

FENNEMORE CRAIG JONES VARGAS
300 East Second Street, Suite 1510
Reno, NV 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

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

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

11 Attorneys for Proposed Intervenor
Federal Housing Finance Agency

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

14 SKYLIGHTS LLC,
15 Plaintiff,
16 vs.

CASE NO. 2:15-cv-00043-GMN-VCF

16 DAVID BYRON; JENNIFER BYRON; CCSF
17 LLC; FEDERAL NATIONAL MORTGAGE
ASSOCIATION; CITIMORTGAGE, INC.;
18 CLEAR RECON CORP.; DOES I through 10;
and ROE BUSINESS ENTITIES I through 10,

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

19 Defendants.

20 FEDERAL NATIONAL MORTGAGE
21 ASSOCIATION,
22 Counterclaimant,

23 SKYLIGHTS LLC; THE FALLS AT
24 RHODES RANCH CONDOMINIUM
OWNERS ASSOCIATION, INC.,

25 Counter-defendants.

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

4 2. On September 6, 2008, FHFA’s Director appointed the FHFA Conservator of Fannie
5 Mae and the Federal Home Loan Mortgage Association in accordance with the Housing and
6 Economic Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654 (codified at 12 U.S.C.§ 4617)
7 (“HERA”).
8

9 3. The FHFA, as Conservator, has succeeded to “all rights, titles, powers, and
10 privileges” of Fannie Mae, including its right to sue and be sued in the federal courts. 12 U.S.C. §
11 4617(b)(2)(A)(i).

12 4. Accordingly, FHFA has an unconditional federal statutory right to intervene in this
13 matter, see Fed. R. Civ. P. 24(a)(1), and to assert its interests in a manner consistent with the
14 Conservator’s powers and duties.
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16 5. Pursuant to Fed. R. Civ. P. 24(c), FHFA attaches as Exhibit A its intended Answer.

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STIPULATION

FHFA and Plaintiff Skylights LLC, through their attorneys of record, hereby stipulate and request that the Court make this stipulation an order of the Court:

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

DATED this 22nd day of January, 2015.

<p>FENNEMORE CRAIG, P.C.</p> <p>By: <u>/s/ Leslie Bryan Hart</u> Leslie Bryan Hart, Esq. (SBN 4932) John D. Tennert, Esq. (SBN 11728) 300 E. Second St., Suite 1510 Reno, Nevada 89501 Tel: 775-788-2228 Fax: 775-788-2229 lhart@fclaw.com; jtennert@fclaw.com</p> <p>and</p> <p>ARNOLD & PORTER LLP (Pro Hac Vice to be Submitted) Asim Varma, Esq. Asim.Varma@aporter.com Howard N. Cayne, Esq. Howard.Cayne@aporter.com Michael A.F. Johnson, Esq. Michael.Johnson@aporter.com 555 12th Street NW Washington, DC 20004 Tel: (202) 942-5000 Fax: (202) 942-5999</p> <p>Attorneys for Proposed Intervenor Federal Housing Finance Agency</p>	<p>PITE DUNCAN, LLP</p> <p>By: <u>/s/ with the consent of Laurel I. Handley</u> Laurel I. Handley, Esq. (SBN 9576) lhandley@piteduncan.com Krista J. Nielson, Esq. (SBN 10698) knielson@piteduncan.com 520 South 4th Street, Suite 360 Las Vegas, Nevada 89101 Tel: (858) 750-7600 Fax: (702) 685-6342</p> <p>Attorneys for Defendants/Counterclaimants David Byron; Jennifer Byron; CCSF LLC; Federal National Mortgage Association; CitiMortgage, Inc.; Clear Recon Corp.; Does 1-10; and Roe Business Entities 1-10</p> <p>LAW OFFICE OF MIKE BEEDE</p> <p>By: <u>/s/ with the consent of Michael N. Beede</u> Michael N. Beede 2300 W. Sahara Ave., Ste. 420 Las Vegas, NV 89102 Tel: 702-473-8406</p> <p>Attorney for Plaintiff Skylights LLC</p>
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ORDER PERMITTING FEDERAL HOUSING FINANCE AGENCY TO INTERVENE

Having considered the Stipulation to Entry of Order Permitting Federal Housing Finance Agency to Intervene as Conservator of the Federal National Mortgage Association, it is hereby:

ORDERED that the Federal Housing Finance Agency is allowed to intervene in this action pursuant to 12 U.S.C. § 4617(b)(2)(A)(i) and Fed. R. Civ. P. 24; and it is further ORDERED that

FENNEMORE CRAIG JONES VARGAS
300 East Second Street, Suite 1510
Reno, NV 89501
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this Order shall be effective immediately.

January 23, 2015

DATED: _____



HON. CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE

The Federal Housing Finance Agency must file its answer on or before January 30, 2015.

Exhibit A

Exhibit A

1 Leslie Bryan Hart, Esq. (SBN 4932)
John D. Tennert, Esq. (SBN 11728)
2 FENNEMORE CRAIG, P.C.
300 E. Second St., Suite 1510
3 Reno, Nevada 89501
Tel: 775-788-2228 Fax: 775-788-2229
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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 SKYLIGHTS LLC,
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16 DAVID BYRON; JENNIFER BYRON; CCSF
17 LLC; FEDERAL NATIONAL MORTGAGE
ASSOCIATION; CITIMORTGAGE, INC.;
18 CLEAR RECON CORP.; DOES I through 10;
and ROE BUSINESS ENTITIES I through 10,

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

19 Defendants.

20 FEDERAL NATIONAL MORTGAGE
21 ASSOCIATION,
Counterclaimant,

22 vs.

23 SKYLIGHTS LLC; THE FALLS AT
24 RHODES RANCH CONDOMINIUM
OWNERS ASSOCIATION, INC.,

25 Counter-defendants.

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 a
3 joint stipulation signed by the parties agreeing that FHFA has a federal statutory right to intervene
4 in this matter pursuant to Federal Rule of Civil Procedure 24(a)(1). 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 the
7 Complaint filed by Plaintiff Skylights LLC:
8

9 1. FHFA admits that Plaintiff claims an interest in the Subject Property, but otherwise
10 denies the allegations within Paragraph 1 of the Complaint.

11 2. FHFA admits that a Trustee’s Deed Upon Sale was recorded on September 26, 2014,
12 in the records of Clark County, Nevada, as Instrument No. 20140926-0001915. Fannie Mae further
13 admits that the Trustee’s Deed Upon Sale states that Alessi & Koenig, LLC (“AK”), as agent for
14 The Falls at Rhodes Ranch Condominium Owners Association, Inc. (“The Falls HOA”), “grant[s]
15 and convey[s], but without warranty expressed or implied to: Skylights LLC (Grantee) all its right,
16 title and interest in the property legally described at APACHE SPRINGS CONDO AMD UNIT
17 2096 BLDG 21...” FHFA otherwise denies the allegations within Paragraph 2 of the Complaint.
18

19 3. FHFA is without knowledge or information sufficient to form a belief as to the truth
20 of the allegation within Paragraph 3 of the Complaint.

21 4. FHFA is without knowledge or information sufficient to form a belief as to the truth
22 of the allegation within Paragraph 4 of the Complaint.

23 5. FHFA admits that this Court has jurisdiction over the issues raised in this action and
24 that venue properly lies in this Court.

25 6. FHFA denies the allegations within Paragraph 6 of the Complaint.
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1 7. FHFA is without knowledge or information sufficient to form a belief as to the truth
2 of the allegation concerning why Plaintiff named Clear Recon Corp. as a defendant in this action,
3 but FHFA admits that it is so named.

4 8. FHFA admits that CCSF, LLC was at one point the beneficiary of a deed of trust on
5 the Subject Property recorded in 2003. FHFA is without knowledge or information sufficient to
6 form a belief as to the truth of the remaining allegations within Paragraph 8 of the Complaint.
7

8 9. FHFA admits that Fannie Mae has an interest in the Subject Property. FHFA is
9 without knowledge or information sufficient to form a belief as to the truth of the remaining
10 allegations within Paragraph 9 of the Complaint.

11 10. Paragraph 10 of the Complaint states legal conclusions that do not require a
12 response. To the extent a response is required, denied.

13 **FIRST CLAIM FOR RELIEF**

14 11. FHFA repeats its responses to Paragraphs 1-10 as if fully stated herein.

15 12. Paragraph 12 of the Complaint consists of Plaintiff's claims that do not require a
16 response. To the extent a response is required, denied.

17 13. Paragraph 13 of the Complaint consists of Plaintiff's claims that do not require a
18 response. To the extent a response is required, denied.

19 **SECOND CLAIM FOR RELIEF**

20 14. FHFA repeats its responses to Paragraphs 1-13 as if fully stated herein.

21 15. Paragraph 15 of the Complaint consists of Plaintiff's claims that do not require a
22 response. To the extent a response is required, denied.

23 16. Paragraph 16 of the Complaint consists of Plaintiff's claims that do not require a
24 response. To the extent a response is required, denied.

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. § 4617(j)(3),
8 which precludes an HOA sale from extinguishing Fannie Mae’s interest in the Property and
9 preempts any state law to the contrary.
10

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiff’s claims are barred by the doctrines of laches, estoppel, waiver, unjust enrichment,
13 and/or unclean hands.
14

15 **THIRD AFFIRMATIVE DEFENSE**

16 The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts
17 described in the Complaint were caused in whole or were contributed to in part by reason of the
18 acts, omissions, negligence, and/or intentional misconduct of Plaintiff and counter-defendant The
19 Falls HOA.
20

21 **FOURTH AFFIRMATIVE DEFENSE**

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

26 **FIFTH AFFIRMATIVE DEFENSE**

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

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SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any alleged acts or omissions of Fannie Mae sufficient to warrant the consideration of general, expectation, consequential, or compensatory damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to equitable relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to join one or more indispensable parties.

NINTH AFFIRMATIVE DEFENSE

Fannie Mae breached no duty with regard to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

FHFA incorporates by reference those defenses enumerated in Rules 8 and 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation reveals the applicability of any such defenses, FHFA reserves the right to seek leave of court to amend this Answer to assert the same.

COUNTERCLAIMS

FIRST COUNTERCLAIM

(Declaratory Judgment versus Plaintiff and The Falls HOA)

1. FHFA incorporates by reference the responses of all previous paragraphs, as if fully set forth herein.
2. Pursuant to 28 U.S.C. § 2201 and NRS § 40.010, this Court has the power and authority to declare FHFA and Fannie Mae’s rights and interests in the Property.
3. Fannie Mae’s Deed of Trust is a first secured interest on the Property.
4. The Federal Housing Finance Agency (“FHFA” or the “Conservator”) is an agency of the federal government of the United States of America and is also the Conservator for Fannie Mae.

