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

11 BANK OF AMERICA, N.A.,

12 Plaintiff,

13 vs.

14 MOUNTAIN SHADOWS COMMUNITY
15 ASSOCIATION; LAS VEGAS
16 DEVELOPMENT GROUP LLC; and NEVADA
ASSOCIATION SERVICES, INC.,

17 Defendants.

Case No.: 2:16-cv-02210-RFB-GWF

**STIPULATION AND ORDER TO
STAY LITIGATION PENDING FINAL
RESOLUTION OF PETITION(S) FOR
WRIT OF CERTIORARI TO UNITED
STATES SUPREME COURT**

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19 Bank of America, N.A., Mountain Shadows Community Association, and Las Vegas
20 Development Group LLC stipulate as follows:¹

21 1. This lawsuit involves quiet title/declaratory relief and other claims related to a non-
22 judicial homeowner's association foreclosure sale conducted pursuant to NRS 116.

23 2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in Bourne Valley
24 Court Tr. v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1159–60 (9th Cir. 2016), holding that NRS 116
25 is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,
26 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

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28 ¹ Defendant Nevada Association Services, Inc. was served but has not appeared.

1 3. On January 26, 2017, the Nevada Supreme Court issued its decision in Saticoy Bay
2 LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A., 133
3 Nev. Adv. Op. 5, __ P.3d __, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct contrast to
4 Bourne Valley, that no state action supported a challenge under the Due Process Clause of the United
5 States Constitution.

6 4. The parties in Bourne Valley and Saticoy Bay are seeking review of both decisions in
7 the United States Supreme Court. Bourne Valley's deadline to file its petition for writ of certiorari of
8 the Ninth Circuit's Bourne Valley decision is April 3, 2017. See Bourne Valley Court Tr. v. Wells
9 Fargo Bank, NA., United States Supreme Court Case No. 16A753. Wells Fargo's deadline to file its
10 petition for writ of certiorari of the Nevada Supreme Court's Saticoy Bay decision is April 25, 2017.
11 Thus, the parties believe the stay requested herein is appropriate.

12 5. On February 8, 2017, the Nevada Supreme Court stayed the issuance of the remittitur in
13 Saticoy Bay pending the filing of a petition for a writ of certiorari with the United States Supreme
14 Court, and if a petition is filed, the stay of the remittitur will remain in effect until final disposition of
15 the certiorari proceedings before the United States Supreme Court.

16 6. Several judges in this district have stayed similar cases pending exhaustion of all
17 appeals before the United States Supreme Court. See e.g., Nationstar Mortg. LLC v. Green Valley S.
18 Owners Ass'n, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); Bank of America,
19 N.A. v. Canyon Willow Trop Owners' Ass'n, No. 2:16-cv-01327-GMN-VCF, ECF No. 25 (D. Nev.
20 Oct. 26, 2016); Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA, No. 2:16-cv-00763-JAD-CWH,
21 ECF No. 29 (D. Nev. Feb. 28, 2017). Ditech Financial Services, LLC v. Highland Ranch
22 Homeowners Assoc., No. 3:16-cv-00194-MMD-WGC (D. Nev. Mar. 7, 2017); Wells Fargo Bank,
23 N.A. v. Las Vegas Dev. Group, LLC, 2:16-cv-02621-RFB-NJK (D. Nev. Mar. 9, 2017).

24 7. To determine if a continued stay is appropriate, the Court considers (1) damage from
25 the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the orderly course
26 of justice. See Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir.
27 2007) (setting forth factors). Here, the factors support a stay of litigation.

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1 a. Damage from Stay: Any damage from a temporary stay in this case will be minimal if
2 balanced against the potential fees, costs, and time which would surely ensue in this matter if litigation
3 were allowed to continue that could be mooted by a decision in Bourne Valley certiorari proceedings.
4 Indeed, the parties will be enable to avoid the cost and expense of continued legal proceedings in light
5 of what is unsettled law to say the least. Moreover, the Court will be relieved of expending further
6 time and effort until the conflict between the circuit and Nevada Supreme Court is resolved. Thus, a
7 stay will benefit all parties involved herein as well as the Court.

8 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls one
9 party more than the other. This relatively equal balance of equities results from the need for all parties
10 to have finality, given the split in the state and federal court decisions. The parties agree that any
11 hardship or inequity falling on any of them is outweighed by the benefits of a stay.

12 c. Orderly Course of Justice: At the center of this case is a homeowners' association's
13 foreclosure sale under NRS 116. The outcome of the petitions for writ in Bourne Valley and/or
14 Saticoy Bay have the potential to affirm or overturn either case. Without a stay, the parties will
15 expend resources that will be unnecessary if either or both petitions are granted. A stay would also
16 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would
17 substantially promote the orderly course of justice in this case. A stay will avoid the moving forward
18 without final resolution of the federal issues and the state court/federal court conflict.

19 8. The parties agree that all proceedings in the instant case, including any responses to any
20 outstanding discovery requests and any litigation deadlines, are stayed pending final resolution of the
21 Bourne Valley and/or Saticoy Bay certiorari proceedings before the United States Supreme Court.

22 9. Any party may file a written motion to lift stay at any time if such party determines it
23 appropriate.

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Once the stay is lifted, the parties agree they will submit a new proposed scheduling order addressing any currently unexpired deadlines including any deadlines to respond to pending summary judgment motions.

DATED: March 21, 2017.

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ORDER

IT IS SO ORDERED.


RICHARD F. BOULWARE, II
United States District Judge

DATED this 23rd day of March, 2017.