

1 Abran E. Vigil (SBN 7548)  
 2 Sylvia O. Semper (SBN 12863)  
 3 BALLARD SPAHR LLP  
 4 100 North City Parkway, Suite 1750  
 Las Vegas, Nevada 89106  
 5 Tel: (702) 471-7000 Fax: (702) 471-7070  
 6 *vigila@ballardspahr.com; sempers@ballardspahr.com*  
 7 *Attorneys for Proposed Intervenor Federal National Mortgage Association*

8 Leslie Bryan Hart, Esq. (SBN 4932)  
 9 John D. Tennert, Esq. (SBN 11728)  
 10 FENNEMORE CRAIG  
 11 300 S. Second St., Suite 1510  
 12 Reno, Nevada 89501  
 13 Tel: 775-788-2228 Fax: 775-788-2229  
 14 *lhart@fclaw.com; jtennert@fclaw.com*

15 Asim Varma, Esq.\*  
*Asim.Varma@aporter.com*  
 16 Howard N. Cayne, Esq.\*  
*Howard.Cayne@aporter.com*  
 17 Michael A.F. Johnson, Esq. \*  
*Michael.Johnson@aporter.com*  
 18 ARNOLD & PORTER LLP  
 19 555 12th Street NW  
 20 Washington, DC 20004  
 21 Tel: (202) 942-5000 Fax: (202) 942-5999  
 22 \*pro hac vice petitions to be submitted  
 23 *Attorneys for Proposed Intervenor Federal Housing Finance Agency*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

LN MANAGEMENT, LLC SERIES 5664  
 DIVOT

CASE NO. 2:13-cv-01420-RCJ-GWF

Plaintiff,

v.

KIT DANSKER and JPMORGAN CHASE  
 BANK, N.A.,

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

Defendants.

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

1 ***Permissive Intervention***

2 2. Fed. R. Civ. P. 24(b) enables this Court to permit anyone to intervene who “has a  
3 claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ.  
4 P. 24(b)(1)(B).

5 3. Because Fannie Mae avers ownership of a mortgage loan on the Property at issue in  
6 this action, Fannie Mae has a claimed property interest that Plaintiff seeks to extinguish by this  
7 action.

8 4. FHFA has a direct interest in protecting Fannie Mae’s claimed rights to property. On  
9 September 6, 2008, FHFA’s Director appointed the FHFA Conservator of Fannie Mae and the  
10 Federal Home Loan Mortgage Corporation in accordance with the Housing and Economic  
11 Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654 (codified at 12 U.S.C. § 4617) (“HERA”),  
12 and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §  
13 4501, et. seq.). As Conservator, FHFA has succeeded to “all rights, titles, powers, and privileges”  
14 of Fannie Mae. *See* 12 U.S.C. § 4617(b)(2)(A)(i). Moreover, FHFA is charged with taking  
15 necessary steps to “preserve and conserve the assets and property of [the Enterprises]” and “take  
16 over the assets of and operate [the Enterprises] with all the powers of the shareholders, the directors,  
17 and the officers of [the Enterprises].” *Id.* at §§ 4617(b)(2)(B)(i), (D)(ii). Thus, FHFA has a  
18 substantial interest in Plaintiff’s action seeking to quiet title and declare extinguished a purported  
19 property interest that Fannie Mae claims to hold. *See* 12 U.S.C. §§ 4617(b)(2)(B)(i),  
20 4617(b)(2)(B)(iv).

21 5. The Petitioners seek to protect Fannie Mae’s property interest and present the  
22 statutory defense that Plaintiff’s claim of free and clear title to the property at issue in this case (the  
23 “Property”) is barred by 12 U.S.C. § 4617(j)(3), which Petitioners contend preempts conflicting  
24 state law and precludes a homeowner’s association sale from extinguishing Fannie Mae’s interest in  
25 the Property. This statutory defense shares a common question of law or fact with the main action,  
26 and is articulated in the Answers Petitioners have filed herewith. Accordingly, permissive  
27 intervention under Rule 24(b) is warranted.  
28

1 ***Intervention of Right***

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

5 7. Pursuant to HERA, FHFA asserts that it has unqualified authority to protect Fannie  
6 Mae’s assets and property. *See* 12 U.S.C. § 4617(b)(2)(A)(i); 12 U.S.C. § 4617(b)(2)(D)(i)-(ii).  
7 Because Fannie Mae claims an interest in the Property at issue here, the Conservator has authority  
8 to intervene to protect that claimed interest.

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

12 9. Plaintiff and Defendant JPMorgan Chase Bank, N.A., consent to this motion to  
13 intervene. The remaining named defendants have not appeared in this action.

14 10. Pursuant to Fed. R. Civ. P. 24(c), Petitioners attach as Exhibits A and B their  
15 intended Answers.

16 **STIPULATION**

17 Proposed Intervenors Fannie Mae and FHFA, Plaintiff LN Management LLC Series 5664  
18 Divot, and Defendant JPMorgan Chase Bank, N.A., through their attorneys of record, hereby  
19 stipulate and request that the Court make this stipulation an order of the Court:

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

22 DATED this 1st day of May, 2015.  
23  
24  
25  
26  
27  
28

1 By: /s/ Kerry P. Faughnan  
Kerry P. Faughnan, Esq. (SBN 12204)  
2 P.O. Box 335361  
North Las Vegas, Nevada 89033  
3 Tel: (702) 301-3096  
*kerry.faughnan@gmail.com*  
4 *Attorney for Plaintiff LN Management Series*  
*5664 Divot*

5  
6 By: /s/ Abran E. Vigil  
Abran E. Vigil, Esq. (SBN 7548)  
7 Matthew David Lamb, Esq. (SBN 12991)  
Sylvia O. Semper, Esq. (SBN 12863)  
8 BALLARD SPAHR LLP  
100 City Parkway , Suite 1750  
9 Las Vegas, NV 89106  
10 Tel: (702) 471-7000 Fax: (702) 471-7070  
*vigila@ballardspahr.com;*  
*lambm@ballardspahr.com;*  
*sempers@ballardspahr.com*

11 *Attorneys for Defendant JPMorgan Chase,*  
12 *N.A. and Proposed Intervenor Federal*  
13 *National Mortgage Association*

By: /s/ Leslie Bryan Hart  
Leslie Bryan Hart, Esq. (SBN 4932)  
John D. Tennert, Esq. (SBN 11728)  
FENNEMORE CRAIG  
300 S. Second St., Suite 1510  
Reno, Nevada 89501  
Tel: (775) 788-2228 Fax: (775) 788-2229  
*lhart@fclaw.com; jtennert@fclaw.com*

and

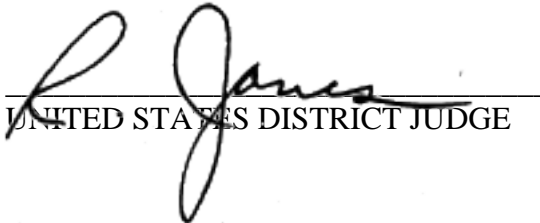
By: /s/ Asim Varma  
Asim Varma, Esq.\*  
*Asim.Varma@aporter.com*  
Howard N. Cayne, Esq.\*  
*Howard.Cayne@aporter.com*  
Michael A.F. Johnson, Esq.\*  
*Michael.Johnson@aporter.com*  
ARNOLD & PORTER LLP  
555 12th Street NW  
Washington, DC 20004  
Tel: (202) 942-5000 Fax: (202) 942-5999  
*Attorneys for Federal Housing Financing*  
*Agency*

\* *pro hac vice* petitions to be submitted

14  
15  
16 **ORDER**

17 **IT IS SO ORDERED.**

18  
19 Dated this 14th day of May, 2015.

20  
21  
22   
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28

# **EXHIBIT A**

# **EXHIBIT A**

1 Leslie Bryan Hart, Esq. (SBN 4932)  
John D. Tennert, Esq. (SBN 11728)  
FENNEMORE CRAIG JONES VARGAS  
2 300 S. Second St., Suite 1510  
Reno, Nevada 89501  
3 Tel: 775-788-2228 Fax: 775-788-2229  
*lhart@fclaw.com; jtennert@fclaw.com*

4 Asim Varma, Esq.\*  
5 *Asim.Varma@aporter.com*  
Howard N. Cayne, Esq.\*  
6 *Howard.Cayne@aporter.com*  
Michael A.F. Johnson, Esq.\*  
7 *Michael.Johnson@aporter.com*  
ARNOLD & PORTER LLP  
8 555 12th Street NW  
Washington, DC 20004  
9 Tel: (202) 942-5000 Fax: (202) 942-5999  
\* *Pro Hac Vice* Petitions to be Submitted  
10 *Attorneys for Proposed Intervenor Federal Housing Finance Agency*

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

13 LN MANAGEMENT, LLC SERIES 5664  
DIVOT,

14 Plaintiff,

15 v.

16 KIT DANSKER and JPMORGAN CHASE  
17 BANK, N.A.,

18 Defendants.

CASE NO.: 2:13-cv-01420-RCJ-GWF

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

19  
20 Simultaneously with this Answer, the Federal Housing Finance Agency (“FHFA”), in its  
21 capacity as Conservator for the Federal National Mortgage Association (“Fannie Mae”), is filing  
22 jointly with other parties in this action a stipulation permitting FHFA to intervene pursuant to  
23 Federal Rule of Civil Procedure 24. In accordance with Rule 24(c)’s requirement that a motion  
24 to intervene “be accompanied by a pleading that sets out the claim or defense for which  
25 intervention is sought,” FHFA submits this Answer to respond as follows to the Complaint filed  
26 by Plaintiff LN Management LLC Series 5664 Divot (“LN Management” or “Plaintiff”):  
27  
28

**PARTIES, JURISDICTION AND VENUE**

1  
2 1. FHFA admits that this action relates to real property located at 5564 Divot Place,  
3 Las Vegas, Nevada 89130 (the "Property"), that the Property is situated within Clark County,  
4 Nevada, and that jurisdiction and venue is proper in this Court.

5 2. FHFA is without knowledge or information sufficient to form a belief as to the  
6 truth of the allegations within Paragraph 2 of the Complaint.

7 3. The allegations contained within Paragraph 3 of the Complaint concerning  
8 Plaintiff's purported title to the Property constitutes a legal conclusion that does not require a  
9 response. To the extent a response is required, denied. FHFA admits the remaining allegations  
10 within Paragraph 3 of the Complaint.

11 4. The allegation contained within Paragraph 4 of the Complaint concerning  
12 Plaintiff's purported title to the Property constitutes a legal conclusion that does not require a  
13 response. To the extent a response is required, denied. FHFA admits the remaining allegations  
14 within Paragraph 4 of the Complaint.

15 5. FHFA is without knowledge or information sufficient to form a belief as to the  
16 truth of the allegations within Paragraph 5 of the Complaint.

**GENERAL ALLEGATIONS**

17  
18 6. FHFA admits that a Foreclosure Deed was recorded in the Official Records of the  
19 Clark County Recorder on March 20, 2013, as Book and Instrument Number 20130320-  
20 0001307, stating that Plaintiff purportedly purchased the Property at a foreclosure sale on March  
21 13, 2013, and that this recording speaks for itself. The remainder of Paragraph 6 states a legal  
22 conclusion that does not require a response. To the extent a response is required, denied.

23 7. FHFA admits that a Foreclosure Deed was recorded in the Official Records of the  
24 Clark County Recorder on March 20, 2013, as Book and Instrument Number 20130320-  
25 0001307, stating that Plaintiff purportedly purchased the Property at a foreclosure sale on March  
26 13, 2013, and that this recording speaks for itself.





1 **AFFIRMATIVE DEFENSES**

2 FHFA's investigation of these claims is continuing. By this Answer, FHFA waives no  
3 affirmative defenses and reserves its right to amend the Answer to insert any subsequently  
4 discovered affirmative defenses.

5 **FIRST AFFIRMATIVE DEFENSE**

6 The Complaint fails to state a claim for which relief can be granted because, among other  
7 reasons, Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C.  
8 § 4617(j)(3), which precludes an homeowners' association sale from extinguishing Fannie Mae's  
9 interest in the Property and preempts any state law to the contrary.

10 **SECOND AFFIRMATIVE DEFENSE**

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

13 **THIRD AFFIRMATIVE DEFENSE**

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

17 **FOURTH AFFIRMATIVE DEFENSE**

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

22 **FIFTH AFFIRMATIVE DEFENSE**

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

25 **SIXTH AFFIRMATIVE DEFENSE**

26 Plaintiff failed to join one or more indispensable parties.  
27  
28



1 could not extinguish Fannie Mae's interest in the Deed of Trust.

2 10. 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 12 U.S.C. § 4617(j)(3) precludes an HOA foreclosure  
4 sale from extinguishing Fannie Mae's interest in the Deed of Trust.

5 **SECOND COUNTERCLAIM**

6 **(Quiet Title versus Plaintiff)**

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

9 2. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and  
10 authority to resolve the Plaintiff's adverse claims in the Property.

11 3. The Deed of Trust is a first secured interest on the Property as intended by NRS  
12 116.3116(2)(b).

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

15 5. Plaintiff claims an interest in the Property through its purported purchase of the  
16 Property at an HOA foreclosure sale on March 15, 2013, and claims that the foreclosure sale  
17 extinguished the Deed of Trust.

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

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

24 8. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to  
25 28 U.S.C. § 2201 and NRS § 40.010, that the HOA sale did not extinguish Fannie Mae's interest  
26 in the Deed of Trust.

27 9. FHFA and Fannie Mae are entitled to a determination from this Court, pursuant to  
28

1 28 U.S.C. § 2201 and NRS § 40.010 that Fannie Mae's interest in the Deed of Trust is superior  
2 to the interest, if any, acquired by Plaintiff through the foreclosure deed.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, FHFA prays for the following relief:

- 6 1. That Plaintiff take nothing by way of its Complaint;
- 7 2. That the Court declare that 12 U.S.C. § 4617(j)(3) preempts any Nevada law that  
8 would permit a foreclosure on a superpriority lien to extinguish Fannie Mae's interest while it is  
9 under FHFA's conservatorship;
- 10 3. That the Court declare that the HOA sale did not extinguish Fannie Mae's interest  
11 in the Property and thus did not convey the Property free and clear to Plaintiff;
- 12 4. That the Court declare that Fannie Mae's property interest is superior to the  
13 interest, if any, of Plaintiff;
- 14 5. That FHFA be awarded reasonable attorneys' fees and costs; and
- 15 6. That FHFA receive such other relief as the Court deems just and proper.

16 DATED this 1st day of May, 2015.

17 FENNEMORE CRAIG JONES VARGAS

18  
19 By: /s/ Leslie Bryan Hart  
20 Leslie Bryan Hart, Esq. (SBN4932)  
21 John D. Tennert, Esq. (SBN 11728)  
22 300 S. Second St., Suite 1510  
23 Reno, Nevada 89501  
24 Tel: 775-788-2228 Fax: 775-788-2229  
25 *lhart@fclaw.com; jtennert@fclaw.com*

26 and

27 ARNOLD & PORTER LLP

28 Asim Varma, Esq.\*  
*Asim.Varma@aporter.com*  
29 Howard N. Cayne, Esq.\*  
*Howard.Cayne@aporter.com*  
30 Michael A.F. Johnson, Esq.\*

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  
28

*Michael.Johnson@aporter.com*  
555 12th Street NW  
Washington, DC 20004  
Tel: (202) 942-5000 Fax: (202) 942-5999  
*\*Pro Hac Vice* Petitions to be Submitted

*Attorneys for Proposed Intervenor Federal Housing  
Financing Agency*

# **EXHIBIT B**

# **EXHIBIT B**

1 Abran E. Vigil  
 Nevada Bar No. 7548  
 2 Sylvia O. Semper  
 Nevada Bar No. 12863  
 3 Matthew D. Lamb  
 Nevada Bar No. 12991  
 4 BALLARD SPAHR LLP  
 100 North City Parkway, Suite 1750  
 5 Las Vegas, Nevada 89106  
 Telephone: (702) 471-7000  
 6 Facsimile: (702) 471-7070  
 vigila@ballardspahr.com  
 7 sempers@ballardspahr.com  
 lambm@ballardspahr.com  
 8 *Attorneys for Fannie Mae*

9  
 10 UNITED STATES DISTRICT COURT  
 11 DISTRICT OF NEVADA

11 LN MANAGEMENT, LLC SERIES 5664  
 12 DIVOT,

Case No. 2:13-cv-01420-RCJ-GWF

13 Plaintiff,

**FANNIE MAE'S ANSWER TO  
 COMPLAINT AND  
 COUNTERCLAIMS**

14 vs.

15 KIT DANSKER and JPMORGAN  
 CHASE BANK, NA

16 Chase,  
 17

18 Intervenor Federal National Mortgage Association ("Fannie Mae") hereby  
 19 answers the Complaint filed by plaintiff LN Management, LLC Series 5664 Divot  
 20 ("plaintiff"), as follows:

21 1. Fannie Mae admits the allegations contained in the first sentence of  
 22 paragraph 1 of the Complaint. Fannie Mae denies the remaining allegations  
 23 contained in Paragraph 1 of the Complaint.

24 2. Fannie Mae is without sufficient information to admit or deny the  
 25 allegations of Paragraph 2 of the Complaint and therefore denies them.

26 3. Fannie Mae is without sufficient information to admit or deny the  
 27 allegations of Paragraph 3 of the Complaint and therefore denies them.  
 28

1 4. Fannie Mae is without sufficient information to admit or deny the  
2 allegations of Paragraph 4 of the Complaint and therefore denies them.

3 5. Fannie Mae is without sufficient information to admit or deny the  
4 allegations of Paragraph 5 of the Complaint and therefore denies them.

5 **GENERAL ALLEGATIONS**

6 6. Fannie Mae denies the allegations contained in paragraph 6 of the  
7 Complaint.

8 7. Fannie Mae denies the allegations contained in paragraph 7 of the  
9 Complaint.

10 8. Fannie Mae admits it has had, and currently has, an interest in the  
11 Property. Fannie Mae denies the remaining allegations of Paragraph 8 of the  
12 Complaint.

13 9. Fannie Mae denies the allegations contained in paragraph 9 of the  
14 Complaint.

15 10. Fannie Mae is without sufficient information to admit or deny the  
16 allegations of Paragraph 10 of the Complaint and therefore denies them.

17 **FIRST CLAIM FOR RELIEF**  
18 **(Quiet Title)**

19 11. Fannie Mae incorporates the answers contained in Paragraphs 1  
20 through 10 above as if set forth fully herein.

21 12. Fannie Mae denies the allegations contained in paragraph 12 of the  
22 Complaint.

23 13. Fannie Mae denies the allegations contained in paragraph 13 of the  
24 Complaint.

25 14. Fannie Mae denies the allegations contained in paragraph 14 of the  
26 Complaint.

27 15. Fannie Mae denies the allegations contained in paragraph 15 of the  
28 Complaint.



**SECOND CLAIM FOR RELIEF  
(Declaratory Relief)**

16. Fannie Mae incorporates the answers contained in Paragraphs 1 through 15 above as if set forth fully herein.

17. Fannie Mae denies the allegations contained in paragraph 17 of the Complaint.

18. Fannie Mae denies the allegations contained in paragraph 18 of the Complaint.

WHEREFORE, Fannie Mae respectfully requests that the Court enter judgment in its favor, and against plaintiff, together with costs, fees and such other relief as the Court deems proper.

**AFFIRMATIVE DEFENSES**

Fannie Mae's investigation of these claims is continuing. By this Answer, Fannie Mae waives no affirmative defenses and reserves its right to amend the Answer to assert any subsequently discovered affirmative defenses.

**First Affirmative Defense**

The Complaint fails to state facts sufficient to constitute a claim upon which relief can be granted.

**Second Affirmative Defense**

The acts alleged in the Complaint were the acts of third parties over whom Fannie Mae have no control or responsibility.

**Third Affirmative Defense**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14<sup>th</sup> Amendment of the United States Constitution and Article 1, Section 8 of the Nevada Constitution.

**Fourth Affirmative Defense**

The homeowners association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to comply with all mailing,

1 noticing and/or other requirements of Nevada and federal law.

2 **Fifth Affirmative Defense**

3 The homeowners association foreclosure sale is void or otherwise insufficient  
4 to extinguish the deed of trust or a property interest of the Fannie Mae.

5 **Sixth Affirmative Defense**

6 Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. §  
7 4617(j)(3), which precludes an homeowners association foreclosure sale from  
8 extinguishing Fannie Mae's interest in the subject property and preempts any state  
9 law to the contrary.

10 **Seventh Affirmative Defense**

11 The homeowners association foreclosure sale by which plaintiff claims  
12 to have acquired its interest was commercially and otherwise unreasonable. The  
13 sales price, when compared to the outstanding balance of Chase's note and deed of  
14 trust and the fair market value of the subject property, demonstrates that the sale  
15 was not conducted in good faith. The circumstances of the sale of the property  
16 violated the homeowners association's obligation of good faith under NRS 116.1113  
17 and duty to act in a reasonable manner.

18 **Eighth Affirmative Defense**

19 Plaintiff purchased the subject property with record notice of the interest of  
20 the senior deed of trust recorded against the property and is not a bona fide  
21 purchaser for value.

22 **Ninth Affirmative Defense**

23 Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or  
24 tender.

25 **Tenth Affirmative Defense**

26 Plaintiff's claims are barred by the equitable doctrines of laches, unclean  
27 hands, and/or failure to do equity.

28

1  
2 WHEREFORE, Fannie Mae respectfully requests that the Court enter  
3 judgment in its favor, and against plaintiff, together with costs, fees and such other  
4 relief as the Court deems proper.

5 **COUNTERCLAIMS**

6 Fannie Mae hereby counterclaims against plaintiff as follows:

7 **GENERAL ALLEGATIONS**

8 1. In 2003, borrower Kit Dansker obtained a mortgage loan for  
9 \$83,000.00 ("Loan") from WaMu to purchase the property located at 5664 Divot  
10 Place Las Vegas, NV 89130 (the "Property").

11 2. The Loan was secured by a first-position Deed of Trust (the "Deed of  
12 Trust") recorded on March 26, 2003, as instrument no. 2003032602658. In 2008,  
13 WaMu, the beneficiary under the Deed of Trust, submitted to receivership under  
14 the Federal Deposit Insurance Corporation, and all of WaMu's assets were  
15 transferred to Chase.

16 3. On April 23, 2003, Fannie Mae purchased the Loan. Chase remains the  
17 current beneficiary of the Deed of Trust.

18 **The HOA Lien and Foreclosure**

19 4. On July 21, 2011, Nevada Association Services, Inc. ("HOA Trustee"),  
20 as agent for Los Prados Community Association ("HOA" or "Los Prados") recorded a  
21 notice of delinquent assessments ("Lien") against the Property.

22 5. On August 31, 2011, the HOA Trustee recorded a notice of default  
23 under the HOA's Lien.

24 6. On February 20, 2013, the HOA Trustee recorded a notice of sale  
25 under the HOA's Lien.

26 7. In none of the recorded documents nor in any notice did the HOA  
27 and/or the HOA Trustee provide Fannie Mae or Chase with notice of the purported  
28 super-priority lien amount.



1 19. Fannie Mae is entitled to a determination from this Court, pursuant to  
2 28 U.S.C. § 2201, that Fannie Mae's interest is superior to the interest, if any,  
3 acquired by plaintiff.

4 20. In the alternative, Fannie Mae is entitled to a determination, pursuant  
5 to NRS 40.010, that the HOA Sale was unlawful and void.

6 **SECOND CLAIM FOR RELIEF**

7 **(Quiet Title against Plaintiff)**

8 21. Fannie Mae incorporates the allegations in the prior paragraphs as if  
9 fully set forth herein.

10 22. Pursuant to 28 U.S.C. § 2201 and Nev. Rev. Stat. § 40.010, this Court  
11 has the power and authority to declare Fannie Mae's rights and interests in the  
12 Property and to resolve the plaintiff's adverse claims in the Property.

13 23. Plaintiff claims an interest in the Property through a foreclosure deed  
14 that is adverse to Fannie Mae's interest.

15 24. Fannie Mae's interest in the Deed of Trust encumbering the Property  
16 constitutes an interest in real property.

17 25. FHFA, as conservator for Fannie, succeeded by law to the all of Fannie  
18 Mae's "rights, title, powers, and privileges." 12 U.S.C. §4617(b)(2)(A)(i).

19 26. During the conservatorship, "[n]o property of [FHFA] shall be subject  
20 to levy, attachment, garnishment, foreclosure, or sale without the consent of the  
21 [FHFA], nor shall any involuntary lien attach to the property of [FHFA]." 12 U.S.C.  
22 § 4617(j)(3).

23 27. At no time did the HOA or HOA Trustee obtain consent from FHFA to  
24 extinguish the deed of trust or otherwise extinguish Fannie Mae's interest.

25 28. Fannie Mae is entitled to a determination from this Court, pursuant to  
26 28 U.S.C. § 2201, that Fannie Mae's interest is superior to the interest, if any,  
27 acquired by plaintiff.

28 29. In the alternative, Fannie Mae is entitled to a determination, pursuant

1 to NRS 40.010, that the HOA Sale was unlawful and void.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Fannie Mae prays for the following relief:

- 4 1. That plaintiff take nothing by way of its Complaint;
- 5 2. That the Court declare that Fannie Mae's interest is superior to the
- 6 interest of plaintiff or, in the alternative, that the HOA Sale was unlawful and void;
- 7 4. That Fannie Mae be awarded reasonable attorneys' fees and costs; and
- 8 5. That Fannie Mae receives such other relief as the Court deems just
- 9 and proper.

10 BALLARD SPAHR LLP

11 By: /s/Abran E. Vigil

12 Abran E. Vigil  
13 Nevada Bar No. 7548  
14 Sylvia O. Semper  
15 Nevada Bar No. 12863  
16 Matthew D. Lamb  
17 Nevada Bar No. 1299  
18 1100 North City Parkway, Suite 1750  
19 Las Vegas, NV 89106  
20 Telephone: (702) 471-7000  
21  
22  
23  
24  
25  
26  
27  
28

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  
28

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of May, 2015, a true and correct copy of the foregoing ANSWER, was served to the parties following in the manner set forth below:

Kerry P. Faughnan  
PO Box 335361  
North Las Vegas, NV 89033  
Kerry.faughnan@gmail.com

- HAND DELIVERY
- E-MAIL TRANSMISSION
- U.S. MAIL, POSTAGE PREPAID
- CM/ECF e-filing system

/s/ Mary Kay Carlton  
An employee of BALLARD SPAHR LLP