

1 WRIGHT, FINLAY & ZAK, LLP
 Dana Jonathon Nitz, Esq.
 2 Nevada Bar No. 0050
 Yanxiong Li, Esq.
 3 Nevada Bar No. 12807
 7785 W. Sahara Ave., Suite 200
 4 Las Vegas, Nevada 89117
 (702) 475-7964; Fax: (702) 946-1345
 5 yli@wrightlegal.net

*Attorneys for Plaintiff,
 6 The Bank of New York Mellon f/k/a The Bank of New York as successor to JPMorgan Chase
 Bank, not individually but solely as trustee for the holders of the Bear Stearns ALT-A Trust
 7 2005-1, Mortgage Pass-Through Certificates, Series 2005-1*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 THE BANK OF NEW YORK MELLON F/K/A
 11 THE BANK OF NEW YORK AS
 12 SUCCESSOR TO JPMORGAN CHASE
 13 BANK, NOT INDIVIDUALLY BUT SOLELY
 AS TRUSTEE FOR THE HOLDERS OF THE
 14 BEAR STEARNS ALT-A TRUST 2005-1,
 MORTGAGE PASS-THROUGH
 15 CERTIFICATES, SERIES 2005-1,

Case No.: 2:17-cv-00737-JCM-VCF

**STIPULATION AND ORDER FOR
 DISMISSAL WITHOUT PREJUDICE OF
 AMBER HILLS II HOMEOWNERS'
 ASSOCIATION, INC. AND ABSOLUTE
 COLLECTION SERVICES, LLC**

16 Plaintiff,

17 vs.

18 PREMIER ONE HOLDINGS INC., a Nevada
 corporation; YING M. SHIH, an individual;
 19 SMM Capital LLC, a Nevada limited liability
 company; BIN ZHANG, an individual;
 20 AMBER HILLS II HOMEOWNERS'
 ASSOCIATION, INC., a Nevada non-profit
 21 corporation; ABSOLUTE COLLECTION
 SERVICES LLC, a Nevada limited liability
 22 company; DOE INDIVIDUALS I through X;
 23 and ROE CORPORATIONS I through X,
 inclusive,

24 Defendants.
 25

1 The Bank of New York Mellon f/k/a The Bank of New York as successor to JPMorgan
2 Chase Bank, not individually but solely as trustee for the holders of the Bear Stearns ALT-A
3 Trust 2005-1, Mortgage Pass-Through Certificates, Series 2005-1 (“BNYM”) by and through its
4 counsel of record, Dana Jonathon Nitz, Esq. and Yanxiong Li, Esq. of the law firm of Wright
5 Finlay & Zak, LLP; Defendant, Absolute Collection Services, LLC (“ACS”), by and through its
6 counsel of record, Shane D. Cox, Esq.; and Amber Hills II Homeowners Association, Inc.
7 (“HOA”), by and through its counsel of record, Ashlie L. Surur, Esq., and hereby stipulate and
8 agree as follows:

9 WHEREAS the above-captioned action concerns Defendant Amber Hills II
10 Homeowners’ Association, Inc.’s (the “HOA”) and Defendant Absolute Collection Services,
11 LLC’s (the “HOA Trustee”) NRS Chapter 116 nonjudicial foreclosure sale on April 16, 2013
12 (“HOA Sale”) involving certain real property located in Clark County, Nevada, commonly
13 known as 9580 West Reno Avenue, Unit 201, Las Vegas, Nevada 89148 (“Property”);

14 WHEREAS BNYM filed its Complaint commencing this action on March 14, 2017
15 [ECF No. 1];

16 WHEREAS BNYM filed its Amended Complaint on June 13, 2017, alleging causes of
17 action for Quiet Title/Declaratory Relief, Permanent/Preliminary Injunction, and Unjust
18 Enrichment against Premier One Holdings, Inc., Ying M. Shih, SMM Capital LLC and Bin
19 Zhang in connection with the HOA Sale and the Property [ECF No. 14];

20 WHEREAS BNYM filed its Amended Complaint on June 13, 2017, alleging causes of
21 action for quiet title/declaratory relief, permanent/preliminary injunction, unjust enrichment,
22 wrongful/statutorily defective foreclosure, misrepresentation, breach of contract, negligence,
23 negligence per se, breach of the covenant of good faith and fair dealing, and tortious
24 interference with contract against the HOA in connection with the HOA Sale and Property [ECF
25 No. 14];

26 WHEREAS BNYM filed its Amended Complaint on June 13, 2017, alleging causes of
27 action for quiet title/declaratory relief, unjust enrichment, wrongful/statutorily defective
foreclosure, negligence, negligence per se, breach of covenant of good faith and fair dealing and

1 tortious interference with contract against the HOA Trustee in connection with the HOA Sale
2 and the Property [ECF No. 14];

3 WHEREAS on November 28, 2017, this Court entered a Default Judgment against
4 Premier One Holdings, Ying M. Shih, SMM Capital, Bin Zhang on BNYM’s claims for quiet
5 title/declaratory relief [ECF No. 47];

6 WHEREAS the Default Judgment granted BNYM the primary relief it seeks in this
7 action – a declaration that, despite the operation of NRS 116.3116 as interpreted by the Nevada
8 Supreme Court in *SFR Investments Pool 1, LLC v. U.S. Bank*, its first deed of trust was not
9 wiped out by the foreclosure sale, and the purchaser Premier One Holdings, as well as its
10 successors who claims an interest through HOA’s foreclosure sale, acquired an interest that is
11 either subject to or subordinate to BNYM interest;

12 WHEREAS the HOA Trustee has never claimed nor now claims an interest in the
13 Property;

14 WHEREAS subject to those rights and obligations created by the Amended and Restated
15 Declaration of Covenants, Conditions and Restrictions for Amber Hills II, A Condominium
16 Development, recorded as Instrument Number 20030613-00190 on or about June 13, 2013 (the
17 “Declaration”), and any amendments thereto, as well as the HOA’s Governing Documents as
18 defined by NRS 116.049, the HOA does not currently claim any right, title or interest in and to
19 the Property.

20 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the
21 Complaint against Defendants HOA and HOA Trustee is hereby dismissed in its entirety
22 without prejudice;

23 IT IS FURTHER STIPULATED AND AGREED that HOA and HOA Trustee shall not
24 contest, seek reconsideration of, and/or appeal the Default Judgment in this case;

25 IT IS FURTHER STIPULATED AND AGREED as follows:

- 26 1. The period of time commencing of **March 14, 2017 (the “Effective Date”)** and ending
27 on the Termination Date (as that term is defined in paragraph 5 below), shall not be
included in determining the applicability of any statute of limitations, laches, or any

1 other defense based on lapse of time in any action or proceeding brought by Bank
2 against HOA and HOA Trustee for quiet title, declaratory relief, unjust enrichment,
3 wrongful/statutorily defective foreclosure, negligence, negligence per se, breach of the
4 covenant of good faith and fair dealing, tortious interference with contract,
5 misrepresentation and breach of contract arising from the HOA Sale;

- 6 2. The Parties expressly agree that the tolling agreement set forth in Paragraph 1, above,
7 does not apply to any cause of action or claim that Bank could have brought but failed to
8 bring against HOA or HOA Trustee in this action and arising from the HOA Sale.
- 9 3. Except as is set forth in the preceding Paragraphs 1 and 2, nothing in this Stipulation
10 shall diminish or affect any defense available to any Party as of the date of this
11 Stipulation, and this Stipulation shall not be deemed to revive any claim, remedy, and/or
12 cause of action, legal or equitable, that is or was already barred as of the Effective Date,
13 nor shall this Stipulation create any new claim, remedy, and/or cause of action, legal or
14 equitable, against any Party hereto. Nothing in this Stipulation, or in the circumstances
15 that gave rise to this Stipulation shall be construed as an acknowledgement by any Party
16 that any claim, remedy, and/or cause of action, legal or equitable, has or has not been
17 barred, or is about to be barred, by the statute of limitations, laches, or other defense
18 based on the lapse of time;
- 19 4. This Stipulation shall not operate as an admission of liability by any Party. Neither this
20 Stipulation nor any action taken pursuant to this Stipulation shall be offered or received
21 in evidence in any action or proceeding as an admission of liability or wrongdoing by
22 any Party;
- 23 5. The Termination Date shall be the date the Court enters its Order granting this
24 Stipulation for Dismissal without prejudice;
- 25 6. This Stipulation comprises the entire agreement of the Parties with respect to the tolling
26 of any statute of limitations. This Stipulation may be modified, amended, or
27 supplemented only by a written instrument signed by all of the Parties;

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

7. Except as set forth hereinabove, the Parties reserve any and all rights, privileges, and defenses under applicable law;

8. Nothing herein shall be construed as a waiver of the attorney client and/or work product privileges that exists among and between HOA and/or HOA Trustee's counsel and the HOA and HOA Trustee;

IT IS FURTHER STIPULATED AND AGREED that each side will bear its own attorney's fees and costs through the date of entry of the Court's Order granting this Stipulation.

IT IS SO STIPULATED AND AGREED.

WHEREFORE, the undersigned request this Court enter an Order granting the above Stipulation.

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

Dated this 31st day of May, 2018.

Dated this 31st day of May, 2018.

WRIGHT, FINLAY & ZAK, LLP

ABSOLUTE COLLECTION SERVICES,
LLC

/s/ Yanxiong Li, Esq.
Dana Jonathon Nitz, Esq.
Nevada Bar No. 00050
Yanxiong Li, Esq.
Nevada Bar No. 12807
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
*Attorney for Plaintiff, The Bank of New York
Mellon f/k/a The Bank of New York as
successor to JPMorgan Chase Bank, not
individually but solely as trustee for the
holders of the Bear Stearns ALT-A Trust
2005-1, Mortgage Pass-Through Certificates,
Series 2005-1*

/s/ Shane D. Cox, Esq.
Shane D. Cox, Esq.
Nevada Bar No. 13852
8440 W. Lake Mead Blvd., Ste. 210
Las Vegas, NV 89128
*Attorneys for Defendant, Absolute Collection
Services, LLC*

Dated this 31st day of May, 2018.

HALL JAFFE & CLAYTON, LLP

/s/ Ashlie L. Surur, Esq.
Ashlie L. Surur, Esq.
Nevada Bar No. 11290
7425 Peak Drive
Las Vegas, NV 89128
*Attorney for Defendant, Amber Hills II
Homeowners' Association, Inc.*

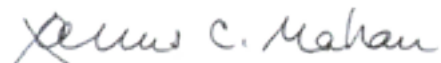
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ORDER

Based on the foregoing Stipulation by and between the Parties, and good cause appearing, ***IT IS SO ORDERED*** that the Complaint against Amber Hills II Homeowners Association and Absolute Collection Services, LLC, is ***DISMISSED*** in its entirety, without prejudice, each Party to bear its own attorney's fees and costs incurred as of the date of this Order .

IT IS SO ORDERED.

Dated: June 5, 2018



UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

The undersigned, an employee of Wright, Finlay & Zak, LLP, hereby certifies that on the 31st day of May, 2018, a true and correct copy of **STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE OF AMBER HILLS II HOMEOWNERS' ASSOCIATION, INC. AND ABSOLUTE COLLECTION SERVICES, LLC** was served electronically via the CM/ECF system to parties of interest as follows:

Shane D. Cox, Esq.
8440 W. Lake Mead Blvd., Suite 210
Las Vegas, NV 89128
Email: shane@absolute-collection.com
Attorneys for Defendant,
Absolute Collection Services, LLC

Ashlie L. Surur, Esq.
HALL, JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
Email: asurur@lawhjc.com
Attorneys for Defendant,
Amber Hills II Homeowners Association, Inc.

/s/ Kelli Wightman
An Employee of Wright, Finlay & Zak, LLP