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8
 9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 BANK OF AMERICA, N.A.,
 12
 Plaintiff,

Case No.: 2:17-cv-02566-GMN-CWH

13 vs.

STIPULATED PROTECTIVE ORDER

14 MESA HOMEOWNERS ASSOCIATION; SFR
 15 INVESTMENTS POOL 1, LLC,
 16
 Defendants.

AKERMAN LLP

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 18 Subject to the approval of the court, Bank of America, N.A. (**BANA**), Countrywide Home
 19 Loans, Inc. (**Countrywide**), Mesa Homeowners Association (**Mesa**), and SFR Investments Pool 1,
 20 LLC (**SFR**) stipulate to the following Protective Order:

21 To expedite the flow of discovery, facilitate the prompt resolution of disputes over confidentiality,
 22 adequately protect material claimed to be confidential, and ensure protection is afforded only to material
 23 so designated, it is, pursuant to the Court's authority under Federal Rules of Civil Procedure 26(c),
 24 **ORDERED** this Protective Order shall govern the disclosure, handling and disposition of documents
 25 in this litigation as follows:

26 1. **Application.**

27 1.1 This Protective Order shall govern any document, information or other material
 28 that is designated as containing "Confidential Information" as defined herein, and is produced in

1 connection with this litigation by any person or entity (the "producing party"), whether in response to a
2 discovery request, subpoena or otherwise, to any other person or entity (the "receiving party") regardless
3 of whether the person or entity producing or receiving such information is a party to this litigation.

4 1.2 The party who asserts that particular information should be treated as
5 Confidential Information under this Protective Order has the burden of proof to establish that the
6 information or document is entitled to such protection.

7 2. **Definitions.**

8 2.1 Confidential Information. "Confidential Information" shall mean and include,
9 without limitation, any non-public information that concerns or relates to the following areas:
10 confidential proprietary information, trade secrets, practices and procedures, personal financial
11 information, commercial, financial, pricing, budgeting, and/or accounting information, information
12 about existing and potential customers, marketing studies, performance projections, business strategies,
13 decisions and/or negotiations, personnel compensation, evaluations and other employment information,
14 and confidential proprietary information about affiliates, parents, subsidiaries and third-parties with
15 whom the parties to this action have or have had business relationships.

16 2.2 Documents. As used herein, the term "documents" includes all writings, records,
17 files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact discs, electronic
18 messages, other data compilations from which information can be obtained and other tangible things
19 subject to production under the Federal Rules of Civil Procedure.

20 3. **Initial Designation.**

21 3.1 Good Faith Claims. Claims of confidentiality will be made only with respect to
22 documents, other tangible things and information that the asserting party has a good faith belief are
23 within the definition set forth in subparagraph 2.1 of this Protective Order. Objections to such claims
24 made pursuant to paragraph 5, below, shall also be made only in good faith.

25 3.2 Produced Documents. A party producing documents that it believes constitute or
26 contain Confidential Information shall state that the material is being produced under this Protective
27 Order by describing the documents or materials to be treated as confidential in writing, by page or bates

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1 number wherever possible and/or shall produce copies bearing a label that contains or includes language
2 substantially identical to the following:

3 **CONFIDENTIAL**

4 This label shall be affixed in a manner that does not obliterate or obscure the contents of the
5 copies. If any person or party makes copies of documents designated as containing Confidential
6 Information, the copying person or party shall mark each such copy as containing Confidential
7 Information in the same form as the Confidentiality notice on the original document.

8 A party producing documents that are stored on electronic, magnetic, optical or other non-paper
9 media, such as compact discs, DVD's, video tapes and audio tapes (collectively, "data storage devices")
10 shall designate the data storage device as containing Confidential Information, by affixing a label or
11 stamp to the data storage device in the manner described above at the time copies of such data storage
12 devices are produced. If the receiving party or other persons or entities to whom disclosure is authorized
13 pursuant to subparagraph 7.1 make a copy of any data storage device designated by the producing party
14 as containing Confidential Information, the receiving party or other authorized person shall mark each
15 such copy as containing Confidential Information in the same form as the confidentiality notice on the
16 original data storage device produced. If the receiving party or other authorized person prints out or
17 otherwise makes copies of the documents or information stored on such data storage device, the
18 receiving party or other authorized person shall mark each page so copied with the label or stamp
19 specified in subparagraph 3.2.

20 3.3 Interrogatory Answers. If a party answering an interrogatory or other discovery
21 demand believes that its answer contains Confidential Information, it shall state so in the interrogatory
22 response, and that portion of the response will be entitled to the protections of this order.

23 3.4 Inspection of Documents. In the event a party elects to produce files and records
24 for inspection and the requesting party elects to inspect them, no designation of Confidential
25 Information needs to be made in advance of the inspection. For purposes of such inspection, all material
26 produced shall be considered as Confidential Information. If the inspecting party selects specified
27 documents to be copied, the producing party shall designate Confidential Information in accordance
28 with subparagraph 3.2 at the time the copies are produced.

1 3.5 Deposition Transcripts. The party asserting confidentiality shall state on the
2 record the portions it deems confidential. The failure to designate testimony on the record as
3 confidential shall be a waiver unless the designating party notifies all other parties and files a motion to
4 designate the testimony as confidential within 5 days of the notification.

5 3.6 Inadvertent Failure to Designate. Inadvertent failure to identify documents or
6 things as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any otherwise
7 valid claim for protection, provided that the provisions of this paragraph are satisfied. If the designating
8 party discovers that information should have but was not designated "Confidential" or of the designating
9 party receives notice that would enable the designated party to learn that it has disclosed such
10 information, the designating party must immediately notify all other parties. In such event, within thirty
11 (30) days of notifying all other parties, the designating parties must also provide copies of the
12 "Confidential" information designated in accordance with this Protective Order. After receipt of such
13 re-designated information, the "Confidential" information shall be treated as required by this Protective
14 Order, and the receiving party(ies) shall promptly, and in no event more than fourteen (14) calendar
15 days from the receipt of the re-designated information, return to the designated party all previously
16 produced copies of the same unlegended documents or things. The designating party and the parties
17 may agree to alternative means. The receiving party(ies) shall receive no liability, under this Protective
18 Order or otherwise, for any disclosure of information contained in unlegended documents or things
19 occurring before the receiving party was placed on notice of the designating party's claims of
20 confidentiality.

21 4. **Designations by Another Party.**

22 4.1 Notification of Designation. If a party other than the producing party believes
23 that a producing party has produced a document that contains or constitutes Confidential Information
24 of the non-producing party, the non-producing party may designate the document as Confidential
25 Information by so notifying all parties in writing within fourteen (14) days of service of the document.

26 4.2 Return of Documents; Non-disclosure. Whenever a party other than the
27 producing party designates a document produced by a producing party as Confidential Information in
28 accordance with subparagraph 4.1, each party receiving the document shall either add the Confidential

1 Information designation in accordance with subparagraph 3.2 or substitute a copy of the document
2 bearing such designation for each copy of the document produced by the producing party. Each party
3 shall destroy all undesignated copies of the document or return those copies to the producing party, at
4 the direction of the producing party. No party shall disclose a produced document to any person, other
5 than the persons authorized to receive Confidential Information under subparagraph 7.1, until after the
6 expiration of the fourteen (14) day designation period specified in subparagraph 4.1. If during the
7 fourteen (14) day designation period a party discloses a produced document to a person authorized to
8 receive Confidential Information under subparagraph 7.1, and that document is subsequently designated
9 as Confidential Information in accordance with subparagraph 4.1, the disclosing party shall cause all
10 copies of the document to be destroyed or returned to the producing party, at the direction of the
11 producing party. The party may thereafter disclose a copy of the document that has been marked as
12 Confidential Information by the designating party, in accordance with subparagraphs 3.2 and 7.1.

13 5. **Objections to Designations.** Any party objecting to a designation of Confidential
14 Information, including objections to portions of designations of multi-page documents, shall notify the
15 designating party and all other parties of the objection in writing forty-five (45) days before trial of the
16 matter. This notice must specifically identify each document that the objecting party in good faith
17 believes should not be designated as Confidential Information and provide a brief statement of the
18 grounds for such belief. In accordance with the Federal Rules of Civil Procedure governing discovery
19 disputes, the objecting and the designating parties thereafter shall confer within ten (10) days after the
20 date of such objection in an attempt to resolve their differences. If the parties are unable to resolve their
21 differences, the designating party shall have fourteen (14) days after the conference concludes to file
22 with the Court a motion to deem the information as Confidential Information. Where a party authored,
23 created, owns, or controls a document, information or other material that another party designates as
24 Confidential Information, the party that authored, created, owns, or controls the Confidential
25 Information may so inform the objecting party and thereafter shall also be considered a designating
26 party for purposes of this paragraph.

27 All documents, information and other materials initially designated as Confidential Information
28 shall be treated as such in accordance with this Protective Order unless and until the Court rules

1 otherwise, except for deposition transcripts and exhibits initially considered as containing Confidential
2 Information under subparagraph 3.5, which will lose their confidential status after fourteen (14) days
3 unless so designated as Confidential Information. If the Court rules that a designation should not be
4 maintained as to a particular document, the producing party shall, upon written request by a party,
5 provide that party a copy of that document without the designation described in subparagraph 3.2.

6 If a designating party elects not to make such a motion with respect to documents within fourteen
7 (14) days after the conference, information or other materials to which an objection has been made, the
8 Confidential Information designation shall be deemed withdrawn. The objecting party shall have
9 fourteen (14) days to respond to the objecting party's motion. If no response is filed by the objecting
10 party within fourteen (14) days, the designating party shall be deemed to have consented to the
11 designating party's motion.

12 6. **Custody.** All Confidential Information and any and all copies, extracts and summaries
13 thereof, including memoranda relating thereto, shall be retained by the receiving party in the custody of
14 counsel of record, or by persons to whom disclosure is authorized under subparagraph 7.1.

15 7. **Handling Prior to Trial.**

16 7.1 Authorized Disclosures. Confidential Information shall be disclosed by the
17 receiving party only to the following persons:

- 18 a. Counsel for the parties in this litigation, including their associates, clerks,
19 paralegals, and secretarial personnel;
- 20 b. Qualified persons taking testimony in this litigation involving such
21 Confidential Information, and necessary stenographic, videotape and
22 clerical personnel;
- 23 c. Experts and their staff who are retained by counsel as expert witnesses for
24 a party in this litigation;
- 25 d. Experts and their staff who are consulted by counsel for a party in this
26 litigation;
- 27 e. Parties to this litigation, limited to the named party and, if that party is a
28 corporate entity, a limited number of employees of the corporate entity and

1 its insurers;

2 f. Designated in-house counsel and a limited number of assistants,
3 administrative or otherwise;

4 g. Outside vendors employed by counsel for copying, scanning and general
5 handling of documents;

6 h. Any person of whom testimony is taken regarding the Confidential
7 Information, except that such person may only be shown Confidential
8 Information during his/her testimony, and may not retain a copy of such
9 Confidential Information; and

10 i. This Court and this Court's staff, subject to the Court's processes for filing
11 materials under seal.

12 Such disclosures are authorized only to the extent necessary to investigate, prosecute, or defend
13 the litigation.

14 Confidential Information may not be disclosed to persons under subparagraphs (c) or (d) until the
15 receiving party has obtained a written acknowledgment from the person receiving Confidential
16 Information, in the form of the Declaration attached hereto as Exhibit A, that he or she has received a
17 copy of this Protective Order and has agreed to be bound by it. A party who discloses Confidential
18 Information in accordance with subparagraph 7.1 shall retain the written acknowledgment from each
19 person receiving Confidential Information, shall maintain a list of all persons to whom a receiving party
20 has disclosed Confidential Information and identify what documents have been disclosed, and shall
21 furnish the written acknowledgments and disclosure list to opposing counsel as follows: (i) for a person
22 under subparagraph (c), within thirty (30) days after the person signs the Declaration; and (ii) for a
23 person under subparagraph (d), within thirty (30) days after the matter is finally concluded. Disclosure
24 of Confidential Information to this Court, including judicial staff, shall be made in accordance with
25 subparagraph 7.4 of this Protective Order.

26 7.2 Unauthorized Disclosures. All persons receiving Confidential Information under
27 the terms of this Protective Order are under the jurisdiction of the state courts and U.S. federal courts
28 located in Nevada for all matters arising from the improper disclosure or use of such information. If

1 Confidential Information is disclosed to any person other than in the manner authorized by this
2 Protective Order, the party or person responsible for the disclosure, and any other party or person who
3 is subject to this Protective Order and learns of such disclosure, shall immediately bring such disclosure
4 to the attention of the designating party. Without prejudice to other rights and remedies of the
5 designating party, the responsible party or person shall make every effort to obtain and return the
6 Confidential Information and to prevent further disclosure on its own part or on the part of the person
7 who was the unauthorized recipient of such information.

8 7.3 Court Filings. In the event any Confidential Information must be filed with the
9 Court prior to trial, the proposed filing shall be accompanied by a motion to file the Confidential
10 Information under seal that complies with Local Rule 10-5(b) and a proposed order, and the application
11 and proposed order shall be directed to the judge to whom the Confidential Information is directed. This
12 provision is applicable to briefs, memoranda, and other filings which quote, summarize, or describe
13 Confidential Information.

14 8. **Care in Storage.** Any person in possession of Confidential Information produced by
15 another party shall exercise reasonable and appropriate care with regard to the storage, custody, copying,
16 and use of such information to ensure that the confidential and sensitive nature of same is maintained.

17 9. **Handling During Trial.** Confidential Information that is subject to this Order may be
18 marked and used as trial exhibits by either party, subject to terms and conditions as imposed by the
19 Court upon application by any party.

20 10. **No Implied Waivers.** This Protective Order shall not be interpreted as a waiver of the
21 right to object, under applicable law, to the furnishing of information in response to discovery requests
22 or to object to a requested inspection of documents or facilities. Parties producing Confidential
23 Information in this litigation are doing so only pursuant to the terms of this Protective Order. The taking
24 of any action in accordance with the provisions of this Protective Order shall not be interpreted as a
25 waiver of any claim or position or defense in this action, or any other actions.

26 11. **No Admission.** The designation of any item as Confidential Information shall not be
27 construed as an admission that such material, or any testimony concerning such material, would be
28 admissible in evidence in this litigation or in any other proceeding.

1 12. **Inadvertent Disclosure.** Nothing in this Protective Order abridges applicable law
2 concerning inadvertent disclosure of a document that the Disclosing Party believes contains attorney-
3 client communications, attorney work product, or otherwise privileged information. If a party
4 inadvertently discloses documents or information subject to a claim of privilege or work product
5 protection, such disclosure will not waive otherwise applicable claims of privilege or work product
6 protection under applicable law. Upon discovery by the Receiving Party, or receipt of written notice
7 from the Disclosing Party identifying privileged or protected Documents that were inadvertently
8 produced, the receiving party shall within seven (7) business days either: (a) return or certify the
9 destruction of all such documents, all copies, and any work product or portions of any work product
10 containing or reflecting the contents of the subject materials; or (b) follow the procedures outlined in
11 paragraph 5 above for objecting to the designation of Confidential Information. The objecting party
12 shall do nothing to compromise the privilege claim until the Court rules on said motion and the
13 opportunity for appellate review is exhausted or the issue is otherwise resolved.

14 13. **Parties' Own Documents.** This Protective Order shall in no way restrict the parties in
15 their use of their own documents and information, and nothing in this Protective Order shall preclude
16 any party from voluntarily disclosing its own documents or information to any party or nonparty.

17 14. **Motion by Third Party to Compel Production of Confidential Information.** If any
18 third party subpoenas Confidential Information from a party to this action or moves to compel a party
19 to this action to produce any such information, such party shall immediately notify the parties who
20 originally produced and/or designated such information that a subpoena has been served or a motion
21 has been made in order to allow the parties who originally produced and/or designated such information
22 the opportunity to seek a protective order or oppose the motion or application. If, within thirty (30) days
23 after receiving notice of a subpoena seeking Confidential Information from a receiving party, the party
24 who originally produced and/or designated such information fails to move for a protective order, the
25 party subject to the subpoena may produce said information. In addition, if a party is ordered to produce
26 Confidential Information covered by this Protective Order, then notice and, if available, a copy of the
27 order compelling disclosure shall immediately be given the parties who originally produced and/or
28 designated such information. Nothing in this Protective Order shall be construed as requiring the party

1 who is ordered to produce such Confidential Information to challenge or appeal any order requiring the
2 production of such information or to subject himself/herself to any penalty for non-compliance with any
3 legal process or seek any relief from the Court.

4 15. **No Effect on Other Rights.** This Protective Order shall in no way abrogate or diminish
5 any pre-existing contractual, statutory, or other legal obligations or rights of any party with respect to
6 Confidential Information.

7 16. **Modification.** In the event any party hereto seeks a Court order to modify the terms of
8 this Protective Order, or seeks a protective order which incorporates the terms and conditions of this
9 Protective Order said party shall make such request by written stipulation or noticed motion to all parties
10 that must be served and filed in accordance with local court rules.

11 17. **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to whom
12 disclosure was made agree to return all Confidential Information to the designating party within thirty
13 (30) days of the conclusion of litigation between the parties, including final appellate action or the
14 expiration of time to appeal or seek further review. In addition, counsel shall certify in writing that all
15 such Confidential Information have been returned. Counsel for each party also shall contact each person
16 to whom that party has provided a copy of any Confidential Information and request the documents be
17 returned. In lieu of returning Confidential Information, the person or party in possession of such
18 information may elect to destroy it. If the person or party in possession of Confidential Information
19 elects to destroy it rather than return it, that person or party must notify the designating party in writing
20 of the destruction of the information within ninety (90) days of the conclusion of litigation between the
21 parties, including final appellate action or the expiration of time to appeal or seek further review.

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1 18. **Survival of the Terms of this Protective Order.** Even after the termination of this
2 litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until
3 a Designating Party otherwise in writing or a court order otherwise directs.

4 Dated this 6th day of July, 2018.

<p>6 AKERMAN LLP</p> <p>7 <u>/s/ Vatana Lay</u></p> <p>8 MELANIE D. MORGAN, ESQ. Nevada Bar No. 8215 VATANA LAY, ESQ. Nevada Bar No. 12993 1635 Village Center Circle, Suite 200 Las Vegas, NV 89134</p> <p>11 Attorneys for Plaintiff Bank of America, N.A. and Countrywide Home Loans, Inc.</p>	<p>6 PENGILLY LAW FIRM</p> <p>7 <u>/s/ Elizabeth Lowell</u></p> <p>8 JAMES W. PENGILLY, ESQ. Nevada Bar No. 6085 ELIZABETH LOWELL, ESQ. Nevada Bar No. 8551 1995 Village Center Cir., Suite 190 Las Vegas, NV 89134</p> <p>11 Attorneys for Mesa Homeowners Association</p>
<p>13 KIM GILBERT EBRON</p> <p>14 <u>/s/ Diana S. Ebron</u></p> <p>15 DIANA S. EBRON, ESQ. Nevada Bar No. 10580 JACQUELINE A. GILBERT, ESQ. Nevada Bar No. 10593 KAREN L. HANKS, ESQ. Nevada Bar No. 9578 JASON G. MARTINEZ, ESQ. Nevada Bar No. 13375 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139</p> <p>20 Attorneys for SFR Investments Pool 1, LLC</p>	

22 **ORDER**

23 **IT IS SO ORDERED:**

24 

25 _____

26 **UNITED STATES MAGISTRATE JUDGE**

27 DATED: July 9, 2018

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____, and read in its entirety and understand the Protective Order that was issued by the United States District Court, for the District of Nevada, on _____, 2018, in the case of Bank of Am., N.A., Case No. 2:17-cv-02566-GMN-CWH. I agree to comply with and be bound by all terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Protective Order. Further, I solemnly promise that I will not offer to sell, advertise or publicize that I have obtained any protected material subject to this Protective Order.

At the conclusion of this matter, I will return all protected materials which came into my possession or control to counsel for the party from whom I received the protected material, or I will destroy those materials. I understand that any confidential information contained within any summaries of protected material shall remain protected pursuant to the terms of this Order.

I further agree to submit to the jurisdiction of the United States District Court, for the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

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

Date: _____

City and State where signed: _____

Printed Name: _____

Address: _____

Signature: _____