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Attorneys for Plaintiff
GREEN TREE SERVICING LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREEN TREE SERVICING LLC,

Plaintiff,

v.

NV EAGLES, LLC; SHADOW SPRINGS
COMMUNITY ASSOCIATION; DOES 1 through
10, inclusive; ROES Business Entities 1 through
10, inclusive; and all others who claim interest in
the subject property located at 6137 Talbot Springs
Court, North Las Vegas, Nevada 89018,

Defendants.

NV EAGLES, LLC,

Counterclaimant,

v.

GREEN TREE SERVICING LLC,

Counterdefendant.

SHADOW SPRINGS COMMUNITY
ASSOCIATION, a Nevada Non-Profit Corporation,

Third-Party Plaintiff,

v.

RED ROCK FINANCIAL SERVICES, LLC, a
foreign limited liability company,

Third-Party Defendants.

CASE NO.: 2:15-cv-00590-RFB-GWF

**STIPULATION AND ORDER TO FILE
FIRST AMENDED COMPLAINT FOR
QUIET TITLE**



STIPULATION

It is hereby stipulated and agreed by and between GREEN TREE SERVICING LLC, NV EAGLES, LLC, LLC, SHADOW SPRINGS COMMUNITY ASSOCIATION, and RED ROCK FINANCIAL SERVICES LLC (collectively as the “Parties”), by and through their respective counsels of record, that GREEN TREE SERVICING LLC may file the First Amended Complaint attached to this Stipulation as Exhibit “1.”

The Parties are stipulating in the interest of judicial economy and this Stipulation shall not be construed to prejudice any claims or defenses asserted by the Parties in this action.

IT IS SO STIPULATED.

DATED this 11th day of June, 2015.

DATED this 11th day of June, 2015.

By: /s/ Colt B. Dodrill .

Colt B. Dodrill, Esq.
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Yanxiong Li, Esq.
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By: /s/ John H. Wright .

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NV EAGLES, LLC



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1 DATED this 11th day of June, 2015.

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By: /s/ James W. Pengilly .
James W. Pengilly, Esq.
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Elizabeth B. Lowell, Esq.
Nevada Bar No. 8551
PENGILLY LAW FIRM
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Las Vegas, NV 89134
Attorneys for Defendant/ Third-party
Plaintiff,
SHADOW SPRINGS COMMUNITY
ASSOCIATION

ORDER

IT IS SO ORDERED.



RICHARD F. BOULWARE, II
United States District Judge

Dated: July 13, 2015



EXHIBIT “1”

EXHIBIT “1”

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5 **Attorneys for Plaintiff**
6 **GREEN TREE SERVICING LLC**

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 GREEN TREE SERVICING LLC,
11
Plaintiff,

12 v.

13 NV EAGLES, LLC; SHADOW SPRINGS
COMMUNITY ASSOCIATION; DOES 1 through
14 10, inclusive; ROES Business Entities 1 through
10, inclusive; and all others who claim interest in
15 the subject property located at 6137 Talbot Springs
Court, North Las Vegas, Nevada 89018,

16 Defendants.

17
18 SHADOW SPRINGS COMMUNITY
ASSOCIATION, a Nevada Non-Profit Corporation,

19 Third-Party Plaintiff,

20 v.

21 RED ROCK FINANCIAL SERVICES, LLC, a
foreign limited liability company,

22 Third-Party Defendant.

23 NV EAGLES, LLC,

24 Counterclaimant,

25 v.

26 GREEN TREE SERVICING LLC,

27 Counterdefendant.
28

CASE NO.: 2:15-cv-00590-RFB-GWF

**FIRST AMENDED COMPLAINT FOR
QUIET TITLE**

1 GREEN TREE SERVICING LLC (“Green Tree”), by and through its counsel of record,
2 Wolfe & Wyman LLP, hereby complains against Defendants as follows:

3 **STATEMENT OF JURISDICTION**

4 1. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331
5 because this claim challenges the constitutionality of Nevada’s HOA foreclosure statutes.

6 2. This Court also has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332
7 because this claim is between diverse Defendants and the amount in controversy exceeds
8 \$75,000.00.

9 3. This matter involves certain real estate located at 6137 Talbot Springs Court, North
10 Las Vegas, NEVADA 89081 (“Subject Property”) and falls under the jurisdiction of this Court.

11 **PARTIES**

12 4. Plaintiff, Green Tree is a limited liability company organized under the laws of
13 Delaware and a principal place of business in Minnesota.

14 5. Defendant, NV EAGLES, LLC (“NV Eagles”) is a limited liability corporation
15 organized under the laws of Nevada with its principal place of business in Nevada. Upon
16 information and belief, no members of NV Eagles are citizens of the state of Delaware.

17 6. Defendant, SHADOW SPRINGS COMMUNITY ASSOCIATION (“HOA”) is a
18 Nevada non-profit corporation with its principal place of business in Nevada.

19 7. RED ROCK FINANCIAL SERVICES (“Red Rock”) is the foreclosure agent of the
20 HOA. All actions and statements of Red Rock alleged herein were for the benefit of the HOA and
21 were made in the course and scope of that agency.

22 8. Green Tree is unaware of the true names and capacities, whether corporate,
23 individual, associate, or otherwise of the other Defendants, and therefore sues those Defendants by
24 fictitious names DOE or ROE BUSINESS ENTITY. When Green Tree ascertains the identities and
25 exact nature of such fictitious Defendants, it will seek leave of this Court to amend this Complaint to
26 assert the true names thereupon.

27 **FACTUAL ALLEGATIONS**

28 9. This action centers around the parties’ rights in that certain real property commonly

1 described as 6137 Talbot Springs Court, North Las Vegas, NV 89081; APN 124-25-615-051 (the
2 “Subject Property”). The Subject Property is legally described as follows:

3 LOT 499 OF SHADOW SPRINGS – UNIT 5, AS SHOWN BY MAP THEREOF ON FILE
4 IN BOOK 113 OF PLATS, PAGE 90, IN THE OFFICE OF THE COUNTY RECORDER
OF CLARK COUNTY, NEVADA.

5 10. Green Tree is informed and believes and thereon alleges that the Subject Property
6 falls within the Covenants, Conditions, and Restrictions of the Shadow Springs Community
7 Association.

8 **Green Tree’s Interest in the Property**

9 11. Green Tree is informed and believes and thereon alleges that at all times relevant to
10 this action, James H. Urello was title owner of record of the Subject Property.

11 12. In 2004, the Subject Property was conveyed to James Urello. A Grant, Bargain, Sale
12 Deed evidencing the conveyance was recorded¹ on or about November 12, 2004 as Book and
13 Instrument 20041112-0001616. A true and correct copy of the Grant, Bargain, Sale Deed is attached
14 as Exhibit 1.

15 13. Green Tree is informed and believes and thereon alleges that on or about November
16 4, 2004, James H. Urello entered into a mortgage loan transaction (“Subject Loan”) in which he
17 borrowed \$224,300.00 from KB Home Mortgage Company (“KB Home”), evidenced by a Note and
18 secured by the Subject Deed of Trust encumbering the Subject Property recorded in the official
19 records of the Clark County Recorder on November 12, 2004 as Instrument Number 20041112-
20 0001617. A true and correct copy of the Subject Deed of Trust is attached as Exhibit 2.

21 14. Green Tree is informed and believes and thereon alleges that on or about November
22 22, 2006, James H. Urello obtained a second loan from Countrywide Home Loans, Inc., secured by a
23 Deed of Trust encumbering the Subject Property recorded in the official records of the Clark County
24 Recorder on November 22, 2006 as Instrument Number 20061122-0002601.

25 15. On or about May 20, 2010, a Corporation Assignment of Deed of Trust was recorded
26 as Book and Instrument Number 20100520003715 whereby Mortgage Electronic Registration

27 _____
28 ¹ Unless stated otherwise, all recorded documents referred to herein were recorded in the
official records of the Clark County Recorder.

1 Systems, Inc., as nominee, assigned the Subject Deed of Trust to BAC Home Loans Servicing, LP
2 FKA Countrywide Home Loans Servicing, LP. A true and correct copy of the Corporation
3 Assignment of Deed of Trust is attached as Exhibit 3.

4 16. On or about February 16, 2012, an Assignment of Deed of Trust was recorded as
5 Book and Instrument Number 201202160000280 whereby Mortgage Electronic Registration
6 Systems, Inc., as nominee, assigned the Subject Deed of Trust to Bank of America, N.A., Successor
7 by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP. A
8 true and correct copy of the Assignment of Deed of Trust is attached as Exhibit 4.

9 17. On or about September 06, 2013, an Assignment of Deed of Trust was recorded as
10 Book and Instrument Number 201309060000055 whereby Bank of America, N.A. assigned the
11 Subject Deed of Trust to EverBank. A true and correct copy of the Assignment of Deed of Trust is
12 attached as Exhibit 5.

13 18. On May 1, 2014, Green Tree began servicing the loan.

14 19. On or about November 26, 2014, an Assignment of Deed of Trust was recorded as
15 Book and Instrument Number 20141126-0003642 whereby EverBank assigned the Subject Deed of
16 Trust to Green Tree Servicing LLC. A true and correct copy of the Assignment of Deed of Trust is
17 attached as Exhibit 6.

18 20. Green Tree is the current beneficiary of the Subject Deed of Trust, holder of the note,
19 and servicer of the Subject Loan.

20 **The HOA Foreclosure and NV Eagles's Alleged Acquisition of the Property**

21 21. The Property is subject to a Declaration of Covenants, Conditions & Restrictions of
22 the HOA (the "CC&Rs"). The CC&Rs were recorded on or about June 17, 2003, as Book and
23 Instrument Number 20090505-0001555. A true and correct copy of the CC&Rs is attached as
24 Exhibit 7.

25 22. The CC&Rs contained a Mortgagee Protection Clause stating that foreclosure under a
26 delinquent HOA assessment lien would not extinguish a first mortgage such as the subject Deed of
27 Trust herein.

28 23. On or about May 05, 2009, Red Rock recorded a Lien for Delinquent Assessment as

1 Book and Instrument Number 20090505-0001555. A true and correct copy of the Lien for
2 Delinquent Assessment is attached as Exhibit 8.

3 24. The Notice of Delinquent Assessment Lien referred to in the above paragraph recites
4 that “The amount owing as of the date of preparation of this lien is **\$750.12. [sic]”

5 25. On or about June 18, 2009, Red Rock recorded a Notice of Default and Election to
6 Sell Pursuant to the Lien for Delinquent Assessments as Book and Instrument Number 20090618-
7 0003428. A true and correct copy of the Notice of Default and Election to Sell Pursuant to the Lien
8 for Delinquent Assessments is attached as Exhibit 9.

9 26. On or about October 04, 2011, Red Rock sent a letter to Countrywide Bank, N.A., the
10 predecessor owner of the loan, on behalf of the HOA. In the letter, Red Rock recites that the current
11 homeowner was delinquent in paying their HOA assessments, and that Red Rock had recorded a
12 Lien for Delinquent Assessments and a Notice of Default and Election to Sell Pursuant to the Lien
13 for Delinquent Assessments. A true and correct copy of the October 04, 2011 letter is attached as
14 Exhibit 10.

15 27. The October 04, 2011 letter from Red Rock further recites that “the Association’s lien
16 for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder. This Lien may
17 affect your position.”

18 28. On or about May 5, 2012, the HOA’s lien expired pursuant to NRS 116.3116(6).

19 29. On or about May 06, 2013, Red Rock recorded a Notice of Foreclosure Sale as Book
20 and Instrument Number 201305060001653. A true and correct copy of the Notice of Foreclosure
21 Sale is attached as Exhibit 11.

22 30. The Notice of Foreclosure Sale identified in the above paragraph stated that the
23 amount owed as of May 01, 2013 was \$6,245.94, “which includes the total amount of the unpaid
24 balance and reasonably estimated costs, expenses and advances at the time of the initial publication
25 of this notice.”

26 31. None of the aforementioned notices identified above identified what portion of the
27 claimed lien were for alleged late fees, interest, fines/violations, or collection fees/costs.

28 32. None of the aforementioned notices identified above specified what portion of the

1 lien, if any, that the HOA claimed constituted a “super-priority” lien.

2 33. None of the aforementioned notices identified above specified whether the HOA was
3 foreclosing on the “super-priority” portion of its lien, if any, or under the non-super-priority portion
4 of the lien.

5 34. None of the aforementioned notices identified above provide any notice of a right to
6 cure.

7 35. On or about July 03, 2013, a Foreclosure Deed was recorded as Book and Instrument
8 Number 201307030002521 reciting that Underwood Partners LLC (“Underwood”) had prevailed at
9 an HOA lien foreclosure sale conducted on May 30, 2013. The deed indicates a sale price of
10 \$21,000.00. A true and correct copy of the deed is attached as Exhibit 12.

11 36. On or about October 18, 2013, a Grant, Bargain, Sale Deed was recorded as Book and
12 Instrument Number 201310180001149, reciting that Underwood Partners, LLC conveyed the
13 Subject Property to NV Eagles for the consideration of \$10.00. A true and correct copy of the
14 Grant, Bargain, Sale Deed is attached as Exhibit 13.

15 37. Upon information and belief, the HOA and its foreclosure agents did not comply with
16 all mailing and noticing requirements stated in N.R.S. 116.31162 through N.R.S. 116.31168.

17 38. Upon information and belief, the HOA assessment lien and foreclosure notices
18 included improper fees and costs in the amount demanded.

19 39. The HOA Sale violated Green Tree’s rights to due process because its predecessors in
20 interest were not given proper, adequate notice and the opportunity to cure the deficiency or default
21 in the payment of the HOA’s assessments.

22 40. The HOA Sale was an invalid sale and could not have extinguished Green Tree’s
23 secured interest because of defects in the notices given, if any, to Green Tree’s predecessors in
24 interest.

25 41. The HOA Sale was an invalid sale pursuant to NRS 116.3116(6) because proceedings
26 to enforce the lien were not instituted within three years of the assessments becoming due. The
27 Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded
28 on June 18, 2009. However, the Notice of Foreclosure Sale was not recorded until May 06, 2013,

1 and the foreclosure sale did not occur until May 30, 2013.

2 42. Without providing Green Tree’s predecessors in interest with notice of the correct
3 super-priority amount and a reasonable opportunity to satisfy that amount, including its failure to
4 identify the super-priority amount and its failure to adequately describe the deficiency in payment as
5 required by Nevada law, the HOA’s foreclosure sale is commercially unreasonable and deprives
6 Green Tree of its right to due process.

7 43. Extinguishment of the Deed of Trust would deprive Green Tree of its right to due
8 process because the HOA included amounts in its super-priority lien, such as fines, late fees, interest,
9 dues, and costs of collection that are not allowed to be included in its super-priority lien, if any,
10 under Nevada law.

11 44. Extinguishment of the Deed of Trust would deprive Green Tree of its right to due
12 process because Red Rock and/or the HOA failed to describe the deficiency in payment as required
13 by Nevada law and failed to give Green Tree’s predecessors in interest, any reasonable opportunity
14 to satisfy the super-priority lien, if any.

15 45. The HOA assessment lien and foreclosure notices included costs of collection and
16 fees that are not permissible under N.R.S. 116.3102 et seq.

17 46. The HOA Sale did not comply with N.R.S. 116.3102 et seq.

18 47. Upon information and belief, at the time of the HOA Sale, the amount owed on the
19 Subject Loan exceeded \$280,000.00.

20 48. Upon information and belief, at the time of the HOA Sale, the fair market value of the
21 Property exceeded \$177,000.00.

22 49. The amount paid by Underwood at the HOA Sale, upon information and belief, was
23 approximately \$21,000.00.

24 50. The sale price at the HOA Sale is not commercially reasonable when compared to the
25 debt owed to Green Tree on the Subject Loan and the fair market value of the Property.

26 51. The HOA Sale was invalid because it was not commercially reasonable.

27 52. The HOA Sale by which Underwood and NV Eagles took their interest was
28 commercially unreasonable if it extinguished Green Tree’s Deed of Trust.

1 53. The sales price to Underwood and NV Eagles, when compared to the outstanding
2 balance of Green Tree’s Note and Deed of Trust and the fair market value of the Property,
3 demonstrates that the HOA Sale was not commercially reasonable or conducted in good faith.

4 54. The HOA Sale is commercially unreasonable because the HOA and/or Red Rock
5 failed to describe the deficiency in payment as required by Nevada law and failed to give Green Tree
6 any reasonable opportunity to satisfy the super-priority lien.

7 55. The HOA Sale was an invalid sale and could not have extinguished Green Tree’s
8 secured interest because it was not a commercially reasonable sale.

9 56. Because the CC&Rs contained a Mortgagee Protection Clause, and Green Tree’s
10 predecessors in interest were not given proper notice that the HOA intended to foreclose on the
11 super-priority portion of the dues owing, Green Tree’s predecessors in interest were not on notice
12 that they had to attend the HOA Sale to protect the Deed of Trust.

13 57. Because the CC&Rs contained a Mortgagee Protection Clause, and because proper
14 notice that the HOA intended to foreclose on the super-priority portion of the dues owing was not
15 given, prospective bidders, including Green Tree’s predecessors in interest, did not appear for the
16 HOA Sale, making the HOA Sale commercially unreasonable.

17 58. Underwood, NV Eagles and the HOA knew that Green Tree’s predecessors in interest
18 would rely on the Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that
19 lienholders and prospective purchasers would not know that the HOA was foreclosing on super-
20 priority amounts because of the failure of the HOA and Red Rocks’ failure to provide such notice.
21 The absence of Green Tree’s predecessors in interest the HOA Sale allowed Underwood to appear at
22 the HOA Sale without competition and purchase the Property for a fraction of its market value,
23 making the HOA Sale commercially unreasonable.

24 59. Underwood, NV Eagles, and the HOA knew that prospective bidders would be less
25 likely to attend the HOA Sale because the public at large believed that Green Tree’s predecessors in
26 interest were protected under the Mortgagee Protection Clause in the CC&Rs of public record, and
27 that the public at large did not receive notice, constructive or actual, that the HOA was foreclosing
28 on a super-priority portion of its lien because the HOA and Red Rocks improperly failed to provide

1 such notice. The general public’s belief therefore was that a buyer at the HOA Sale would take title
2 to the Property subject to the Subject Deed of Trust. This general belief resulted in the absence of
3 prospective bidders at the HOA Sale, which allowed Underwood to appear at the HOA Sale and
4 purchase the Property for a fraction of market value, making the HOA Sale commercially
5 unreasonable.

6 60. The circumstances of the HOA Sale of the Property breached the HOA’s obligation
7 of good faith under N.R.S. 116.1113 and their duty to act in a commercially reasonable manner.

8 61. Green Tree is informed and believes that Underwood and NV Eagles are professional
9 property purchasers.

10 62. The circumstances of the HOA Sale of the Property and Underwood and NV Eagles’
11 status as professional property purchasers prevent Underwood and NV Eagles from being deemed a
12 bona fide purchaser for value.

13 **FIRST CAUSE OF ACTION**

14 **(Quiet Title versus NV Eagles)**

15 63. Green Tree incorporates by reference the allegations of all previous paragraphs, as if
16 fully set forth herein.

17 64. Pursuant to 28 U.S.C. § 2201 and N.R.S. 40.010, this Court has the power and
18 authority to declare Green Tree’s rights and interests in the Property and to resolve the parties’
19 adverse claims in the Property.

20 65. NV Eagles claims an interest in the Property through a Foreclosure Deed recorded in
21 the Clark County Recorder’s Office as Book and Instrument Number 201307030002521, and a
22 subsequent Grant, Bargain, Sale Deed, which are adverse to Green Tree’s interest.

23 66. The HOA Sale could not have extinguished Green Tree’s secured interest for the
24 reasons set forth above in the Factual Allegations.

25 67. Green Tree’s Deed of Trust is a first secured interest on the Property as intended by
26 N.R.S. 116.3116(2)(b).

27 68. As the current beneficiary under the Subject Deed of Trust and owner of the Note
28 relating to the Subject Loan, Green Tree retained its first position status in the chain of title for the

1 Property after the HOA Sale.

2 69. Based on the adverse claims being asserted by the parties, the parties are entitled to a
3 judicial determination regarding the rights and interests of the respective parties to the case.

4 70. Green Tree is entitled to a determination from this Court, pursuant to 28 U.S.C.
5 § 2201 and N.R.S. 40.010, that Green Tree is the beneficiary of a first position Deed of Trust which
6 still encumbers the Property.

7 71. Green Tree is entitled to a determination from this Court, pursuant to 28 U.S.C.
8 § 2201 and N.R.S. 40.010, that Green Tree's secured interest by virtue of its Deed of Trust is
9 superior to the interest, if any, acquired by NV Eagles through the Foreclosure Deed.

10 **SECOND CAUSE OF ACTION**

11 **(Declaratory Relief versus all Defendants)**

12 72. Green Tree incorporates by reference the allegations of all previous paragraphs, as if
13 fully set forth herein.

14 73. Pursuant to 28 U.S.C. § 2201, this Court has the power and authority to declare Green
15 Tree's rights and interests in the Property and to resolve the parties' adverse claims in the Property.

16 74. The Subject Deed of Trust is a first secured interest on the Property whose priority is
17 protected by N.R.S. 116.3116(2)(b).

18 75. As the current beneficiary under the Deed of Trust and owner of the Loan, Green
19 Tree's interest in the Property retained its first position status in the chain of title after the HOA Sale.

20 76. NV Eagles claims an interest in the Property through a Foreclosure Deed recorded in
21 the Clark County Recorder's Office as Book and Instrument Number 201307030002521, and a
22 subsequent Grant, Bargain, Sale Deed, which are adverse to Green Tree's interest.

23 77. Green Tree is entitled to a judicial determination regarding the rights and interests of
24 the respective parties to the case.

25 78. Green Tree is entitled to a determination from this Court, pursuant to 28 U.S.C.
26 § 2201, that its secured interest by virtue of its Deed of Trust is superior to the interest, if any,
27 acquired by NV Eagles through the Foreclosure Deed, or held or claimed by any other party.

28 79. Green Tree is entitled to a declaration that the HOA Sale conducted by the HOA did

1 not affect or extinguish Green Tree’s rights, status, legal relations and interest in the Property.

2 80. In the alternative, Green Tree is entitled to a determination from this Court that the
3 HOA Sale was not a valid sale and conveyed no legitimate interest to NV Eagles.

4 81. Green Tree has been required to retain counsel to prosecute this action and is entitled
5 to recover reasonable attorney’s fees to prosecute this action.

6 **THIRD CAUSE OF ACTION**

7 **(Negligent Misrepresentation versus the HOA)**

8 82. Green Tree incorporates by reference the allegations of all previous paragraphs, as if
9 fully set forth herein.

10 83. On or about October 04, 2011, Red Rock, on behalf of the HOA, sent a letter to
11 Countrywide Bank, N.A., the predecessor beneficiary of the loan. In the letter, Red Rock recites that
12 the current homeowner was delinquent in paying their HOA assessments, and that Red Rock had
13 recorded a Lien for Delinquent Assessments and a Notice of Default and Election to Sell Pursuant to
14 the Lien for Delinquent Assessments. A true and correct copy of the October 04, 2011 letter is
15 attached as Exhibit 10.

16 84. The October 04, 2011 Red Rock letter further recites that “the Association’s lien for
17 Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder. This Lien may affect
18 your position.”

19 85. This October 04, 2011 Red Rock letter was sent in the course of Red Rock and the
20 HOA’s business, profession or employment.

21 86. This October 04, 2011 letter supplies false information for the guidance of Green
22 Tree’s predecessors in interest, including but not limited to Countrywide Bank, N.A., Mortgage
23 Electronic Registration Systems, Inc., Bank of America, N.A., and/or EverBank, in that it
24 specifically states that the Association’s lien for delinquent Assessments is Junior to the Senior
25 Lender/Mortgage Holder (i.e., Subject Deed of Trust), yet the grantee parties under the Foreclosure
26 Deed have subsequently taken the position that the Association’s lien for Delinquent Assessment
27 was senior to the Subject Deed of Trust.

28 87. Green Tree’s predecessors in interest relied on the HOA’s misrepresentations by not

1 appearing at the HOA sale or bidding on the Subject Property at the sale, due to the HOA's
2 misrepresentations that the Association's misrepresentations that its lien was junior to the Subject
3 Deed of Trust.

4 88. Green Tree's predecessors in interest relied on the HOA's misrepresentations by
5 refraining from taking actions to preserve Green Tree's interest in the Subject Property.

6 89. Green Tree's predecessors in interest were justified in relying on the October 04,
7 2011 letter, in that the HOA expressly stated that its lien was junior to the Senior Lender/Mortgage
8 Holder (the Subject Deed of Trust). Green Tree's predecessors in interest had no reason to believe
9 that the HOA would take the position that its lien was senior to the Subject Deed of Trust, because
10 the letter was sent on behalf of the HOA.

11 90. Green Tree, as successor in interest to the note and Deed of Trust, and servicer of the
12 loan, has standing to raise these claims.

13 91. Red Rock and the HOA failed to exercise reasonable care or competence in obtaining
14 and communicating the information contained in the October 04, 2011 letter when it sent the letter.

15 92. Green Tree has been damaged by the HOA's misrepresentations in an amount to be
16 proven at trial, but not less than \$75,000.00.

17 93. Green Tree has been required to retain counsel to prosecute this action and is entitled
18 to recover reasonable attorney's fees to prosecute this action.

19 **FOURTH CAUSE OF ACTION**

20 **(Unconstitutional Statute - all Defendants)**

21 94. Green Tree incorporates by reference the allegations of all previous paragraphs, as if
22 fully set forth herein.

23 95. This Court has the duty and jurisdiction to declare unconstitutional any law that
24 violates a protected right.

25 96. Nevada's HOA foreclosure statutes violate the Due Process Clauses of the Nevada
26 and United States Constitutions because the opt-in notice provisions do not mandate that reasonable
27 and affirmative steps be taken to give actual notice to lenders and other holders of recorded security
28 interests prior to a deprivation of their property rights.

1 97. Because the Statutes do not require the foreclosing party to take reasonable steps to
2 ensure that actual notice is provided to interested parties who are reasonably ascertainable (unless
3 the interested party first requests notice) they do not comport with long standing principles of
4 constitutional due process.

5 98. As a direct and proximate result of the above, Nevada’s HOA foreclosure statutes are
6 facially unconstitutional in violation of the Due Process Clauses of both the United States and
7 Nevada Constitutions and should be stricken.

8 99. Green Tree is entitled to a determination from this Court that because the HOA Sale
9 proceeded under an unconstitutional statute, it was not a valid sale, conveyed no legitimate interest
10 to NV Eagles, and did not extinguish Green Tree’s Deed of Trust.

11 100. Green Tree has been required to retain counsel to prosecute this action and is entitled
12 to recover reasonable attorney’s fees to prosecute this action.

13 Wherefore, Plaintiff Green Tree Servicing LLC prays for relief as follows:

- 14 1. For a judgment determining that Nevada’s HOA foreclosure statutes are stricken as
15 unconstitutional;
- 16 2. For a declaration and determination that the HOA Sale was invalid and conveyed no
17 legitimate interest to NV Eagles;
- 18 3. For a judgment quieting title and declaring that Green Tree’s Deed of Trust continues
19 to encumber the Property;
- 20 4. For a declaration and determination that Green Tree’s interest is secured against the
21 Subject Property, and that Green Tree’s first Deed of Trust was not extinguished by the HOA Sale;
- 22 5. For a declaration and determination that Green Tree’s interest is superior to the
23 interest of NV Eagles and all other parties;
- 24 6. For a preliminary injunction that NV Eagles, its successors, assigns, and agents are
25 prohibited from conducting any sale, transfer or encumbrance of the Property that is claimed to be
26 superior to Green Tree’s Deed of Trust or not subject to that Deed of Trust;
- 27 7. For a preliminary injunction that NV Eagles be required to pay all taxes, insurance
28 and homeowner’s association dues and segregate and deposit with the Court or a Court-approved

1 trust account over which NV Eagles has no control during the pendency of this action;

2 8. If it is determined that Green Tree’s Deed of Trust has been extinguished by the HOA
3 Sale, for special damages in the amount equal to the fair market value of the Property or the unpaid
4 balance of the Subject Loan, plus interest, at the time of the HOA Sale, whichever is greater;

5 9. For general and special damages;

6 10. For costs incurred herein, including post-judgment costs;

7 11. For attorney’s fees; and

8 12. For any and all further relief deemed appropriate by this Court.

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10 DATED: June ___, 2015

WOLFE & WYMAN LLP

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By: /s/ Colt B. Dodrill

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Attorneys for Plaintiff,

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GREEN TREE SERVICING LLC

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