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 Bank of America, N.A.

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

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

Case No.: 2:16-cv-00848-JCM-GWF

12 vs.

**STIPULATION AND PROTECTIVE
 ORDER**

13
 14 SONRISA HOMEOWNERS ASSOCIATION;
 SFR INVESTMENTS POOL 1, LLC; NEVADA
 15 ASSOCIATION SERVICES, INC.,

16 Defendants.

17 SFR INVESTMENTS POOL 1, LLC, a Nevada
 18 limited liability company,

19 Counter/Cross Claimant,

20 v.

21 BANK OF AMERICA, N.A.; UNIVERSITY
 22 MEDICAL CENTER; RICK C. WATKINS, an
 individual; and JENNIFER L. WATKINS, and
 23 individual

24 Counter/Cross Defendants.

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1 Subject to the approval of the court Bank of America, N.A. (**BANA**), Sonrisa Homeowners
2 Association (**Sonrisa**), SFR Investments Pool 1, LLC (**SFR**), and Nevada Association Services,
3 Inc. (**NAS**), by and through their attorneys of record, stipulate to the following protective order:

4 To expedite the flow of discovery, facilitate the prompt resolution of disputes over
5 confidentiality, adequately protect material claimed to be confidential, and ensure protection is
6 afforded only to material so designated, it is, pursuant to the Court's authority under Federal Rule of
7 Civil Procedure 26(c), **ORDERED** this Protective Order shall govern the disclosure, handling and
8 disposition of documents in this litigation as follows:

9 1. **Application.**

10 1.1 This Protective Order shall govern any document, information or other
11 material that is designated as containing "Confidential Information" as defined herein, and is
12 produced in connection with this litigation by any person or entity (the **producing party**), whether
13 in response to a discovery request, subpoena or otherwise, to any other person or entity (the
14 **receiving party**) regardless of whether the person or entity producing or receiving such information
15 is a party to this litigation.

16 2. **Definitions.**

17 2.1 Confidential Information. "Confidential Information" shall mean and include,
18 without limitation, any non-public information that concerns or relates to the following areas:
19 confidential proprietary information, trade secrets, practices and procedures, personal financial
20 information, commercial, financial, pricing, budgeting, and/or accounting information, information
21 about existing and potential customers, marketing studies, performance projections, business
22 strategies, decisions and/or negotiations, personnel compensation, evaluations and other employment
23 information, and confidential proprietary information about affiliates, parents, subsidiaries and third-
24 parties with whom the parties to this action have or have had business relationships.

25 2.2 Documents. As used herein, the term "documents" includes all writings,
26 records, files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact
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1 discs, electronic messages, other data compilations from which information can be obtained and
2 other tangible things subject to production under the Federal Rules of Civil Procedure.

3 3. **Initial Designation.**

4 3.1 Good Faith Claims. Claims of confidentiality will be made only with respect
5 to documents, other tangible things and information that the asserting party has a good faith belief
6 are within the definition set forth in subparagraph 2.1 of this Protective Order. Objections to such
7 claims made pursuant to paragraph 5, below, shall also be made only in good faith.

8 3.2 Produced Documents. A party producing documents that it believes constitute
9 or contain Confidential Information shall state that the material is being produced under this
10 Protective Order by describing the documents or materials to be treated as confidential in writing, by
11 page or bates number wherever possible and/or shall produce copies bearing a label that contains or
12 includes language substantially identical to the following:

13 **CONFIDENTIAL**

14 This label shall be affixed in a manner that does not obliterate or obscure the contents of the
15 copies. If any person or party makes copies of documents designated as containing Confidential
16 Information, the copying person or party shall mark each such copy as containing Confidential
17 Information in the same form as the Confidentiality notice on the original document.

18 A party producing documents that are stored on electronic, magnetic, optical or other non-
19 paper media, such as compact discs, DVD's, video tapes and audio tapes (collectively, "data storage
20 devices") shall designate the data storage device as containing Confidential Information, by affixing
21 a label or stamp to the data storage device in the manner described above at the time copies of such
22 data storage devices are produced. If the receiving party or other persons or entities to whom
23 disclosure is authorized pursuant to subparagraph 7.1 make a copy of any data storage device
24 designated by the producing party as containing Confidential Information, the receiving party or
25 other authorized person shall mark each such copy as containing Confidential Information in the
26 same form as the confidentiality notice on the original data storage device produced. If the receiving
27 party or other authorized person prints out or otherwise makes copies of the documents or
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1 information stored on such data storage device, the receiving party or other authorized person shall
2 mark each page so copied with the label or stamp specified in subparagraph 3.2.

3 3.3 Interrogatory Answers. If a party answering an interrogatory or other
4 discovery demand believes that its answer contains Confidential Information, it shall state so in the
5 interrogatory response, and that portion of the response will be entitled to the protections of this
6 order.

7 3.4 Inspection of Documents. In the event a party elects to produce files and
8 records for inspection and the requesting party elects to inspect them, no designation of Confidential
9 Information needs to be made in advance of the inspection. For purposes of such inspection, all
10 material produced shall be considered as Confidential Information. If the inspecting party selects
11 specified documents to be copied, the producing party shall designate Confidential Information in
12 accordance with subparagraph 3.2 at the time the copies are produced.

13 3.5 Deposition Transcripts. The party asserting confidentiality shall state on the
14 record the portions it deems confidential. The failure to designate testimony on the record as
15 confidential shall be a waiver unless the designating party notifies all other parties and files a motion
16 to designate the testimony as confidential within 5 days of the notification.

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

6 4. **Designations by Another Party.**

7 4.1 Notification of Designation. If a party other than the producing party believes
8 that a producing party has produced a document that contains or constitutes Confidential Information
9 of the non-producing party, the non-producing party may designate the document as Confidential
10 Information by so notifying all parties in writing within fourteen (14) days of service of the
11 document.

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

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

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

26 If an objecting party elects not to make such a motion with respect to documents within
27 twenty one (21) days after the conference, information or other materials to which an objection has
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1 been made, the objection shall be deemed withdrawn. The designating party shall have twenty one
2 (21) days to respond to the objecting party's motion. If no response is filed by the designating party
3 within twenty one (21) days, the designating party shall be deemed to have consented to the
4 objecting party's motion pursuant to LR 7-2(d).

5 6. **Custody.** All Confidential Information and any and all copies, extracts and
6 summaries thereof, including memoranda relating thereto, shall be retained by the receiving party in
7 the custody of counsel of record, or by persons to whom disclosure is authorized under subparagraph
8 7.1.

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

10 7.1 Authorized Disclosures. Confidential Information shall be disclosed by the
11 receiving party only to the following persons:

- 12 a. Counsel for the parties in this litigation, including their associates,
13 clerks, paralegals, and secretarial personnel;
 - 14 b. Qualified persons taking testimony in this litigation involving such
15 Confidential Information, and necessary stenographic, videotape and
16 clerical personnel;
 - 17 c. Experts and their staff who are retained by counsel as expert witnesses
18 for a party in this litigation;
 - 19 d. Experts and their staff who are consulted by counsel for a party in this
20 litigation;
 - 21 e. Parties to this litigation, limited to the named party and, if that party is
22 a corporate entity, a limited number of employees of the corporate
23 entity and its insurers;
 - 24 f. Designated in-house counsel and a limited number of assistants,
25 administrative or otherwise;
 - 26 g. Outside vendors employed by counsel for copying, scanning and
27 general handling of documents;
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- 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
27 immediately bring such disclosure to the attention of the designating party. Without prejudice to
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1 other rights and remedies of the designating party, the responsible party or person shall make every
2 effort to obtain and return the Confidential Information and to prevent further disclosure on its own
3 part or on the part of the person who was the unauthorized recipient of such information.

4 7.3 Court Filings. In the event any Confidential Information must be filed with the
5 Court prior to trial, the proposed filing shall be accompanied by a motion to file the Confidential
6 Information under seal that complies with Local Rule 10-5(b) and a proposed order, and the
7 application and proposed order shall be directed to the judge to whom the Confidential Information
8 is directed. This provision is applicable to briefs, memoranda, and other filings which quote,
9 summarize, or describe Confidential Information.

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

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

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

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

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

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

17 14. **Motion by Third Party to Compel Production of Confidential Information.** If any
18 third party subpoenas Confidential Information from a party to this action or moves to compel a
19 party to this action to produce any such information, such party shall immediately notify the parties
20 who originally produced and/or designated such information that a subpoena has been served or a
21 motion has been made in order to allow the parties who originally produced and/or designated such
22 information the opportunity to seek a protective order or oppose the motion or application. If, within
23 thirty (30) days after receiving notice of a subpoena seeking Confidential Information from a
24 receiving party, the party who originally produced and/or designated such information fails to move
25 for a protective order, the party subject to the subpoena may produce said information. In addition, if
26 a party is ordered to produce Confidential Information covered by this Protective Order, then notice
27 and, if available, a copy of the order compelling disclosure shall immediately be given the parties
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1 who originally produced and/or designated such information. Nothing in this Protective Order shall
2 be construed as requiring the party who is ordered to produce such Confidential Information to
3 challenge or appeal any order requiring the production of such information or to subject
4 himself/herself to any penalty for non-compliance with any legal process or seek any relief from the
5 Court.

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

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

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

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

4 DATED November 16, 2016.

<p>6 AKERMAN LLP</p> <p>7 /s/ <u>Tenesa S. Scaturro, Esq.</u></p> <p>8 DARREN T. BRENNER, ESQ. Nevada Bar No. 8386</p> <p>9 TENESA S. SCATURRO, ESQ. Nevada Bar No. 12488</p> <p>10 1160 Town Center Drive, Suite 330 Las Vegas, Nevada 89144</p> <p>11 Attorneys for Bank of America, N.A.</p>	<p>6 KIM GILBERT EBRON</p> <p>7 /s/ <u>Diane Cline Ebron, Esq.</u></p> <p>8 JACQUELINE A. GILBERT, ESQ. Nevada Bar No. 10593</p> <p>9 KAREN L. HANKS, ESQ. Nevada Bar No. 9578</p> <p>10 DIANA CLINE EBRON, ESQ. Nevada Bar No. 10580</p> <p>11 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139</p> <p>12 Attorneys for SFR Investment Pool 1, LLC</p>
<p>14 LEACH JOHNSON SONG & GRUCHOW</p> <p>15 /s/ <u>Ryan D. Hastings, Esq.</u></p> <p>16 SEAN L. ANDERSON, ESQ. Nevada Bar No. 7259</p> <p>17 RYAN D. HASTINGS, ESQ. Nevada Bar No. 12394</p> <p>18 8945 West Russell Road, Suite 300 Las Vegas, Nevada 89148</p> <p>19 Attorneys for Sonrisa Homeowners' Association</p>	<p>14 NEVADA ASSOCIATION SERVICES, INC.</p> <p>15 /s/ <u>Christopher V. Yergensen, Esq.</u></p> <p>16 CHRISTOPHER V. YERGENSEN, ESQ. Nevada Bar No. 6183</p> <p>17 Nevada Association Services, Inc. 6224 West Desert Inn Road Las Vegas, NV 89146</p> <p>18 Attorney for Nevada Association Services, Inc.</p>

21 **ORDER**

22 It is so ordered.

23 DATED this 17th day of November, 2016.

24 

25 _____
 26 UNITED STATES MAGISTRATE JUDGE