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10 *Attorneys for Proposed Intervenor Federal Housing Finance Agency*

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 TERRA WEST COLLECTIONS GROUP,
 14 LLC,

Plaintiff,

vs.

15 FEDERAL NATIONAL MORTGAGE
 16 ASSOCIATION; CITY OF HENDERSON;
 and REPUBLIC SERVICES,

Defendants.

17 FEDERAL NATIONAL MORTGAGE
 18 ASSOCIATION,

Counterclaimant,

vs.

19 TERRA WEST COLLECTIONS GROUP,
 20 LLC; ANTHEM HIGHLANDS
 21 COMMUNITY ASSOCIATION; and
 22 RUGGED OAKS INVESTMENTS, LLC,

Counter-Defendants.

CASE NO. 2:15-cv-01692-JAD-VCF

**STIPULATION TO ENTRY OF ORDER
 AND ~~PROPOSED~~ ORDER
 PERMITTING THE FEDERAL HOUSING
 FINANCE AGENCY, AS CONSERVATOR
 OF THE FEDERAL NATIONAL
 MORTGAGE ASSOCIATION, TO
 INTERVENE**

23 1. The Federal Housing Finance Agency (“FHFA” or “Conservator”), as
 24 Conservator for the Federal National Mortgage Association (“Fannie Mae”), seeks to intervene
 25 in the above-captioned action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

26 2. On September 6, 2008, FHFA’s Director appointed the FHFA Conservator of
 27 Fannie Mae in accordance with the Housing and Economic Recovery Act of 2008, Pub. L. 110-
 28

1 289, 122 Stat. 2654 (codified at 12 U.S.C. § 4617) (“HERA”), and the Federal Housing
2 Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4501, et. seq.).

3 3. The FHFA, as Conservator, has succeeded to “all rights, titles, powers, and
4 privileges” of Fannie Mae, including its right to sue and be sued in the federal courts. *See*
5 12 U.S.C. § 4617(b)(2)(A)(i).

6 4. Accordingly, FHFA asserts that it has an unconditional federal statutory right to
7 intervene in this matter, *see* Fed. R. Civ. P. 24(a)(1), and to assert its interests in a manner
8 consistent with the Conservator’s powers and duties.

9 5. Pursuant to Fed. R. Civ. P. 24(c), FHFA attaches as **Exhibit A** their intended
10 Answer.

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1 **STIPULATION**

2 FHFA, Fannie Mae, and Plaintiff/Counter-Defendant Terra West Collections Group,
3 through their undersigned attorneys of record, hereby stipulate and request that the Court make
4 this stipulation an order of the Court:

5 The FHFA shall be permitted to intervene in the above-referenced action
6 pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24.

7 DATED this 17th day of November, 2015.

8 **GORDON LAW**

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24 *Federal National Mortgage Association*

25 **ORDER**

26 IT IS SO ORDERED.


27 
28 UNITED STATES MAGISTRATE JUDGE
DATED: November 18, 2015

Exhibit A

Exhibit A

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10 *Attorneys for Intervenor Federal Housing Finance Agency*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 TERRA WEST COLLECTIONS GROUP,
14 LLC,

15 Plaintiff,

16 vs.

17 FEDERAL NATIONAL MORTGAGE
ASSOCIATION; CITY OF HENDERSON;
18 and REPUBLIC SERVICES,

19 Defendants.

20 and

21 FEDERAL HOUSING FINANCE AGENCY,
as Conservator for the Federal National
22 Mortgage Association,

23 Intervenor.

24 FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

25 Counterclaimant,

26 and

27 FEDERAL HOUSING FINANCE AGENCY,
as Conservator for the Federal National
28 Mortgage Association,

Intervenor.

vs.

TERRA WEST COLLECTIONS GROUP,
26 LLC; ANTHEM HIGHLANDS
COMMUNITY ASSOCIATION; and
27 RUGGED OAKS INVESTMENTS, LLC,

Counter-Defendants.

CASE NO. 2:15-cv-01692-JAD-VCF

~~**[PROPOSED]**~~

**ANSWER AND COUNTERCLAIMS BY
INTERVENOR FEDERAL HOUSING
FINANCE AGENCY, AS CONSERVATOR
FOR THE FEDERAL NATIONAL
MORTGAGE ASSOCIATION**

1 Simultaneously with this Answer, the Federal Housing Finance Agency (“FHFA”), in its
2 capacity as Conservator for the Federal National Mortgage Association (“Fannie Mae”), is filing,
3 along with the other parties to this action, a joint stipulation that FHFA be permitted to intervene
4 in this action pursuant to Federal Rule of Civil Procedure 24. In accordance with Rule 24(c)’s
5 requirement that a motion to intervene “be accompanied by a pleading that sets out the claim or
6 defense for which intervention is sought,” FHFA submits this Answer to respond as follows to
7 the Complaint filed by Plaintiff Terra West Collections Group, LLC (“Plaintiff”) on July 21,
8 2015.

9
10 1. FHFA admits the allegations contained within Paragraph 1 of the Complaint.

11 2. FHFA admits that Fannie Mae has an interest in property located within the State
12 of Nevada. FHFA denies the remaining allegations within Paragraph 2 of the Complaint.

13 3. FHFA admits that the City of Henderson is an entity existing under the laws of
14 the State of Nevada. FHFA is without knowledge or information sufficient to form a belief as to
15 the truth of the remaining allegations within Paragraph 3 of the Complaint.

16 4. FHFA is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations within Paragraph 4 of the Complaint.

18 5. Paragraph 5 of the Complaint states legal conclusions that do not require a
19 response. To the extent a response is required, denied.

20 6. FHFA is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations within Paragraph 6 of the Complaint.

22 7. FHFA admits that Fannie Mae had an interest in real property located at 2672
23 Strichen Avenue, Henderson, NV 89044 (the “Property”) at the time of the foreclosure sale
24 referred to in Paragraph 7 of the Complaint. FHFA is without knowledge or information
25 sufficient to form a belief as to the truth of the remaining allegations within Paragraph 7 of the
26 Complaint.

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SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches, estoppel, waiver, unjust enrichment, and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of one or more third parties over whom neither FHFA nor Fannie Mae had control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has an adequate remedy at law and has, through its own acts and/or omissions, failed to mitigate its damages, the existence of which are denied.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff failed to join one or more indispensable parties.

SEVENTH AFFIRMATIVE DEFENSE

Fannie Mae breached no duty with regard to Plaintiff.

COUNTERCLAIMS

FIRST CAUSE OF ACTION

(Declaratory Judgment versus Counter-Defendant Rugged Oaks Investments, LLC)

1. FHFA incorporates by reference the responses of all previous paragraphs, as if fully set forth herein.

1 2. Pursuant to 28 U.S.C. § 2201, this Court has the power and authority to declare
2 FHFA and Fannie Mae’s rights and interests in the Property.

3 3. FHFA is an agency of the federal government of the United States of America and
4 is also the Conservator for Fannie Mae.

5 4. The Conservator has succeeded by law to all of Fannie Mae’s “rights, titles,
6 powers, and privileges.” 12 U.S.C. § 4617(b)(2)(A)(i).

7 5. During the Conservatorship, “[n]o property of [FHFA] shall be subject to levy,
8 attachment, garnishment, foreclosure, or sale without the consent of the [FHFA], nor shall any
9 involuntary lien attach to the property of [FHFA].” 12 U.S.C. § 4617(j)(3).

10 6. Fannie Mae’s interest at issue is property of the Conservator. Therefore, applying
11 NRS Chapter 116 or other state law in a manner that extinguishes Fannie Mae’s interest in the
12 Property would violate 12 U.S.C. § 4617(j)(3).

13 7. 12 U.S.C. § 4617(j)(3) preempts any state law that would permit a foreclosure on
14 a superpriority lien to extinguish a property interest of Fannie Mae while it is under FHFA’s
15 conservatorship.

16 8. On or about October 10, 2013, Fannie Mae acquired ownership of the Property at
17 a duly noticed foreclosure sale conducted pursuant to a Deed of Trust encumbering the Property.
18 The Trustee’s Deed Upon Sale conveying the Property to Fannie Mae was recorded in the Books
19 and 1 Records of Clark County on October 21, 2013 as Instrument No. 20131021-0000768.
20 (ECF 11, Ex. 1.)

21 9. On April 29, 2015, Plaintiff, doing business as Assessment Management Services
22 as agent for Anthem Highlands Community Association (the “HOA”) conducted a foreclosure
23 sale of the Property (the “HOA Sale”), at which the Property was purportedly sold to Rugged
24 Oaks Investments, LLC (“Rugged Oaks”). (ECF 11, Exs. 4 & 5.)

25 10. Rugged Oaks claims an interest in the Property through a Trustee’s Deed Upon
26 Sale recorded in the Clark County Recorder’s Office as Book and Instrument Number 20150507-
27 0004054 that is adverse to FHFA and Fannie Mae’s interests.

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1 11. At no time did Plaintiff, Plaintiff's trustee or agent, the HOA, the HOA's trustee
2 or agent, or any other person or entity obtain consent from FHFA to extinguish Fannie Mae's
3 interest in the Property.

4 12. Pursuant to 12 U.S.C. § 4617(j)(3), the foreclosure sale conducted by the HOA
5 could not extinguish Fannie Mae's interest in the Property.

6 13. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to
7 28 U.S.C. § 2201, that 12 U.S.C. § 4617(j)(3) precludes an HOA foreclosure sale from
8 extinguishing Fannie Mae's interest in the Property.

9 14. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to
10 28 U.S.C. § 2201, that the HOA Sale did not extinguish Fannie Mae's interest in the Property.

SECOND CAUSE OF ACTION

(Quiet Title versus Counter-Defendant Rugged Oaks)

13 15. FHFA incorporates by reference the responses of all previous paragraphs, as if
14 fully set forth herein.

15 16. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and
16 authority to resolve the parties' adverse claims in the Property.

17 17. Fannie Mae has an ownership interest in the Property by virtue of its purchase of
18 title at the October 10, 2013 foreclosure sale.

19 18. FHFA, as Fannie Mae's conservator, has succeeded by law to all of Fannie Mae's
20 "rights, titles, powers, and privileges." 12 U.S.C. § 4617(b)(2)(A)(i).

21 19. Rugged Oaks claims an interest in the Property through its purported purchase of
22 the Property at an HOA foreclosure sale held on April 29, 2015, and claims that the foreclosure
23 sale extinguished Fannie Mae's interest.

24 20. Pursuant to 12 U.S.C. § 4617(j)(3), "[n]o property of [FHFA] shall be subject to
25 levy, attachment, garnishment, foreclosure, or sale without the consent of [FHFA], nor shall any
26 involuntary lien attach to the property of [FHFA]."

27 21. Based on the adverse claims being asserted by the parties, FHFA and Fannie Mae
28 are entitled to a judicial determination regarding the rights and interests of the respective parties

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1 to the case.

2 22. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to
3 28 U.S.C. § 2201 and NRS § 40.010, that the HOA Sale did not extinguish Fannie Mae's interest
4 in the Property.

5 23. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to
6 28 U.S.C. § 2201 and NRS § 40.010 that Rugged Oaks's interest in the Property, if any, is
7 subject to Fannie Mae's interest in the Property.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, FHFA prays for the following relief:

- 10 1. That the Court declare that 12 U.S.C. § 4617(j)(3) preempts any Nevada law that
11 would permit a foreclosure on a superpriority lien to extinguish Fannie Mae's
12 property interest while it is under FHFA's conservatorship;
- 13 2. That the Court declare that the HOA sale did not extinguish Fannie Mae's interest
14 in the Property and thus did not convey the Property free and clear of Fannie
15 Mae's interest to Rugged Oaks;
- 16 3. That the Court declare that Rugged Oaks's interest in the Property, if any, is
17 subject to Fannie Mae's interest in the Property;
- 18 4. That FHFA be awarded reasonable attorneys' fees and costs; and

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5. That FHFA receive such other relief as the Court deems just and proper.

DATED this _____ day of November, 2015.

FENNEMORE CRAIG, P.C.

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