, as the Court has confirmed that the only remaining parties properly in the case were DITECH and SFR Investments, and they both participated in the trial, the Court finds it is appropriate to issue the Findings of Fact and Conclusions of Law and Judgment as set forth herein.

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2. In January 2008, Fannie Mae acquired ownership of the Loan and thereby obtained a property interest in the Deed of Trust. Joint Exhibit 40, 47.

3. On July 30, 2008, Congress enacted the Housing and Economic Recovery Act ("HERA") in response to the financial crisis of 2007-08, which established the Federal Housing Finance Agency ("FHFA") as an independent agency of the Federal Government that has supervisory and regulatory authority over Fannie Mae. 12 U.S.C. § 4511 (2008).

4. On September 6, 2008, pursuant to its authority under HERA, the FHFA placed Fannie Mae into conservatorship. *See* James B. Lockhart, Director, FHFA, Statement: Announcing Conservatorship of Fannie Mae and Freddie Mac (Sept. 7, 2008) (transcript available at https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Annnouncing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx)[2].

B. The HOA Foreclosure Sale and SFR's Purported Acquisition of the Property

5. On April 22, 2010, Alessi & Koenig, LLC, on behalf of Seven Hills Master Community Association ("HOA"), recorded a Notice of Delinquent Assessment Lien concerning past due homeowner association assessments on the Property ("Notice of Lien").

6. On October 18, 2010, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to BAC Home Loans Servicing LP ("BAC"). Joint Exhibit 12.

7. On February 10, 2011, the HOA recorded a Notice of Default and

[2] The FHFA's public statements are considered public records, and therefore the District Court takes judicial notice of this public record, pursuant to NRS 52.085.

Election to Sell on the Property.

8. Based on Fannie Mae's business records, the Borrower ceased to make monthly payments on the Loan beginning August 31, 2010, and continued to be delinquent until October 1, 2011, at which time the Loan was modified reflected by a significant change in the unpaid principal balance owed on the Loan. (Joint Exhibit 50.) Mr. Maltese testified that a loan cannot be modified if it remained in a securitized pool of loans, and therefore, would have been removed from any securitized pool of loans and placed into Fannie Mae's corporate portfolio prior to October 1, 2011.

9. There is no evidence the Loan was placed in a securitized pool after October 1, 2011.

10. On February 15, 2012, MERS, as nominee for Lender and Lender's successors and assigns, also recorded an assignment of the Deed of Trust to Bank of America, N.A. ("BANA"), as successor by merger to BAC. Bank of America was the servicer of the Loan for Fannie Mae at that time. Joint Exhibit 13, 42.

11. On September 5, 2013, BANA recorded an assignment of the Deed of Trust to Everbank. Everbank was the servicer of the Loan for Fannie Mae at that time. Joint Exhibit 14, 42.

12. On December 15, 2011, the HOA recorded a Notice of Trustee's Sale on the Property.

13. On August 13, 2013, the HOA recorded another Notice of Trustee' Sale on the Property.

14. On September 11, 2013, the HOA foreclosed on the Notice of Lien and sold the Property to SFR, which paid $18,000.00 according to the Foreclosure Deed recorded on September 17, 2013.

15. At the time of the HOA Sale on September 11, 2013, Everbank was the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 14. Pursuant to the effective version of the Guide at the time of the HOA Sale, Fannie

Mae's contractually authorized servicers, such as Everbank, often appeared as the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 42.

16. Ditech became the servicer of the Loan on behalf of Fannie Mae as of May 1, 2014, acquiring the servicing rights from Everbank. Ditech remains the servicer of the Loan on behalf of Fannie Mae. Joint Exhibit 34, 35, 47, 48, 50.

17. On February 2, 2015, Everbank recorded an assignment of the Deed of Trust to Ditech. Joint Exhibit 15. No further assignments were recorded.

18. Ditech and Everbank's role as Fannie Mae's authorized servicer is governed by the Fannie Mae Single Family Servicing Guide ("Guide"), which serves as the central document governing the contractual relationship between Fannie Mae and its loan servicers nationwide, including Ditech and Everbank. Joint Exhibit 42[3].

19. Fannie Mae contracts with a number of different loan servicers that handle all the day-to-day management of mortgage loans owned by Fannie Mae. Joint Exhibit 42.

20. There was no evidence that MERS, BANA, BAC, Everbank or Ditech claimed to be the owner of the Loan at any time after Fannie Mae acquired the Loan in January 2008.

21. Fannie Mae owned the Loan on September 11, 2013, the date of the HOA Sale. Joint Exhibit 35, 40, 47, 48, 50.

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[3] The Guide is publicly available on Fannie Mae's website. An interactive, current version is available at https://www.fanniemae.com/content/guide/servicing/index.html, and archived prior versions of the Guide are available at that URL by clicking "Show All" in the left hand column of that site. While some sections of the Guide have been amended over the course of Fannie Mae's ownership of the Loan, none of these amendments have materially changed the relevant sections. A static, PDF copy of the most recent version of the Guide is available at https://www.fanniemae.com/content/guide/svc121317.pdf. The Court may take judicial notice of the Guide. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

22. For any loans that Fannie Mae acquires and places into a securitized pool, Mr. Maltese testified that Fannie Mae always remains the Trustee of the pool with the control necessary to remove the loans from the securitized pool and to place into Fannie Mae's corporate portfolio.

23. If Fannie Mae owned the Loan, the servicer would provide monthly reports on the Loan. Joint Exhibit 50. Mr. Maltese testified that if Fannie Mae no longer owned the Loan, there would be no further Loan Activity History and there would be an action code to demonstrate such liquidation. Here, between September 1, 2013 and October 1, 2013, the servicer continued to report on the Loan to Fannie Mae and there is no action codes demonstrating Fannie Mae had ever relinquished ownership in the Loan. Joint Exhibit 50.

24. Mr. Maltese of Fannie Mae and Mr. Hardwick of Ditech testified that the business records of those entities would indicate something different if FHFA had consented to the extinguishment of the Deed of Trust. Their review of the records showed no evidence of such consent or that FHFA communicated with Fannie Mae or Ditech.

25. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

26. The FHFA has publicly supported invocation of the Federal Foreclosure Bar, codified as 12 U.S.C. § 4617(j)(3), by "authorized servicers," such as Ditech, in litigation such as this one. *See* FHFA's Statement on Servicer Reliance on HERA in HOA Foreclosure Litigation (Aug. 28, 2015), available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf.

CONCLUSIONS OF LAW

A. Standard of Proof

1. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

2. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered…").

B. The Federal Foreclosure Bar Preempts Contrary State Law

3. "The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Gonzales v. Raich*, 545 U.S. 1, 29, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (emphasis added). Indeed, "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (emphases added) (internal quotations and citations omitted).

4. As the Nevada Supreme Court and the Ninth Circuit recently held, the Federal Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA's foreclosure of its super priority lien to extinguish the Enterprises' interest in property while the Enterprises are under FHFA's

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conservatorship. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

5. A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights,* 112 F. Supp. 3d at 1153.

6. The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory of conflict preemption because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of their property interests. Accordingly, "the Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]." *Berezovsky*, 869 F.3d at 930; *see also Elmer*, 2017 WL 3822061, at *1 (following *Berezovsky*); *Flagstar*, 2017 WL 4712396, at *1 (same).

7. The Federal Foreclosure Bar necessarily protects the Deed of Trust because FHFA has succeeded by law to all of Fannie Mae's "rights, titles, powers,

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and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of [Fannie Mae] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA's "[a]uthority over" Fannie Mae and Freddie Mac when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

C. The Federal Foreclosure Bar Protected Fannie Mae's Property Interest at the Time of the HOA Sale

8. In January 2008, Fannie Mae purchased the Loan, and thereby acquired ownership of both the Promissory Note and the Deed of Trust. Joint Exhibit 40, 47. Fannie Mae maintained ownership of the Loan at the time of the HOA Sale. Joint Exhibits 47, 48, 50. At the time of the HOA Sale, Everbank was the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 14. Pursuant to the effective version of the Guide at the time of the HOA Sale, Fannie Mae's contractually-authorized servicers, such as Everbank, often appeared as the record beneficiary of the Deed of Trust on behalf of Fannie Mae. Joint Exhibit 42. As Fannie Mae's servicer of the Loan, Everbank was in a contractual relationship with Fannie Mae requiring it, upon Fannie Mae's request, to assign all of its interest to Fannie Mae. Under Nevada law, Fannie Mae owned the Deed of Trust and thereby maintained a property interest in the underlying collateral at the time of the HOA Sale on September 11, 2013.

9. Fannie Mae's acquisition and continued ownership of the Loan at the time of the HOA Sale are amply supported by the business record's data, derived from SIR, a database that Fannie Mae uses in its everyday business to track millions

of loans that it acquires and owns nationwide. Joint Exhibits 47, 48, 50. Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records, including electronic database records, have "unusual reliability"). The Ninth Circuit's decisions in *Berezovsky* and *Elmer* confirmed that materially identical evidence is sufficient to establish an Enterprise's property interest. *See Berezovsky*, 869 F.3d at 932-33; *Elmer*, 2017 WL 3822061, at *1.

10. Fannie Mae is not required to produce the original wet-ink Note in order to prove that it owned the Loan at the time of the HOA Sale. And because Fannie Mae is not attempting to enforce the Note in this litigation, it need not produce the original Note to prove it currently has authority to enforce the Note. Fannie Mae does not need to show it has authority to enforce the Note at this time, much less at the time of the HOA Sale. *Cf. Leyva v. Nat'l Default Serv'g Corp.*, 255 P.3d 1275, 1280 (Nev. 2011) (explaining that once a note is properly endorsed, then the "'note holder,' with possession is entitled to enforce the note"). Thus, being a current holder of a note is irrelevant to proving Fannie Mae's ownership of the Loan *at the time of the HOA Sale*. Indeed, the *owner* and the *holder* of a note may be two different entities. A transfer of a note has no bearing on ownership: but, instead, "vests in the transferee any right of the transferor to enforce the instrument." NRS § 104.3203. Thus, under Nevada law, "[a] person may be a person entitled to enforce [a promissory note] even though the person is not the owner of the [note]." NRS § 104.3301(2). Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *3 n.9 (Nev. Dec. 20, 2011).

11. Under Nevada law, when Fannie Mae purchased the Loan in January 2008, Fannie Mae acquired ownership of the Note and Deed of Trust. *See In re Montierth*, 354 P.3d at 650-51 (citing Restatement (Third) of Property: Mortgages § 5.4 cmt. c (Am. Law. Inst. 1997). Restatement § 5.4 cmt. c. The *In re: Montierth* decision held that where the record beneficiary of the deed of trust has contractual or agency authority to foreclose on the note owner's behalf, the note-owner maintains a property interest in the collateral. *See id.*[4] The Restatement acknowledges that the assignment of a deed of trust to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note and deed of trust. The Restatement approach is also recognition of the realities of the mortgage industry: Fannie Mae and Freddie Mac can more efficiently support the national secondary mortgage market if they can contract with servicers to manage loans without relinquishing ownership of deeds of trust.

12. The Nevada Supreme Court recently confirmed that *Montierth*'s holding applies in a case involving materially the same facts and legal issues as here. *Nationstar Mortg., LLC v. Guberland LLC-Series 3*, No. 70546, 2018 WL 3025919 (Nev. June 15, 2018) (unpublished disposition). In *Guberland*, the Nevada Supreme Court cited *Montierth* and the Restatement and "conclude[d] that the district court erred in determining that the Federal Foreclosure Bar does not apply" in a situation when "Fannie Mae was not the beneficiary of the deed of trust" at the time of the HOA foreclosure sale. *Id.* at *2. In so doing, the Nevada Supreme Court emphasized

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[4] Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in *Edelstein v. Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58 (2012), which had discussed a general rule about what happens when a note and deed of trust are split without needing to consider the exception when a contractual or agency relationship exists between the entity who owns the loan and the entity who serves as record beneficiary of the deed of trust. *Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d at 651 ("Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions provided in the Restatement.").

that "different parties may hold the note and the deed of trust. Where that is the case, the note remains secured 'if there is *either* a principal-agent relationship between the note holder and the mortgage holder, *or* the mortgage holder 'otherwise has authority to foreclose in the [note holder]'s behalf.'" *Id.* (quoting *Montierth*, 354 P.3d at 650-51) (emphasis and alteration in original); *see also Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *1 (Nev. Mar. 15, 2018) (unpublished disposition) (characterizing *Montierth* as "recognizing that it is an acceptable practice for a loan servicer to serve as the beneficiary of record for the actual deed of trust beneficiary").

13. Nevada law further adopts the Uniform Commercial Code Article 3, which provides that "[a] person may be a person entitled to enforce [a promissory note] even though the person is not the owner of the [that note]." N.R.S. §104.3301. A "person entitled to enforce" a note may be a "holder" of the note or even a "nonholder in possession of the [note] who has the rights of the holder." *Id.* Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *1, 3 n.9 (Nev. Dec. 20, 2011). That is because "[o]wnership rights in instruments may be determined by principles of the law of property . . . which do not depend upon whether the instrument was transferred." UCC § 3-203 cmt. 1. For that reason, a transfer of a note has no bearing on ownership, but instead "vests in the transferee any right of the transferor

to enforce the instrument." Nev. Rev. Stat. § 104.3203.[5]

14. The ruling in *Montierth* is not limited to issues arising between mortgagees and mortgagors only. In *Guberland*, the Nevada Supreme Court cited *Montierth* and found that Fannie Mae maintained a protected property interest while its servicer appeared as the record beneficiary of the deed of trust at the time of an HOA sale to a third party purchaser. *Guberland*, 2018 WL 3025919 at *2; *see also 5312 La Quinta Hills, LLC BAC Home Loans Servicing, LP*, No. 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition). Moreover, the Ninth Circuit fully analyzed *Montierth* and Nevada law and found that "Nevada law . . . recognizes that . . . a note owner remains a secured creditor with a property interest in the collateral even if the recorded deed of trust names" a servicer. *Berezovsky*, 869 F.3d at 932. Thus, "[a]lthough the recorded deed of trust here omitted [Fannie Mae]'s name, [Fannie Mae]'s property interest is valid and enforceable under Nevada law," *id.*, as against third parties, including SFR.

D. Ditech Has Standing to Assert the Federal Foreclosure Bar

15. Ditech has standing to assert the Federal Foreclosure Bar as the current beneficiary of record for the Loan and has a contractual relationship as servicer to protect Fannie Mae's interest in litigation relating to the Loan. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, No. 69400, 133 Nev. Adv. Op. 34, 2017 WL 2709806 (Nev. June 22, 2017). *Nationstar* holds that "the servicer of a loan owned by [an Enterprise] may argue that the Federal Foreclosure Bar preempts NRS

[5] Similarly, Uniform Commercial Code Article 9 provides that, "[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security, mortgage or other lien." NRS § 104.9203(7). Thus, "a transferee of a mortgage note" such as Fannie Mae "whose property right in the note has attached also automatically *has an attached property right in the mortgage* that secures the note." Report of the Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) (emphasis added).

116.3116 and that neither [the Enterprise] nor the FHFA need be joined as a party." *Id.* at *2. The Nevada Supreme Court cited *Montierth*, which recognizes that when a noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See* 354 P.3d at 651 (citing Restatement § 5.4 cmt. c). *Nationstar* also confirmed that "private parties," like Ditech here, "may argue federal law preempts state law." *Nationstar*, 2017 WL 2709806, at *3. In cases where servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a claim properly before the court, in such circumstances "*judges are bound by federal law*." *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015)) (emphasis in *Nationstar*). Similarly, the Ninth Circuit found *Nationstar* persuasive and held that servicers may raise the Federal Foreclosure Bar to defend property interests of Fannie Mae and Freddie Mac in litigation. *Flagstar*, 2017 WL 4712396, at *1.

16. Ditech's role as Fannie Mae's authorized servicer is governed by the Guide, which serves as the central document governing the contractual relationship between Fannie Mae and its loan servicers nationwide, including Ditech. Pursuant to its contract with Fannie Mae, Ditech has the authority to represent Fannie Mae's interests in litigation with respect to the loans it services. The provisions of the Guide demonstrate that Fannie Mae and its loan servicers maintain the type of relationship described in the Restatement and *Montierth*. *See Berezovsky*, 869 F.3d at 932-33; *Montierth*, 354 P.3d at 651 (looking to whether a loan owner can "compel an assignment of the deed of trust"). The Nevada Supreme Court recognizes that the existence of a contractual relationship need not be proven by producing the actual contract and instead may be established through sworn testimony. *See Khan v. Bakhsh*, 306 P.3d 411, 413 (Nev. 2013). The Second Circuit Court of Appeals has held the same in evaluating the existence of a servicer's relationship with an Enterprise. *U.S. ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650,

653–54 n.5 (2d Cir. 2016) ("Although the specific Countrywide–Freddie Mac contract incorporating the selling guide does not appear in the record on appeal, there was trial testimony that Countrywide's contract obligated it to make the representations contained within Freddie Mac's selling guide.").

E. The Loan Was Not Securitized At The Time Of The HOA Sale

17. In the present case, the evidence established that the Loan was not securitized at the time of the HOA Sale. While Fannie Mae placed the Loan into a securitization trust after acquisition (Joint Exhibit 40), the Borrower ceased to make monthly payments on the Loan beginning August 31, 2010, and continued to be delinquent until October 1, 2011. Joint Exhibit 50. In October 2011, the Loan was modified, reflected by a significant change in the unpaid principal balance owed on the Loan. Joint Exhibit 50. Mr. Maltese testified that a Loan cannot be modified if it remained in a securitized pool of loans; and therefore, would have been removed from any securitized pool of loans and placed into Fannie Mae's corporate portfolio prior to October 1, 2011. There is no evidence the Loan was placed in a securitized pool after October 1, 2011. Given the loan was not securitized at the time of the sale, the Court does not find that its prior status as being part of a securitized pool impacts the application of the Federal Foreclosure Bar. *See, e.g.* 12 U.S.C. § 4617(b)(2)(A)(i) (the "Succession Provision"); *FHFA v. SFR*, 2018 WL 3097719, at *5-*6 ("Section 4617(b)(19)(B) nowhere disallows FHFA from 'succeed[ing] to' mortgages held it trust."); *Fannie Mae v. Villas at Huntington Homeowners Association*, No. 2:16-CV-2968-JCM-GWF, 2018 WL 2993532, at *4 (D. Nev. June 14, 2018) ("securitization of the loan does not alter [an Enterprise]'s ownership or FHFA's ability to 'succeed' to ownership of [the Enterprise]'s interest"); *see also Fannie Mae v. Keynote Properties, LLC*, 2:17-CV-1647-JCM-NJK, 2018 WL 2993530, at *4 (D. Nev. June 14, 2018) (holding same).

F. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

18. Because Fannie Mae had a protected property interest at the time of the HOA Sale, the Federal Foreclosure Bar precluded SFR from acquiring free-and-clear title unless SFR obtained FHFA's consent to the extinguishment of Fannie Mae's interest. The FHFA has publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens." Thus, "it is clear that FHFA did not consent to the extinguishment of [the Enterprise's] property interest through the HOA's foreclosure sale." *Alessi & Koenig*, 2017 WL 773872, at *3 (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent); *see also Berezovsky*, 869 F.3d at 929 (holding that FHFA's consent can only be manifested affirmatively).

19. Furthermore, SFR bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's ownership interest in the Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *See Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited). Here, SFR failed to provide any evidence or law to meet its burden.

G. The Federal Foreclosure Bar Does Not Violate Due Process

20. To the extent SFR contends that the Federal Foreclosure Bar violated Due Process, the Court does not find that argument compelling. Indeed, the

argument has been rejected by multiple courts, including the Ninth Circuit. *See FHFA. v. SFR*, 2018 WL 3097719, at *7 ("SFR's arguments lack merit."); *see also Skylights v. Byron*, 112 F. Supp. 1145, 1154 n.4 (D. Nev. 2015) (holding that "the protections of [the Federal Foreclosure Bar] were already in effect at the time of sales," and thus, HOA sale purchasers "all purchased real property subject to FHFA's lienhold interest, and there was no deprivation of property"); *Keynote*, 2018 WL 2993530, at *5 (similar); *Nationstar Mortg. LLC v. Tow Props., LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064, at *5 (D. Nev. Apr. 27, 2018) (similar). As the Ninth Circuit confirmed, the protections of the Federal Foreclosure Bar are automatic. *See FHFA v. SFR*, 2018 WL 3097719, at *9 ("SFR's characterization of FHFA's non-consent to the HOA foreclosure sales as affirmative declinations is incorrect."). Moreover, "[t]he Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional protection *unless or until* the Agency *affirmatively* relinquishes it.'" *Christine View*, 417 P.3d at 368 (quoting *Berezovsky*, 869 F.3d 929) (emphases added); *see also FHFA v. SFR*, 2018 WL 3097719, at *9 (citing *Berezovsky*). Thus, preservation of enterprise property interests is the default rule, with no action necessary from the Conservator for the statute to prevent a party from extinguishing a lien.

21. When SFR bought its interest in the Property, that purchase was governed by *both* state law and the protections of the Federal Foreclosure Bar. *See FHFA v. SFR*, 2018 WL 3097719, at *8. Thus, because the Federal Foreclosure Bar functioned to protect Fannie Mae's Deed of Trust from extinguishment, SFR was precluded from vesting free and clear title. *Id.* In other words, any interest SFR acquired at the time of the HOA Sale was, from the outset, subject to Fannie Mae's preexisting property interest, because the Federal Foreclosure Bar had already been enacted and protected Fannie Mae's property, thereby limiting the interest that SFR

could acquire at the HOA Sale. *Id.* SFR cannot be deprived of an interest it never had.

22. Even if SFR had some constitutionally protected property interest, SFR received all the procedural protections it was due. In analyzing the exact argument presented here, the Ninth Circuit concluded that any due process considerations arising out of an HOA Sale do not implicate the rights of the purchaser of a property such as SFR. *See FHFA v. SFR*, 2018 WL 3097719, at *9. Further, even assuming that an adjustment of property rights somehow occurred, that would not salvage SFR's argument. The action that "purportedly deprived . . . property was the enactment of HERA, which was undertaken by Congress in the normal manner prescribed by law." *Skylights*, 122 F. Supp. 3d at 1156; *see also FHFA v. SFR*, 2018 WL 3097719, at *9 (citing *Skylights*); *Tow*, 2018 WL 2014064, at *5. "When the action complained of is legislative in nature, due process is satisfied when the legislative body performs its responsibilities in the normal manner prescribed by law." *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012) (citation omitted). Thus, even if SFR had been deprived of some property interest, "the deprivation of property rights effected by [the Federal Foreclosure Bar] occurred with due process of law." *Skylights*, 112 F. Supp. 3d at 1154.

23. Furthermore, even if it were true that obtaining FHFA consent were impossible, this would be irrelevant to the due process analysis, as providing such a process would only provide an avenue for SFR to take a property interest away from Fannie Mae, not to prevent a deprivation of a property interest it already had. *FHFA v. SFR*, 2018 WL 3097719, at *10 ("SFR articulates no risk of erroneous deprivation of a buyer's interest under the statute's procedures, and any additional procedures so providing would burden the government's interest, as codified in the Federal Foreclosure Bar, in protecting the Enterprises' assets from foreclosure.") There is no requirement in the Federal Foreclosure Bar that FHFA create any more elaborate

processes to facilitate the destruction of the Enterprises' statutorily protected property in favor of private parties seeking to take away the conservatorships' property.

JUDGMENT

Based on the above Findings of Fact and Conclusions of Law, and good cause appearing, therefore;

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Judgment be entered in favor of Ditech and against SFR.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the HOA Sale that was conducted on September 11, 2013; and the Trustee's Deed Upon Sale recorded with the Clark County Recorder's Office on September 17, 2013, as Instrument No. 201309170000704, did not extinguish the Deed of Trust dated December 24, 2007, and recorded with the Clark County Recorder's Office on January 7, 2008, as Instrument No. 20080107-0001695 ("Deed of Trust"); and thus, the Deed of Trust, therefore, remains in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Title to the Property, commonly known as 2993 Via Della Amore, Henderson, NV 89052 (APN: #177-36-411-030), legally described as:

> PARCEL NO 1: LOT 104 IN BLOCK 2 OF SEVEN HILLS LOT D UNIT 1, as shown by map thereof on file in Book 79 of Maps, Page 82, in the Office of the County Recorder, Clark County, Nevada.
>
> PARCEL NO 2: Non-exclusive easements on and over the common elements (common area) as defined in the Declaration for Access, Use, Purpose, Enjoyment, Ingress and Egress subject to the terms and provisions of the Declaration. The easements are appurtenant to Parcel No. 1 above described. The common area is for the use of owners of residential lots which are subject to the Declaration, and is not for the use of the general public.

is hereby quieted; and the Deed of Trust recorded with the Clark County Recorder's Office on January 7, 2008, as Instrument No. 20080107-0001695, remains in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any and all Lis Pendens recorded against Title to the real property commonly known as 2993 Via Della Amore, Henderson, NV. 89052 (APN: #177-36-411-030), and as legally described herein, relating to the instant litigation is/are hereby **EXPUNGED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Judgment may be recorded against title to the real property commonly known as 2993 Via Della Amore, Henderson, NV. 89052 (APN: #177-36-411-030), and as legally described herein.

DATED this 10 day of October, 2018.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ANDREW A. BAO, ESQ.
WOLFE & WYMAN, LLP.

DIANA S. EBRON, ESQ.
KAREN HANKS, ESQ.
KIM GILBERT EBRON



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

MICHAEL WEISS, an individual; EVERBANK, an unknown entity; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic a governmental entity; MERIDIANA / RUBICON HOMEOWNERS ASSOCIATION, a domestic non-profit corporation; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX inclusive,

Defendants,

and

DITECH FINANCIAL LLC,

Case No.: A-13-690490-C
Dept. No.: XXXI

STIPULATION AND ORDER FOR RULE 54(b) CERTIFICATION

MAY 02 '19 PM06:14*
TC31

Case Number: A-13-690490-C

Intervenor-Defendant.

DITECH FINANCIAL LLC,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC,

Third-Party Defendant.

SFR INVESTMENTS POOL 1, LLC,

Counterclaimant/Cross-Claimant,

vs.

DITECH FINANCIAL LLC; MICHAEL WEISS, an individual; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XII-XXX, inclusive,

Counter-Defendant/Cross-Defendants.

KIMGILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
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(702) 485-3300 FAX (702) 485-3301

Third-Party-Defendant/Counter-claimant/Cross-Claimant SFR Investments Pool 1, LLC ("SFR"), and Intervenor-Defendant/Third-Party-Plaintiff/Counter-Defendant/Cross-Defendant Ditech Financial, LLC, fka Green Tree Servicing, LLC ("Ditech"), (collectively, the "Parties") hereby stipulate and agree as follows:

IT IS HEREBY AGREED AND STIPULATED that the Parties request this Court to independently review the record for determination that there is no just cause to delay to deem final pursuant to NRCP 54(b) the Findings of Fact and Conclusions of Law and Judgment, entered on October 12, 2018. The Order adjudicated all claims between Ditech and SFR.

SFR appealed the Order but the Nevada Supreme Court has issued an Order to Show Cause as Alessi & Koenig, LLC's interpleader action remains in the case, making SFR's Notice of Appeal, entered on November 13, 2018, premature.

Thus, without Rule 54(b) Certification, the Order is not ripe for appeal.

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Because of those remaining claims, the appeal may not move forward without Rule 54(b) certification.

Respectfully submitted by:

DATED this 1st day of May, 2019.

KIM GILBERT EBRON	WOLFE & WYMAN LLP
Diana S. Ebron, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 Karen L. Hanks, Esq. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 Telephone: 702-485-3300 Facsimile: 702-485-3301 Email: diana@kgelegal.com Email: jackie@kgelegal.com Email: karen@kgelegal.com *Attorneys for SFR Investments Pool 1, LLC*	Andrew M. Bao, Esq. Nevada Bar No. 10508 6757 Spencer Street Las Vegas, Nevada 89119 Telephone: 702-476-0100 Facsimile: 702-476-0101 Email: aabao@wolfewyman.com *Attorneys for Ditech Financial LLC fka Green Tree Servicing LLC*

ORDER

Having independently reviewed the docket and papers on file, this Court finds no just cause for delaying entry of final judgment as between SFR, and Ditech Financial, LLC in Case No. A-13-690490-C

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For good cause appearing,

IT IS ORDERED that the Findings of Fact and Conclusions of Law and Judgment, entered on October 12, 2018 be certified as final as to Ditech Financial, LLC and SFR Investments Pool 1, LLC.

IT IS FURTHER ORDERED that final judgment as to the above-referenced parties be entered.

Dated: May 2, 2019

DISTRICT COURT JUDGE

TC

JOANNA S. KISHNE

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DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**March 11, 2014**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

March 11, 2014 **9:00 AM** **Motion for Leave**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT: Bace, Bradley D, ESQ Attorney

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Plaintiff's Motion for Leave to Amend Complaint is GRANTED pursuant to EDCR 2.20 and for good cause. Plaintiff's counsel to prepare the Order, circulating to all parties. Matter SET for Status Check regarding receipt of proposed order.

3/28/14 STATUS CHECK: ORDER (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**July 08, 2016**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

July 08, 2016 **3:00 AM** **Motion to Intervene**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- DITECH FINANCIAL LLC'S MOTION TO INTERVENE

On May 25, 2016, a Motion to Intervene was filed by Ditech Financial, LLC. The matter was subsequently placed on the Chambers Calendar of Department XXXI. There being no opposition to the motion, and the time to oppose having passed, pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS the Motion to Intervene.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Counsel Ditech Financial, LLC to prepare the Order and submit to Chambers for consideration within ten (10) days in accordance with EDCR 7.21.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Cort Dodrill, Esq., Huong Lam, Esq. and Kevin Hahn, Esq.\sjh

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**November 04, 2016**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

November 04, 2016 **3:00 AM** **Motion to Withdraw as Counsel**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- MALCOLM AND CISNEROS' MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR EVERBANK; DECLARATION OF KEVIN HAHN

On September 23, 2016, a Motion to Withdraw was filed by Malcom Cisneros counsel for Defendant Everbank. The matter was subsequently placed on the Chambers Calendar of Department XXXI. There being no Opposition to the Motion, and the time to oppose having passed, pursuant to EDCR 2.20 and for good cause showing that a withdrawal would be proper in accordance with applicable law, the Court hereby GRANTS the Motion to Withdraw.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Defendant's Counsel to prepare the Order and submit to Chambers for consideration within ten (10) days in accordance with EDCR 7.21, notifying the former clients of all pending dates and providing the last known address and telephone number of Plaintiffs within the proposed Order.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Kevin Hahn, Esq.\sjh 11-4-16

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**December 15, 2016**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

December 15, 2016 9:00 AM Motion

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Hanks, Karen	Attorney
Miles, Christian A.	Attorney

JOURNAL ENTRIES

- Counsel for Plaintiff not present. Court notes may be challenges in this underlying case. Upon Court's inquiry, Mr. Miles states Alessi & Koenig are holding the funds. Mr. Miles states bringing this motion in order to preserve the funds as it has come to their attention that Alessi & Koenig may be insolvent at this point.
Matter trailed.
Matter recalled.
Ms. Hanks now present on behalf of SFR. Mr. Miles states this Court does have jurisdiction. Ms. Hanks states she sent a text message to Mr. Loizzi and received no response. Court notes it has been stated in another courtroom that the Alessi & Koening firm has filed bankruptcy, however, no personal knowledge. Both Mr. Miles and Ms. Hanks state they were unaware. COURT ORDERED, Ditech Financial LLC's Motion for Deposit of Funds in Court Pursuant to Nev. R. Civ. P. 67 is GRANTED based on what is currently before the Court. Court notes if information is presented, the Court may not sign the Order if it has no jurisdiction to do so. Mr. Miles to prepare the Order, circulating to all counsel for approval as to form and content in accordance with EDCR 7.21.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**February 14, 2017**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

February 14, 2017 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Kory Schlitz

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Zachary Clayton Esq. present on behalf of SFR Investment POOL 1 LLC. Andrew Bao Esq. present on behalf of Ditech Financial LLC.

Court summarized the bankruptcy filing of Alessi and Koenig. Upon Court's inquiry, Mr. Clayton indicated SFR has or will put in a notice to withdraw their motion based upon events that are unfolding, and orally stated that is SFR's intention. Mr. Bao indicated SFR filed an Answer and Crossclaim the previous day, and parties tried to remove this from calendar however it was too late in the day. COURT ORDERED, Motion to Dismiss WITHDRAWN.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**March 15, 2017**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

March 15, 2017 **2:00 PM** **Minute Order**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- MINUTE ORDER - NO HEARING HELD

The Court is in receipt of the Notice of Removal to the United States Bankruptcy Court filed on March 5, 2017. Given the removal, the District Court case is statistically closed and any pending matters are vacated from the Court's calendar as they need to be addressed to the Bankruptcy Court unless and/or until this Court receives different notification from the Bankruptcy Court.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Colt Dodrill, Esq., Diana Ebron, Esq. and Stacey Midby-Weiss.\sjh 3-15-17

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**February 22, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

February 22, 2018 **9:00 AM** **Status Check: Status of Case**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: April Watkins

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Clayton, Zachary	Attorney
Foley-Peak, Brigette E.	Attorney
Loizzi, Steven T., Jr.	Attorney

JOURNAL ENTRIES

- Court noted matter remanded back from Bankruptcy Court. Mr. Clayton advised interpleader filed in 2013, bank came in and then SFR served right before bankruptcy. Ms. Foley-Peak advised JCCR has not been filed, need to do discovery and need to do ECCR. Mr. Loizzi stated started as interpleader, do not have access proceeds to deposit and requested to stipulate to dismiss this portion of complaint. Ms. Foley-Peak advised Ditech Financial intervened. Court inquired as to Intervenor Stacey Midby-Weiss. Ms. Foley-Peak stated she does not thing she appeared in bankruptcy proceedings, have not noticed her on anything and believes she was on certificate of service regarding status check. Court noted Ms. Midby-Weiss not on certificate of service. Ms. Foley-Peak stated she will try to reach out to Ms. Midby-Weiss or her counsel. COURT ORDERED, oral request to dismiss DENIED. Counsel can file written motion. Mr. Loizzi stated do have funds but funds are with bankruptcy trustee. Mr. Clayton stated he is in process of serving Michael Weiss. Ms. Foley-Peak requested to continue to get a hold of Ms. Midby Weiss, do ECCR and JCCR. Colloquy regarding trial stacks. Mr. Clayton stated he believes five year rule was tolled when bankruptcy was filed. Court stated nothing has been provided to the Court as to tolling of the case and ORDERED, matter SET for trial. New trial order to issue. FURTHER ORDERED, matter SET for status check.

3/8/18 9:00 AM STATUS CHECK: NOTICE OF MS. MIDBY-WEISS

6/28/18 10:15 AM PRETRIAL CONFERENCE

7/31/18 9:00 AM CALENDAR CALL

8/6/18 9:00 AM BENCH TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**March 08, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

March 08, 2018	**9:00 AM**	**Status Check**	**Status Check Re: Stacey Midby-Weiss Motion to Intervene**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Clayton, Zachary	Attorney

JOURNAL ENTRIES

- Court noted there was no appearance by Alessi & Koenig as well as Ms. Stacey Midby-Weiss who filed a Motion to Intervene prior to the Bankruptcy Stay. MATTER TRAILED for counsel to reach out to counsel for Alessi & Koenig.

MATTER RECALLED. Counsel for Alessi & Koenig not present and COURT ORDERED, ORDER TO SHOW CAUSE to issue for non-appearance. Matter heard with counsel present. Mr. Bao stated that Ditech and SFR drafted the Joint Case Conference Report but there was no signatures by Alessi & Koenig or Ms. Midby-Weiss. Mr. Bao stated they had no information why Ms. Midby-Weiss was seeking to intervene as the original borrower was Michael Weiss and unaware of the relationship. COURT ORDERED, Stacey Midby-Weiss' Motion to Intervene DEFERRED to Chambers for Decision. Court DIRECTED counsel to move the case forward and are compliant with the rules. COURT FINDS the two parties presently before this Court to be compliant with NRCP 16 based on counsel's representations.

CONTINUED TO: 3/16/18 (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**March 23, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

March 23, 2018	**3:00 AM**	**Status Check**	**Status Check Re: Stacey Midby-Weiss Motion to Intervene**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Tena Jolley

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- This matter came on for hearing on February 22, 2018. That hearing was a status check following the remand of this matter from the Bankruptcy Court. At that hearing, it was brought to the Court s attention that on February 15, 2017, a document was filed by Stacey Midby-Weiss, pro se. That document is titled as a Motion to Intervene, and requests relief in the form of intervention and the appointment of a guardian ad litem. As no notice of motion was ever filed along with the Motion, it did not come before the Court for hearing. However, as all parties present at the status check have notice of the document, and receiving no objection from those parties, the Court finds it appropriate to rule on the Motion at this time, pursuant to EDCR 2.23(c). Based on a full review of all the papers, pleadings, documents on file, and all applicable statutes and case law, the Court finds as follows.

NRCP 24 permits intervention in a matter, but requires a showing that the applicant has an interest which is the subject of the action and those actions are not adequately represented by existing parties. The Court does not find that the claimed interest in the action has been adequately stated in order for the Court to evaluate whether that interest is represented by existing parties. The Motion to Intervene is therefore DENIED without prejudice. With respect to the request to appoint a Guardian ad litem, the Court finds that movant has not named the guardian sought to appointed, and in so doing

appears to misunderstand the purpose and role of a guardian ad litem. As no good cause has been shown for appointing a guardian, the Motion is also DENIED, without prejudice, in that respect.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Tena M. Jolley, to all registered parties for Odyssey File & Serve and via Email to Stacy Midby-Weiss (midby@yahoo.com). (tmj:3/23/18)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**May 25, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

May 25, 2018 **3:00 AM** **Motion to Withdraw as Counsel**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Tena Jolley

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- On April 20, 2018, Steven Loizzi, Jr., Esq., filed a Motion to Withdraw as Counsel of Record for Plaintiff Alessi & Koenig. This matter was subsequently placed on the May 25, 2018, Chambers Calendar of Department XXXI. There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown that a withdrawal would be proper in accordance with applicable law, the Court hereby GRANTS the Motion to Withdraw as Counsel both pursuant to EDCR 2.20 and on the merits. As Defendant is a corporate entity and cannot proceed in proper person, the Court is setting a status check for June 28, 2018, at 10:15 a.m., regarding retention of counsel for the Plaintiff Alessi & Koenig. Counsel is to notify the client and include that status check in the proposed order discussed below.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Plaintiff's Counsel to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21, and no later than June 29, 2018, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order.

Said Order then must be filed in accordance with EDCR 7.24.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Tena M. Jolley, to all registered parties for Odyssey File & Serve. (tmj:5/25/18)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**June 28, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

June 28, 2018 **10:15 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Haly Pannullo

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT: Bao, Andrew A. Attorney
Loizzi, Steven T., Jr.

JOURNAL ENTRIES

- STATUS CHECK: COUNSEL FOR PLAINTIFF ... PRE-TRIAL CONFERENCE

Jason Martinez, Esq.. present on behalf of SFR Investments.

Court inquired as to the status of Mr. Loizzi's Order to Withdraw. Mr. Loizzi stated he has the Order. Order SIGNED IN OPEN COURT. COURT FINDS Mr. Loizzi is not in compliant with EDCR 7.21 and ORDERED, Mr. Loizzi is to donate $150.00 within 30 days of today's date with a receipt to be provided to the Court. Court noted if a receipt is not received by July 30, then the Court is going to set an Order to Show Cause. Colloquy regarding the pending Motions for Summary Judgment. Upon Court's inquiry, Counsel agreed trial will take 3-4 days. COURT FURTHER ORDERED, trial dates VACATED and RESET; Pre-trial Memo due 08/21/18; clarification for case caption is to be provided 07/10/18.

08/28/18 9:00 AM CALENDAR CALL

09/04/18 11:00 AM BENCH TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**July 10, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

July 10, 2018 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley
Madalyn Kearney

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Gilbert, Jacqueline	Attorney

JOURNAL ENTRIES

- THIRD PARTY DEFENDANT/COUNTER CLAIMANT SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT...THIRD PARTY PLAINTIFF/COUNTER DEFENDANT DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT...THIRD PARTY DEFENDANT/COUNTER CLAIMANT SFR INVESTMENTS POOL 1 LLC'S OPPOSITION TO DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO STRIKE

Following arguments by Ms. Gilbert and Mr. Bao, COURT ORDERED, Third Party Defendant/Counter Claimant Sfr Investments Pool 1, Llc's Motion for Summary Judgment and Third Party Plaintiff/Counter Defendant Ditech Financial Llc's Motion for Summary Judgment DENIED WITHOUT PREJUDICE as there are issues of material fact as to both. COURT stated its FINDINGS, and FURTHER ORDERED, Third Party Defendant/Counter Claimant Sfr Investments Pool 1 Llc's Opposition to Ditech Financial Llc's Motion for Summary Judgment and Countermotion to Strike DENIED WITHOUT PREJUDICE. Upon Court's Inquiry, Mr. Bao advised he will prepare one order in regards to all Motions.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**August 28, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

August 28, 2018 **9:00 AM** **Calendar Call**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Keri Cromer

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Hanks, Karen	Attorney

JOURNAL ENTRIES

- Colloquy regarding Motion to Intervene and trial checklist. Trial exhibits provided to the Court Clerk. Arguments by counsel regarding audio visual testimony request for Mr. Maltese. Court advised it would render a decision at the time of trial. COURT ORDERED, start time for 9/04/2018 bench trial RESCHEDULED to 1:00 pm; start time for 9/05/2018 bench trial RESCHEDULED to 1:00 pm.

CLERK'S NOTE: The above Minute Order was completed by listening to a JAVS recording of the proceedings. kc//10-23-18

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing **COURT MINUTES** **September 04, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

September 04, 2018 1:00 PM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Hanks, Karen	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- Colloquy regarding which of the parties remain in the case and the funds interplead by the Alessi & Koenig firm and deposited into the Bankruptcy case. Upon the Court's inquiry, Mr. Bao stated the funds specifically allocated to the sale of the property in this case are included in the accounting of Alessi & Koenig in their Bankruptcy case and Ms. Hanks indicated that the Bankruptcy Court has directed the parties to litigate the case in State Court and if they receive an order stating that they are entitled to the excess sale proceeds, that Order would be provided to the Bankruptcy Court. The Court noted there were no party present representing Alessi & Koenig, Michael Weiss, Everbank, Republic Services, Meridiana/Rubicon Homeowners. Mr. Bao stated his position as defendant/intervenor was that if judgment is entered in favor of SFR, then Ditech would be entitled to the excess sale proceeds and would take that up with the Bankruptcy Court. The Court then confirmed with Mr. Bao on behalf of Ditech, the only parties present on the first party complaint, that for purposes of this trial, the Court need not address the first party complaint. The Court then addressed the Motion to Intervene by Stacey Midby-Weiss set to be heard on September 27, 2018, and inquired if there was anything the Court needs to be made aware of as to any communication with Ms. Midby-Weiss to determine if there was anything the Court needs to address in order to ensure all interests are taken care of. Both Ms. Hanks and Mr. Bao indicated there was no communication with

Ms. Midby-Weiss other than the electronic notification of the motion having been filed. The Court then inquired if there was anything the parties were requesting to the Court to do with regard to Ms. Midby-Weiss. Ms. Hanks stated that Ms. Midby-Weiss is not a party in the case, that Mr. Weiss signed a stipulation to dismiss and Ms. Hanks was not requesting anything of the Court with regard to Ms. Midby-Weiss. Mr. Bao agreed with Ms. Hanks stating that Ms. Midby-Weiss was not a party to the loan at issue and clearly has notice of these proceedings and requested that they proceed with trial without her involvement. In light of the parties' representations, the chronology of events, the late filing of the Motion to Intervene, the request of counsel, and in the interests of justice, the Court stated it would move forward with the trial as scheduled.

BENCH TRIAL COMMENCED. Opening statements by counsel. Witness Testimony and Exhibits presented (see worksheets). Colloquy regarding scheduling of witnesses. Ms. Hanks' objection to any testimony by an Everbank witness not properly disclosed. Arguments by counsel and the Court's ruling thereon. COURT ORDERED, Bench Trial CONTINUED.

9/5/18 1:00 PM BENCH TRIAL CONTINUES

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**September 05, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

September 05, 2018 1:00 PM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Hanks, Karen	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES. Witness testimony and exhibits presented (see worksheets). Objections and Court's rulings thereon. COURT ORDERED, BENCH TRIAL CONTINUED.

9/6/18 1:30 PM BENCH TRIAL CONTINUES

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing **COURT MINUTES** **September 06, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

September 06, 2018 1:30 PM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Hanks, Karen	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES. Testimony and exhibits presented (see worksheets). Third Party Plaintiff RESTED. Ms. Hanks made an Oral Motion under Rule 52(c) and provided Trial Briefs. Mr. Bao requested an opportunity to respond in writing to the Trial Briefs. Court declined to render its decision on SFR's Rule 52(c) motion until the close of all the evidence. Third Party Defendant RESTED. Third Party Plaintiff RESTED in rebuttal. The Court stated its FINDINGS and ORDERED SFR's 52(c) Motion on standing DENIED. Closing arguments by counsel. The Court DEFERRED RULING and DIRECTED counsel to submit Amended Findings of Fact and Conclusions of Law, incorporating its ruling on the 52(c) motion in Word format and hard copy to Chambers, due by September 14, 2018 and matter SET for Status Check for receipt of Amended Findings of Fact and Conclusions of Law and for Decision.

9/21/18 (CHAMBERS) FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECISION

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**September 27, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

September 27, 2018 9:00 AM Motion to Intervene

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Martinez, Jason G.	Attorney
Midby-Weiss, Stacey	Intervenor

JOURNAL ENTRIES

- Following arguments by Ms. Midby-Weiss and Mr. Martinez, COURT FINDS, Intervenor Stacey Midby-Weiss' Motion to Intervene untimely and lacks standing, and ORDERED, Motion DENIED. Mr. Martinez to prepare the Order and Ms. Midby-Weiss waived signing off on the proprosed Order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**September 28, 2018**

A-13-690490-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Michael Weiss, Defendant(s)

September 28, 2018 3:00 AM Status Check

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Tena Jolley

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Status check completed for Findings of Fact Conclusions of Law. In light of the Court's ruling denying the Motion to Intervene on September 27, 2018, the decision on the Bench Trial will be posted separately.

EXHIBIT LIST

Case No.: **A690490**

Dept. No.: **XXXI**

Trial Date: **SEPTEMBER 4, 2018**

Judge: **JOANNA S. KISHNER**

Court Clerk: **TENA M JOLLEY**

Recorder: **SANDRA HARRELL**

ALESSI AND KOENIG LLC,

PLAINTIFF,

vs.

MICHAEL WEISS,

DEFENDANTS.

Counsel for Plaintiff: **ANDREW A. BAO, ESQ.**

Counsel for Defendant: **KAREN HANKS, ESQ.**

JASON MARTINEZ, ESQ

TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Deed of Trust recorded 01/07/08 as Instrument No. 20080107-0001695 (GTS000001 – GTS000021)	9-4-18	NO	9-4-18
2	Endorsed Note for 2993 Via Della Amore, Henderson, NV 89052[1] (GTS000022 – GTS000023)	9-4-18	yes	9-4-18
3	Substitution of Trustee recorded 10/18/10 as Instrument No. 201010180003235 (GTS000024 – GTS000025)	Returned to Counsel		
4	Notice of Delinquent Assessment Lien recorded 04/22/10 as Instrument No. 201004220001232 (GTS000026)			
5	Notice of Default/Election to Sell Under Deed of Trust recorded 10/14/10 as Instrument No. 201010140002724 (GTS000027 – GTS000028)			
6	Notice of Default and Election to Sell Under Homeowners Association recorded 02/10/11 as Instrument No. 20110210-003159 (GTS000029)			
7	Nevada Notice of Trustee's Sale recorded 08/29/11 as Instrument No. 201108290002033 (GTS000030 – GTS000031)			
8	Rescission of Election to Declare Default recorded on 09/21/11 as Instrument No. 201109210003043 (GTS000032 – GTS000033)			
9	Notice of Trustee's Sale recorded 12/15/11 as Instrument No. 201112150002231 (GTS000034)			
10	Notice of Trustee's Sale recorded 08/13/13 as Instrument No. 201308130001272 (GTS000035)			
11	Trustee's Deed Upon Sale recorded 09/17/13 as Instrument No. 012309170000704 (GTS000036 – GTS000037)	Returned to Counsel		

[1] Certain information has been redacted on the following grounds: irrelevant, confidential and proprietary business information

EXHIBIT LIST

A690490

ALESSI AND KOENIG LLC **VS.** **MICHAEL WEISS**

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
12	Corporation Assignment of Deed of Trust recorded 10/18/10 as Instrument No. 201010180003234 (GTS000038)	9-4-18	STIP	9-4-18
13	Assignment of Deed of Trust recorded on 02/15/12 as Instrument No. 201202150001843 (GTS000039 – GTS000040)	9-4-18	STIP	9-4-18
14	Assignment of Deed of Trust recorded on 09/05/13 as Instrument No. 201309050000106 (GTS000041 – GTS000042)	9-4-18	STIP	9-4-18
15	Assignment of Deed of Trust recorded on 02/02/15 as Instrument No. 20150202-0001191 (GTS000043 – GTS000044)	9-4-18	NO	9-4-18
16	Notice of Lis Pendens recorded on 09/02/14 as Instrument No. 20140902-0002384 (GTS000045 – GTS000047)	Returned to Counsel		
17	Master Declaration of Covenants Conditions and Restrictions and Reservation of Easements for Seven Hills (GTS000048 – GTS000167)			
18	Documents received from Alessi & Koenig (GTS0000168 – GTS000183)			
19	Notice of Delinquent Assessment Lien recorded 01/08/09 as Instrument No. 200910080003625 (GTS000184)			
20	Notice of Lien for Homeowner Association Fines recorded on 04/06/09 as Instrument No. 20090406-000868 (GTS000185 – GTS000186)			
21	Notice of Delinquent Assessment Lien recorded 05/19/10 as Instrument No. 201005190001943 (GTS000187 – GTS000188)			
22	Notice of Default and Election to Sell Real Property to Satisfy Delinquent Assessment Lien recorded 01/30/13 as Instrument No. 2013013000001812 (GTS000189 – GTS000190)			
23	Notice of Default and Election to Sell Real Property to Satisfy Delinquent Assessment Lien recorded 06/23/10 as Instrument No. 201006230002121 (GTS000191 – GTS000192)			
24	Notice of Delinquent Assessment Lien recorded 05/23/14 as Instrument No. 201405230002649 (GTS000193 – GTS000196)			
25	Chicago Title Insurance Company Title Policy (GTS000197 – GTS000200)			
26	Release of Lien recorded 09/02/14 as Instrument No. 20140902-0002761 (GTS000201)			
27	Declaration of Covenants, Conditions and Restrictions for Meridiana recorded 08/29/97 as Instrument No. 970829.04209 (GTS000202 – GTS000275)	Returned to Counsel		

EXHIBIT LIST

A690490

ALESSI AND KOENIG LLC **VS.** **MICHAEL WEISS**

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
28	First Amendment to Declaration of Covenants, Conditions and Restrictions for Meridiana recorded 10/02/97 as Instrument No. 971002.00694 (GTS000276 – GTS000279)	Returned to Counsel		
29	Second Amendment to Declaration of Covenants, Conditions and Restrictions for Meridiana recorded 12/17/97 as Instrument No. 971217.01157 (GTS000280 – GTS000281)	↓	↓	↓
30	Third Amendment to Declaration of Covenants, Conditions and Restrictions for Meridiana recorded 12/30/97 as Instrument No. 971230.02389 (GTS000282 – GTS000283)	↓	↓	↓
31	Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Meridiana recorded 02/20/98 as Instrument No. 980220.01877 (GTS000284 – GTS000286)	↓	↓	↓
32	First Statutorily Mandated Amendment to Declaration of Covenants, Conditions and Restrictions for Meridiana/ Rubicon Homeowners' Association recorded 20010323.00865 as Instrument No. 970829.04209 (GTS000287 – GTS000301)	↓	↓	↓
33	Restated and Amended Declaration of Covenants, Conditions and Restrictions for Meridiana Homeowners Association recorded 20020206.00778 as Instrument No. 20020206.00778 (GTS000302 – GTS000331)	Returned to Counsel		
34	Welcome Letter from Green Tree dated April 15, 2014[1] (GTS000332 – GTS000335)	9-4-18	yes	9-4-18 WA
35	Ditech Business Record – Primary Account Information[1] (GTS000336)	9-4-18	yes	9-4-18 WA
36	Affidavit from Miles, Bergstrom & Winters LLP Borrower Letter dated August 24, 2017 (GTS000337 – GTS000345)	Returned to Counsel		
37	Affidavit from Miles, Bergstrom & Winters LLP Borrower Letter dated August 24, 2017 (GTS000346 – GTS000367)	↓	↓	↓
38	Fannie Mae Business Records - LAM Transaction Audit Trail[1] (GTS000368)	Returned to Counsel		
39	Fannie Mae Business Records - LAM Transaction Details[1] (GTS000369 – GTS000371)	9-5-18	yes	— WA
40	Fannie Mae Schedule of Mortgages[1] (GTS000372 – GTS000621)	9-5-18	NO	9-5-18 WA
41	Relevant Portions of March 14, 2018 Fannie Mae Single Family Servicing Guide – available at https://www.fanniemae.com/content/guide/svc031418.pdf (GTS000622 – GTS000682)	Returned to Counsel		

EXHIBIT LIST

A690490

ALESSI AND KOENIG LLC **VS.** **MICHAEL WEISS**

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
42	Portions of Fannie Mae Servicing Guide Excerpts 03/14/12 to 11/01/14 – a full copy of which is available at: https:www//fanniemae.com/content/guide/svc031412.pdf (GTS000683 – GTS000713)	9-5-18	yes	9-5-18	VA
43	Federal Housing Finance Agency Statement on HOA Super Priority Lien Foreclosures (Apr. 21, 2015) (GTS000714)	Returned to Counsel			
44	Federal Housing Finance Agency, Statement on Servicer Reliance on the Hosing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations (Aug. 28, 2018) (GTS000715)	↓	↓	↓	
45	Fannie Mae Lender Letter LL-2015-04 (GTS000716)	↓	↓	↓	
46	Declaration of Graham Babin executed March 28, 2018 (GTS000717 - GTS000740)	Returned to Counsel			
47	Fannie Mae Acquisition Information (GTS000741)	9-5-18	yes	9-5-18	VA
48	Fannie Mae Property Information (GTS000742)	9-5-18	yes	9-5-18	VA
49	Fannie Mae Servicing Transfer Information (GTS000743 - GTS000744)	9-5-18	yes	—	VA
50	Fannie Mae Loan Transaction History – Loan Activity History Detail (GTS000745 - GTS000756)	9-5-18	yes	9-5-18	VA
51	Relevant Portions of February 27, 2018 Fannie Mae Selling Guide – available at https://www.fanniemae.com/content/guide/sel022718.pdf (GTS000757-GTS000770)	Returned to Counsel			
52	Emails from prior servicer (GTS000771 -GTS000773)	↓	↓	↓	
53	Foreclosure Notices from Prior Servicer (GTS000774-GTS000789)				
54	Ditech Servicing Notes (GTS000790 - GTS000968)				
55	Ditech Business Record – Primary Account Information[1] (Color Copy of GT000336 with Loan No Redacted) (GTS000969)	↓	↓	↓	
56	Affidavit of Missing or Lost Assignment, Instrument No. 20080123-0002585 (SFR0029-SFR0030)	Returned to Counsel			
57	Fannie Mae Servicing Guide Announcement SVC-2012-22 dated November 9, 2012 (SFR94-SFR119)	9-6-18	NO	9-6-18	VA
58	Fannie Mae Servicing Guide Announcement SVC-2012-05 dated April 11, 2012 (SFR145-SFR147)	9-5-18	NO	9-5-18	VA

EXHIBIT LIST

A690490

ALESSI AND KOENIG LLC **VS.** **MICHAEL WEISS**

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
59	Federal Housing Finance Agency News Released dated September 2, 2011; "FHFA Sues 17 Firms to Recover Losses to Fannie Mae and Freddie Mac" (SFR157-SFR158)	Returned to Counsel		
60	Selling Guide Announcement (SFR390-SFR391)	9-6-18	yes	9-6-18
61	Letter Re: Comments in Response to Proposed Changes to the Uniform Common Interest Ownership Act (SFR392-SFR397)	9-6-18	yes	—
62	Transcript of Bench Trial Day 2 Re: SFR Investment Pool 1, LLC v. Green Tree Servicing LLC (SFR398-SFR460)	Returned to Counsel		
63	Impact of New Accounting Standards SFR461-SFR469	Returned to Counsel		
64	Declaration of Jon Curcio (SFR501-SFR515)	Returned to Counsel		
65	Declaration of Ann-Louise Fraser (SFR516-SFR522)	Returned to Counsel		
66	Trust Agreement (SFR528-SFR624)	9-6-18	yes	-
67	Fannie Mae Single Family 2011 Servicing Guide (SFR625-SFR634)	Returned to Counsel		
68	Mortgage Selling Servicing Contract (SFR644-SFR648)			
69	FHFA Statement (SFR685-SFR687)			
70	Selling Guide Announcement (SFR688-SFR690)			
71	Transcript of July 5, 2016 Proceedings (2:15-cv-00267-RFB-NJK) (SFR691-SFR791)			
72	Respondent's Answering Brief (SFR792-SFR855)			
73	Opening Brief (SFR856-SFR935)			
74	Appellant's Opening Brief (SFR936-SFR997)			
75	Complaint for Quite Title (SFR998-SFR1090)			
76	Order (SFR1091-SFR1100)	Returned to Counsel		

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

DIANA S. EBRON, ESQ.
7625 DEAN MARTIN DR., SUITE 110
LAS VEGAS, NV 89139-5974

DATE: June 7, 2019
CASE: A-13-690490-C

RE CASE: ALESSI & KOENIG, LLC vs. MICHAEL WEISS; EVERBANK; REPUBLIC SILVER STATE DISPOSAL, INC. dba REPUBLIC SERVICES; MERIDIANA / RUBICON HOMEOWNERS ASSOCIATION

NOTICE OF APPEAL FILED: June 6, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☐ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☐ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☒ Notice of Entry of Order *re: Stipulation and Order filed May 7, 2019*

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL (AMENDED); CASE APPEAL STATEMENT (AMENDED); DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF FINDING OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT; STIPULATION AND ORDER FOR RULE 54(B) CERTIFICATION; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

ALESSI & KOENIG, LLC,

Plaintiff(s),

vs.

MICHAEL WEISS; EVERBANK; REPUBLIC SILVER STATE DISPOSAL, INC. dba REPUBLIC SERVICES; MERIDIANA / RUBICON HOMEOWNERS ASSOCIATION,

Defendant(s),

Case No: A-13-690490-C

Dept No: XXXI

DITECH FINANCIAL, LLC,

Third-Party Plaintiff(s),

vs.

SFR INVESTMENTS POOL 1, LLC,

Third-Party Defendant(s),

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of June 2019.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk
A-13-690490-C