

1 DARREN T. BRENNER, ESQ.  
 Nevada Bar No. 8386  
 2 ERIC S. POWERS, ESQ.  
 Nevada Bar No. 12850  
 3 AKERMAN LLP  
 1160 Town Center Drive, Suite 330  
 4 Las Vegas, NV 89144  
 Telephone: (702) 634-5000  
 5 Facsimile: (702) 380-8572  
 Email: darren.brenner@akerman.com  
 6 Email: eric.powers@akerman.com

7 *Attorneys for Plaintiff and Counter-*  
 8 *Defendant Bank of America, N.A.*

9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF NEVADA**

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

Case No.: 2:15-cv-01097-GMN-NJK

13 vs.

**STIPULATION AND PROTECTIVE ORDER**

14 SFR INVESTMENTS POOL I, LLC;  
 15 ALTURAS AT MOUNTAIN'S EDGE  
 HOMEOWNERS ASSOCIATION; DOE  
 16 INDIVIDUALS I-X, inclusive, and ROE  
 CORPORATIONS I-X, inclusive,

AS AMENDED

17 Defendants.

**AKERMAN LLP**

1160 TOWN CENTER DRIVE, SUITE 330  
 LAS VEGAS, NEVADA 89144  
 TEL.: (702) 634-5000 – FAX: (702) 380-8572

18 Subject to the approval of the Court, Bank of America, N.A. and SFR Investments Pool I,  
 19 LLC, by and through their attorneys of record, stipulate to the following Protective Order:

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

25 ///

26 ///

27 {37033924;2}  
 28

1           1.     **Application.**

2           1.1     This Protective Order shall govern any document, information or other  
3 material that is designated as containing “Confidential Information” as defined herein, and is  
4 produced in connection with this litigation by any person or entity (the “producing party”), whether  
5 in response to a discovery request, subpoena or otherwise, to any other person or entity (the  
6 “receiving party”) regardless of whether the person or entity producing or receiving such  
7 information is a party to this litigation.

8           2.     **Definitions.**

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

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

21           3.     **Initial Designation.**

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



1           3.4     Inspection of Documents. In the event a party elects to produce files and  
2 records for inspection and the requesting party elects to inspect them, no designation of Confidential  
3 Information needs to be made in advance of the inspection. For purposes of such inspection, all  
4 material produced shall be considered as Confidential Information. If the inspecting party selects  
5 specified documents to be copied, the producing party shall designate Confidential Information in  
6 accordance with subparagraph 3.2 at the time the copies are produced.

7           3.5     Deposition Transcripts. The party asserting confidentiality shall state on the  
8 record the portions it deems confidential. The failure to designate testimony on the record as  
9 confidential shall be a waiver unless the designating party notifies all other parties and files a motion  
10 to designate the testimony as confidential within 5 days of the notification.

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

27 {37033924;2}  
28

1           4.       **Designations by Another Party.**

2           4.1       Notification of Designation. If a party other than the producing party believes  
3 that a producing party has produced a document that contains or constitutes Confidential Information  
4 of the non-producing party, the non-producing party may designate the document as Confidential  
5 Information by so notifying all parties in writing within fourteen (14) days of service of the  
6 document.

7           4.2       Return of Documents; Non-disclosure. Whenever a party other than the  
8 producing party designates a document produced by a producing party as Confidential Information  
9 in accordance with subparagraph 4.1, each party receiving the document shall either add the  
10 Confidential Information designation in accordance with subparagraph 3.2 or substitute a copy of the  
11 document bearing such designation for each copy of the document produced by the producing party.  
12 Each party shall destroy all undesignated copies of the document or return those copies to the  
13 producing party, at the direction of the producing party. No party shall disclose a produced  
14 document to any person, other than the persons authorized to receive Confidential Information under  
15 subparagraph 7.1, until after the expiration of the fourteen (14) day designation period specified in  
16 subparagraph 4.1. If during the fourteen (14) day designation period a party discloses a produced  
17 document to a person authorized to receive Confidential Information under subparagraph 7.1, and  
18 that document is subsequently designated as Confidential Information in accordance with  
19 subparagraph 4.1, the disclosing party shall cause all copies of the document to be destroyed or  
20 returned to the producing party, at the direction of the producing party. The party may thereafter  
21 disclose a copy of the document that has been marked as Confidential Information by the  
22 designating party, in accordance with subparagraphs 3.2 and 7.1.

23           5.       **Objections to Designations.** Any party objecting to a designation of Confidential  
24 Information, including objections to portions of designations of multi-page documents, shall notify  
25 the designating party and all other parties of the objection in writing up to and through trial of the  
26 matter. This notice must specifically identify each document that the objecting party in good faith

27 {37033924;2}

1 believes should not be designated as Confidential Information and provide a brief statement of the  
2 grounds for such belief. In accordance with the Federal Rules of Civil Procedure governing  
3 discovery disputes, the objecting and the designating parties thereafter shall confer within ten (10)  
4 days after the date of such objection in an attempt to resolve their differences. If the parties are  
5 unable to resolve their differences, the objecting party shall have twenty one (21) days after the  
6 conference concludes to file with the Court a motion to remove the Confidential Information. If an  
7 objection is served within forty-two (42) days of trial, the objecting party must file its motion to  
8 remove the Confidential Information designation within half of the remaining time before trial, and  
9 the meet-and-confer period shall be shortened accordingly. Where a party authored, created, owns,  
10 or controls a document, information or other material that another party designates as Confidential  
11 Information, the party that authored, created, owns, or controls the Confidential Information may so  
12 inform the objecting party and thereafter shall also be considered a designating party for purposes of  
13 this paragraph.

14 All documents, information and other materials initially designated as Confidential  
15 Information shall be treated as such in accordance with this Protective Order unless and until the  
16 Court rules otherwise, except for deposition transcripts and exhibits initially considered as  
17 containing Confidential Information under subparagraph 3.5, which will lose their confidential status  
18 after twenty-one (21) days unless so designated as Confidential Information. If the Court rules that a  
19 designation should not be maintained as to a particular document, the producing party shall, upon  
20 written request by a party, provide that party a copy of that document without the designation  
21 described in subparagraph 3.2.

22 If an objecting party elects not to make such a motion with respect to documents within  
23 twenty one (21) days after the conference, information or other materials to which an objection has  
24 been made, the objection shall be deemed withdrawn. The designating party shall have twenty one  
25 (21) days to respond to the objecting party's motion. If no response is filed by the designating party  
26  
27

28 {37033924;2}

1 within twenty one (21) days, the designating party shall be deemed to have consented to the  
2 objecting party's motion pursuant to LR 7-2(d).

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

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

8 7.1 Authorized Disclosures. Confidential Information shall be disclosed by the  
9 receiving party only to the following persons:

- 10 a. Counsel for the parties in this litigation, including their associates,  
11 clerks, paralegals, and secretarial personnel;
- 12 b. Qualified persons taking testimony in this litigation involving such  
13 Confidential Information, and necessary stenographic, videotape and  
14 clerical personnel;
- 15 c. Experts and their staff who are retained by counsel as expert witnesses  
16 for a party in this litigation;
- 17 d. Experts and their staff who are consulted by counsel for a party in this  
18 litigation;
- 19 e. Parties to this litigation, limited to the named party and, if that party is  
20 a corporate entity, a limited number of employees of the corporate  
21 entity and its insurers;
- 22 f. Designated in-house counsel and a limited number of assistants,  
23 administrative or otherwise;
- 24 g. Outside vendors employed by counsel for copying, scanning and  
25 general handling of documents;
- 26  
27  
28

- 1 h. Any person of whom testimony is taken regarding the Confidential  
2 Information, except that such person may only be shown Confidential  
3 Information during his/her testimony, and may not retain a copy of  
4 such Confidential Information; and
- 5 i. This Court and this Court's staff, subject to the Court's processes for  
6 filing materials under seal.

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

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

21 7.2 Unauthorized Disclosures. All persons receiving Confidential Information  
22 under the terms of this Protective Order are under the jurisdiction of the state courts and U.S. federal  
23 courts located in Nevada for all matters arising from the improper disclosure or use of such  
24 information. If Confidential Information is disclosed to any person other than in the manner  
25 authorized by this Protective Order, the party or person responsible for the disclosure, and any other  
26 party or person who is subject to this Protective Order and learns of such disclosure, shall



1 immediately bring such disclosure to the attention of the designating party. Without prejudice to  
2 other rights and remedies of the designating party, the responsible party or person shall make every  
3 effort to obtain and return the Confidential Information and to prevent further disclosure on its own  
4 part or on the part of the person who was the unauthorized recipient of such information.

5 7.3 Court Filings. ~~In the event any Confidential Information must be filed with the~~  
6 See order issued ~~proposed filing shall be accompanied by a motion to file the Confidential~~  
7 concurrently herewith ~~that complies with Local Rule 10-5(b) and a proposed order, and the~~  
8 ~~application and proposed order shall be directed to the judge to whom the Confidential Information~~  
9 ~~is directed. This provision is applicable to briefs, memoranda, and other filings which quote,~~  
10 ~~summarize, or describe Confidential Information.~~

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

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

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

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

27 {37033924;2}

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  
3 attorney-client communications, attorney work product, or otherwise privileged information. If a  
4 party inadvertently discloses documents or information subject to a claim of privilege or work  
5 product protection, such disclosure will not waive otherwise applicable claims of privilege or work  
6 product protection under applicable law. Upon discovery by the Receiving Party, or receipt of  
7 written notice from the Disclosing Party identifying privileged or protected Documents that were  
8 inadvertently produced, the receiving party shall within seven (7) business days either: (a) return or  
9 certify the destruction of all such documents, all copies, and any work product or portions of any  
10 work product containing or reflecting the contents of the subject materials; or (b) after attempting to  
11 resolve any dispute with opposing counsel informally, file a motion to challenge the assertion of  
12 privilege and tender the subject documents for *in camera* review with the motion. The moving party  
13 shall do nothing to compromise the privilege claim until the Court rules on said motion and the  
14 opportunity for appellate review is exhausted or the issue is otherwise resolved.

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

19           14.     **Motion by Third Party to Compel Production of Confidential Information.** If any  
20 third party subpoenas Confidential Information from a party to this action or moves to compel a  
21 party to this action to produce any such information, such party shall immediately notify the parties  
22 who originally produced and/or designated such information that a subpoena has been served or a  
23 motion has been made in order to allow the parties who originally produced and/or designated such  
24 information the opportunity to seek a protective order or oppose the motion or application. If, within  
25 thirty (30) days after receiving notice of a subpoena seeking Confidential Information from a  
26 receiving party, the party who originally produced and/or designated such information fails to move

27 {37033924;2}  
28

1 for a protective order, the party subject to the subpoena may produce said information. In addition, if  
2 a party is ordered to produce Confidential Information covered by this Protective Order, then notice  
3 and, if available, a copy of the order compelling disclosure shall immediately be given the parties  
4 who originally produced and/or designated such information. Nothing in this Protective Order shall  
5 be construed as requiring the party who is ordered to produce such Confidential Information to  
6 challenge or appeal any order requiring the production of such information or to subject  
7 himself/herself to any penalty for non-compliance with any legal process or seek any relief from the  
8 Court.

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

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

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

1 conclusion of litigation between the parties, including final appellate action or the expiration of time  
2 to appeal or seek further review.

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

6 Respectfully submitted, this 22<sup>nd</sup> day of December, 2015.

8 BY: /s/ Eric S. Powers, Esq.  
9 Darren T. Brenner, Esq.  
10 Nevada Bar No. 8386  
11 Eric S. Powers, Esq.  
12 Nevada Bar No. 12850  
13 AKERMAN LLP  
14 1160 Town Center Drive, Suite 330  
15 Las Vegas, NV 89144  
16 *Attorneys for Bank of America, N.A.*

8 BY: /s/ Diana Cline Ebron, Esq.  
9 Diana Cline Ebron, Esq.  
10 Nevada Bar No. 10580  
11 Jacqueline Gilbert, Esq.  
12 Nevada Bar No. 10593  
13 KIM GILBERT EBRON  
14 7625 Dean Martin Dr., Suite 110  
15 Las Vegas, Nevada 89014  
16 *Attorneys for SFR Investments Pool 1, LLC*

17 **ORDER**

18 It is so ordered.

19 DATED this 23rd day of December, 2015.

20   
21 \_\_\_\_\_  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27

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

**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 \_\_\_\_\_, 2015, in the case of *Bank of America, N.A. v. SFR Investments Pool I, LLC et al*, Case No.: 2:15-cv-01097-GMN-NJK. 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: \_\_\_\_\_