



1 theories, including that NRS 116.3116 violates due process on its face.<sup>3</sup>

2 The HOA moves to dismiss all claims against it.<sup>4</sup> It argues that it is an improper party to  
3 Nationstar’s quiet-title claim under Nevada law, and that Nationstar’s bad-faith and wrongful-  
4 foreclosure claims must be dismissed because NRS 38.310 requires a court to dismiss any claim  
5 relating to the interpretation, application, or enforcement of an HOA’s governing documents if  
6 the plaintiff has not first mediated or arbitrated its claim before the Nevada Real Estate Division.  
7 The HOA also argues that Nationstar’s facial due-process challenge fails because the statutory  
8 scheme provided constitutionally adequate notice to first-deed-of-trust holders.

9 I find that the HOA is a necessary party to the quiet-title claim based on the relief  
10 Nationstar prays for, so I deny the motion to dismiss on this basis. But the Nevada Supreme  
11 Court’s interpretation of NRS 38.310 in *McKnight Family, LLP v. Adept Management Services,*  
12 *Inc.*<sup>5</sup> requires dismissal of Nationstar’s bad-faith and wrongful-foreclosure claims. And I find  
13 that NRS 116.3116 does not, on its face, violate due process, so I also dismiss Nationstar’s  
14 claims to the extent they are based on a facial due-process challenge to Chapter 116.

#### 15 Discussion

16 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the  
17 legal sufficiency of a complaint.<sup>6</sup> A complaint should be dismissed under this rule only when it  
18 lacks “a cognizable legal theory or sufficient facts to support a cognizable legal theory.”<sup>7</sup>

19 Nationstar pleads three causes of action: (1) declaratory relief and quiet title, (2) breach of  
20  
21  
22

---

23 <sup>3</sup> ECF 1 at 7–9.

24 <sup>4</sup> ECF 10. I find this motion suitable for disposition without oral argument. L.R. 78-2.

25 <sup>5</sup> *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 310 P.3d 555 (Nev. 2013).

26 <sup>6</sup> *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

27 <sup>7</sup> *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

1 NRS 116.1113 (bad faith), and (3) wrongful foreclosure.<sup>8</sup> Although the title of the declaratory  
2 relief/quiet title claim suggests it targets only Saticoy Bay, it also seeks to invalidate the HOA  
3 sale.<sup>9</sup> By this motion, the HOA challenges portions of claim 1 and the entirety of claims 2 and 3.

4 **A. The HOA is a necessary party.**

5 The HOA first argues that it is not a proper target of Nationstar’s quiet-title claim because  
6 it “makes no claim to any interest held by” Nationstar.<sup>10</sup> “NRS 40.010 governs Nevada quiet title  
7 actions and provides: ‘An action may be brought by any person against another who claims an  
8 estate or interest in real property, adverse to the person bringing the action, for the purpose of  
9 determining such adverse claim.’”<sup>11</sup> Although “[a] plea to quiet title does not require any  
10 particular elements,”<sup>12</sup> each party must have or assert an interest in the property. Nationstar does  
11 not allege that the HOA has or claims,<sup>13</sup> and the HOA by its motion renounces,<sup>14</sup> any *present*  
12 interest in this property. Indeed, the HOA’s interest was the lien it held before—and satisfied  
13 with the proceeds of—the foreclosure sale.

14 But Nationstar is challenging the validity of that sale, and the remedies it seeks in this  
15 action include declarations that the sale was invalid, that the sale did not extinguish Nationstar’s  
16  
17

---

18 <sup>8</sup> ECF 1. Nationstar adds a fourth “claim” for “Injunctive Relief against Saticoy Bay.” *Id.* at 13.  
19 But injunctive relief is a remedy, not an independent claim for relief, *see, e.g., Indian Homes*  
20 *Programs, LLC Series III v. Green Tree Servicing, LLC*, 2015 WL 5132456, at \*4 (D. Nev. Sept.  
21 1, 2015), so I do not separately address this claim.

22 <sup>9</sup> *Id.* at 9-10,14.

23 <sup>10</sup> ECF 28 at 3.

24 <sup>11</sup> *Chapman v. Deutsche Bank Nat’l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (quoting Nev.  
25 Rev. Stat. § 40.010).

26 <sup>12</sup> *Id.*

27 <sup>13</sup> *See* ECF 1 at 7–11.

28 <sup>14</sup> ECF 28 at 2 (“the Association does not claim an interest in the Property adverse to Plaintiff.”).

1 interest, and that the HOA improperly calculated the super-priority component of its lien.<sup>15</sup> With  
2 some limitations not applicable here, Rule 19(a) of the Federal Rules of Civil Procedure requires  
3 a party to be joined in a suit if it “claims an interest relating to the subject of the action and is so  
4 situated that the disposition of the action in [its] absence may (i) as a practical matter impair or  
5 impede [its] ability to protect that interest or (ii) leave any of the persons already parties subject  
6 to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason  
7 of [its] claimed interest.”<sup>16</sup> The “complete relief” factor considers whether the existing parties  
8 can obtain “consummate rather than partial or hollow relief” and whether there is a real  
9 possibility of “multiple lawsuits on the same cause of action.”<sup>17</sup>

10 Based on the type of relief Nationstar prays for, it appears at this nascent stage of this  
11 litigation that the HOA is a necessary party to Nationstar’s quiet-title claim. The disposition of  
12 this action in the HOA’s absence may impair or impede the HOA’s ability to protect its interests.  
13 And if Nationstar succeeds in invalidating the sale without the HOA being a party to this suit,  
14 separate litigation to further settle the priority and extent of the parties’ respective liens and rights  
15 may be necessary. Thus, at this point, the HOA appears to be a necessary party, at least  
16 nominally, so the motion to dismiss on this basis is denied.

17 **B. NRS 38.310 requires dismissal of Nationstar’s bad-faith and wrongful-foreclosure**  
18 **claims.**

19 The HOA next argues that NRS 38.310 requires me to dismiss Nationstar’s claims for  
20 bad faith and wrongful foreclosure because Nationstar did not mediate or arbitrate those claims  
21 through the Real Estate Division of the Nevada Department of Business and Industry.<sup>18</sup> NRS  
22 38.310 bars any “civil action based upon a claim relating to . . . [t]he interpretation, application  
23

---

24 <sup>15</sup> ECF 1 at 9–10.

25 <sup>16</sup> Fed. R. Civ. P. 19(a).

26 <sup>17</sup> *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983).

27 <sup>18</sup> ECF 12 at 5.

1 or enforcement of any covenants, conditions or restrictions applicable to residential property or  
2 any bylaws, rules or regulations adopted by an association”<sup>19</sup> that has not been first mediated or  
3 arbitrated. And NRS 38.300(3) defines “civil action” to include all claims except quiet-title  
4 claims and those seeking injunctive relief for an immediate threat of irreparable harm.<sup>20</sup> The  
5 court must consider each claim separately and dismiss those “initiated in violation of NRS  
6 38.310(1).”<sup>21</sup>

7  
8 **1. NRS 38.310 requires the dismissal of all qualifying claims that have not been  
mediated or arbitrated.**

9 Nationstar argues<sup>22</sup> that NRS 38.310’s legislative history demonstrates that the statute is  
10 only intended to reach a “homeowner’s claims against [an] HOA pertaining to rules and  
11 regulations governing the homeowner in the planned community.”<sup>23</sup> But Nationstar’s argument  
12 skips the first rule of statutory interpretation: “if a statute is clear and unambiguous,” the court  
13 must give “effect to the plain and ordinary meaning of the statute’s language, and . . . not resort  
14 to the rules of statutory construction.”<sup>24</sup> Nationstar claims NRS 38.310 is ambiguous because it

---

15  
16 <sup>19</sup> Nev. Rev. Stat. § 38.310.

17 <sup>20</sup> Nev. Rev. Stat. § 38.300(3).

18 <sup>21</sup> *McKnight Family, LLP*, 310 P.3d at 558.

19 <sup>22</sup> Nationstar’s argument that NRS 38.310 “cannot affect” federal subject-matter jurisdiction  
20 misses the point. NRS 38.310 is not a jurisdictional statute; it is an exhaustion statute that  
21 creates prerequisites for filing certain state-law claims. Its applicability is governed by the  
22 *Erie* doctrine, *see United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d  
963, 972 (9th Cir. 1999), which Nationstar fails to analyze here.

23 <sup>23</sup> ECF 15 at 8.

24 <sup>24</sup> *W. Sur. Co. v. ADCO Credit, Inc.*, 251 P.3d 714, 716 (Nev. 2011). This court must apply  
25 Nevada’s rules of statutory construction when sitting in diversity. *See, e.g., In re Goldman*, 70  
26 F.3d 1028, 1029 (9th Cir. 1995); *see also* ECF 1 at 1 (noting that jurisdiction in this case is based  
27 on diversity). *See also Silver State Elec. Supply Co. v. State ex rel. Dep’t of Taxation*, 157 P.3d  
28 710, 713 (Nev. 2007) (“If the words of a statute are unambiguous, this court will give those  
words their plain meaning. Otherwise, this court will look to legislative history and rules of  
statutory construction in determining the statute’s meaning.”).

1 “is silent as to whom it applies.”<sup>25</sup> But the absence of limiting language does not render this  
2 statute ambiguous. “The preeminent canon of statutory interpretation requires [the court] to  
3 ‘presume that the legislature says in a statute what it means and means in a statute what it says  
4 there.’”<sup>26</sup> Had the Nevada legislature intended to restrict NRS 38.310’s application to claims  
5 between homeowners and their HOAs, it could have easily said so. Instead, it broadly prescribed  
6 alternative-dispute resolution for “any civil action” that meets the statutory definition.

7  
8 **2. Nationstar’s bad-faith and wrongful-foreclosure claims must be dismissed  
under NRS 38.310.**

9 Nationstar’s claims for bad faith and wrongful foreclosure meet that statutory definition.  
10 The Nevada Supreme Court staked out the statute’s boundaries in *McKnight Family, LLP v.*  
11 *Adept Management Services, Inc.*<sup>27</sup> In *McKnight*, the homeowner sued the HOA alleging that it  
12 failed to properly credit his payments and wrongfully foreclosed based on delinquent  
13 assessments.<sup>28</sup> Like Nationstar, he alleged claims for quiet title, bad faith, and wrongful  
14 foreclosure.<sup>29</sup> The district court dismissed all of his claims under NRS 38.310 because the  
15 parties had not mediated or arbitrated before the suit was filed.<sup>30</sup>

16 On appeal, the Nevada Supreme Court held that the quiet-title claim should not have been  
17 dismissed because quiet-title claims are expressly exempted from the statute’s definition of  
18 “civil action.”<sup>31</sup> But the Court found that the bad-faith and wrongful-foreclosure claims “fell  
19

---

20 <sup>25</sup> ECF 15 at 9.

21  
22 <sup>26</sup> *Bldg. Energetix Corp. v. EHE, LP*, 294 P.3d 1228, 1232 (Nev. 2013) (quoting *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 183 (2004)).

23 <sup>27</sup> *McKnight Family, LLP*, 310 P.3d at 555.

24 <sup>28</sup> *Id.* at 557.

25 <sup>29</sup> *Id.*

26 <sup>30</sup> *Id.*

27 <sup>31</sup> *Id.* at 559 (“it is not a civil action as defined in NRS 38.300(3)”).

1 under NRS 38.310’s purview.”<sup>32</sup> It reasoned that the NRS 116.1113 claim “required the district  
2 court to interpret regulations and statutes that contain[] conditions and restrictions applicable to  
3 residential property” and, because the homeowner “sought money damages” for this claim, it  
4 qualified as a “civil action[] as defined in NRS 38.300(3).”<sup>33</sup> It also concluded that the  
5 homeowner’s claim that the HOA wrongfully foreclosed because it failed to properly credit the  
6 homeowner’s payments likewise “involve[d] interpreting covenants, conditions, or restrictions  
7 applicable to residential property” and also required the court to “interpret the CC&Rs to  
8 determine their applicability and enforceability regarding” this property owner.<sup>34</sup>

9 Like the claims in *McKnight*,<sup>35</sup> Nationstar’s bad-faith and wrongful-foreclosure claims  
10 fall under the purview of NRS 38.310. The bad-faith claim is founded on the allegation that the  
11 HOA breached NRS 116.1113 and its implied and express duties in the HOA’s “CC&Rs,  
12 recorded prior to the first deed of trust,” particularly “the obligations in the CC&Rs that [the  
13 HOA’s lien] would be subordinate to the senior deed of trust.”<sup>36</sup> NRS 116.1113 imposes a duty  
14 of good faith and fair dealing on any act performed under an HOA’s CC&Rs adopted in  
15 accordance with Chapter 116.<sup>37</sup> So this bad-faith claim is “a claim relating to” the “enforcement  
16 of” both a covenant applicable to residential property and the “bylaws, rules[,] or regulations  
17  
18

---

19  
20 <sup>32</sup> *Id.* at 558–59.

21 <sup>33</sup> *Id.*

22 <sup>34</sup> *Id.* at 560.

23 <sup>35</sup> “When interpreting state law, federal courts are bound by decisions of the state’s highest  
24 court.” *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1494 n.4 (9th Cir. 1996)  
25 (quoting *Arizona Elec. Power Coop., Inc. v. Berkeley*, 59 F.3d 988, 991 (9th Cir. 1995)); *accord*,  
26 *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982)  
(federal courts must follow the state courts’ interpretation of a state statute).

27 <sup>36</sup> ECF 1 at 11.

28 <sup>37</sup> Nev. Rev. Stat. § 116.1113.

1 adopted by an association.”<sup>38</sup>

2 The factual premise of Nationstar’s wrongful-foreclosure claim is that: (1) the HOA gave  
3 inadequate notice or opportunity to cure the deficiency; (2) Bank of America had satisfied the  
4 superpriority portion of the lien before the foreclosure sale, so the foreclosure did not extinguish  
5 the deed of trust; (3) the sale price was commercially unreasonable; (4) the HOA breached the  
6 mortgage-protection clause in the CC&Rs; and (5) the HOA breached the covenant of good faith  
7 and fair dealing imposed by NRS 116.1113.<sup>39</sup> Each of these theories will require “[t]he  
8 interpretation, application or enforcement of” various provisions of NRS Chapter 116, which  
9 constitute “covenants, conditions or restrictions applicable to residential property,” or “[t]he  
10 interpretation, application or enforcement of” the HOA’s “bylaws, rules[,] or regulations.”<sup>40</sup> I  
11 thus dismiss both claims under NRS 38.310.

12 **C. Nationstar’s facial due-process challenge fails.**

13 Finally, the HOA seeks to dismiss the portion of Nationstar’s quiet-title claim that seeks a  
14 declaration that, on its face, NRS Chapter 116’s nonjudicial-foreclosure scheme violates  
15 procedural due process because it “lacks any pre or post deprivation methods of providing” first-  
16 deed-of-trust holders like Nationstar “with notice and an opportunity to be heard.”<sup>41</sup> The HOA  
17 argues that the statute’s notice provisions satisfy due process, as the Nevada Supreme Court  
18 recognized in *SFR Investments Pool 1 v. U.S. Bank*.<sup>42</sup> Nationstar responds that the statutory  
19 scheme “impermissibly requires those with a security interest in a Nevada property subject to an  
20 HOA lien to ‘opt-in’ to their constitutional protections by requesting notice prior to an HOA’s  
21 foreclosure—a requirement that fails to provide the mandatory notice guaranteed by the Due  
22

---

23 <sup>38</sup> Nev. Rev. Stat. § 38.310(1).

24 <sup>39</sup> ECF 1 at 12–13.

25 <sup>40</sup> Nev. Rev. Stat. § 38.310(1).

26 <sup>41</sup> ECF 1 at 7–8.

27 <sup>42</sup> ECF 12 at 7–12.

1 Process Clause.”<sup>43</sup>

2 Nationstar’s theory was rejected in *Las Vegas Development Group v. Yfantis*, 2:15-cv-  
3 01127-APG-CWH, ECF 72 (D. Nev., Mar. 24, 2016), when Wells Fargo espoused it in another  
4 HOA-foreclosure challenge in this district. In *Yfantis*, Judge Andrew Gordon carefully evaluated  
5 the statutory scheme. He noted that NRS 116.31168 incorporates the notice provisions of NRS  
6 107.090, which expressly requires notice to first-deed-of-trust holders,<sup>44</sup> and he observed that  
7 both the majority and the dissenting opinions in *SFR* agreed that “the statutory scheme requires  
8 notice to the first deed of trust holder, which is the issue in this case.”<sup>45</sup> “The statute therefore  
9 does not violate due process because it does not require the first deed of trust holder to ‘opt in’ to  
10 receive notice as Wells Fargo argues.”<sup>46</sup> Thus, Judge Gordon concluded, “[b]ecause the statute,  
11 properly interpreted, does not require the first deed of trust holder to opt in to receive notice,  
12 there is no due process violation.”<sup>47</sup>

13 I find the *Yfantis* analysis and conclusion persuasive, and I adopt them here. Because I  
14 conclude that the nonjudicial foreclosure scheme did not require Nationstar and other first-deed-  
15 of-trust holders to “opt in” to receive notice of a foreclosure sale, Nationstar has not pled a  
16 plausible facial due-process challenge.<sup>48</sup> I therefore dismiss the portion of Nationstar’s  
17 declaratory relief/quiet title claim based on this facial challenge.<sup>49</sup>

---

18  
19 <sup>43</sup> ECF 15 at 13–21.

20 <sup>44</sup> *Yfantis*, 2:15-cv-01127-APG-CWH, ECF 72 at 8–9.

21 <sup>45</sup> *Id.* at 9 (citing *SFR*, 334 P.3d at 417–18 (majority opinion), 422 (Gibbons, C.J., concurring in  
22 part and dissenting in part)).

23 <sup>46</sup> *Id.* at 9–10.

24 <sup>47</sup> *Id.* at 11.

25 <sup>48</sup> The HOA also argues that the due-process claim fails for lack of state action. Because I  
26 dismiss this claim based on my rejection of Nationstar’s “opt in” interpretation, I do not reach the  
27 state-action argument.

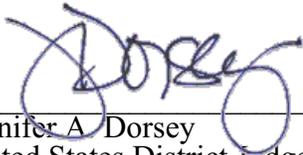
28 <sup>49</sup> See ECF 1 at 7–9 (¶¶ 39–44).

1 **Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that The Springs at Spanish Trail Association's  
3 Motion to Dismiss Nationstar Mortgage, LLC's Complaint [ECF 12] is **GRANTED in part and**  
4 **DENIED in part:**

- 5 • **Nationstar's first claim for relief** (declaratory relief/quiet title) is **DISMISSED**  
6 **to the extent it raises a facial due-process challenge** to NRS Chapter 116;
- 7 • **Nationstar's second and third claims for relief** (breach of NRS 116.1113 and  
8 wrongful foreclosure) are **DISMISSED** under NRS 38.310.

9 Dated March 31, 2016

10   
11 \_\_\_\_\_  
12 Jennifer A. Dorsey  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28