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

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

12 vs.

13 BACARA RIDGE ASSOCIATION; SFR  
INVESTMENTS POOL 1, LLC; and ALESSI &  
14 KOENIG, LLC,

15 Defendants.

Case No.: 2:16 cv 02533-RFB-VCF

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

16 SFR INVESTMENTS POOL 1, LLC,

17 Counter/Cross Claimaint,  
18 vs.

19 BANK OF AMERICA, N.A.; THE BANK OF  
NEW YORK MELLON FKA THE BANK OF  
NEW YORK, AS THE TRUSTEE FOR THE  
20 BENEFIT OF THE CERTIFICATE  
HOLDERS OF THE CWHEQ IN., HOME  
EQUITY LOAN ASSET-BACKED  
21 CERTIFICATES, SERIES 2006-S2; and  
DEREK L. SMITH, an individual,

22 Counter/ Cross Defendants.

23  
24 Plaintiff Bank of America, N.A. (**BANA**) and Defendant SFR Investment Pool 1, LLC  
25 (collectively, the **parties**)<sup>1</sup> stipulate as follows:

26 <sup>1</sup> Defendant Alessi & Koenig, LLC (**Alessi**) filed a chapter 7 bankruptcy petition in the U.S. Bankruptcy Court  
27 for the District of Nevada on December 13, 2016, under Case No. 16-16593. Accordingly, the stay provisions  
28 of 11 U.S.C. § 362 (a)(1) automatically apply to Alessi.

1           1.       This lawsuit involves the parties seeking quiet title/declaratory relief and other claims  
2 related to a non-judicial homeowner's association foreclosure sale conducted on a Property pursuant to  
3 NRS 116.

4           2.       On August 12, 2016, the Ninth Circuit issued its decision on appeal in Bourne Valley  
5 Court Tr. v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1159-60 (9th Cir. 2016) holding that NRS 116 is  
6 facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,  
7 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

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

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

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

23           6.       Since then, several judges in this district have stayed similar cases pending the  
24 exhaustion of all appeals before the United States Supreme Court. E.g., Nationstar Mtg. LLC v. Green  
25 Valley S. Owners Assoc., No. 2:16-cv-00883-GMN-GWF; Bank of America, N.A. v. Canyon Willow  
26 Trop Owners' Assoc., No. 2:16-cv-01327-GMN-VCF (D. Nev. Oct. 26, 2016); Deutsche Bank Nat'l  
27 Trust Co. v. Copper Sands HOA, No. 2:16-cv-00763-JAD-CWH (D. Nev. Feb. 28, 2017).

28

1           7. To determine if a continued stay is appropriate, the Court considers (1) damage from  
2 the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the orderly course  
3 of justice. See *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
4 2007) (setting forth factors). Here, the factors support a stay of litigation.

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

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

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

23           8. The parties agree that all proceedings in the instant case, including motion and other  
24 litigation deadlines, are stayed pending final resolution of the Bourne Valley and/or Saticoy Bay  
25 certiorari proceedings before the United States Supreme Court.

26           9. Defendant SFR shall be required to keep current on all property taxes and assessments,  
27 HOA dues, maintain the property, and maintain insurance on the property at issue. SFR shall also be  
28

1 required to provide proof of payment and insurance upon reasonable notice to counsel for BANA.

2 10. Defendant SFR shall be prohibited from selling or encumbering the property unless  
3 otherwise ordered by the Court.

4 11. Plaintiff BANA is prohibited from conducting foreclosure proceedings on the property  
5 unless otherwise ordered by the Court.

6 12. Any party may file a written motion to lift stay at any time for either party determines it  
7 appropriate.

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19 **ORDER**

20 **IT IS SO ORDERED:**

21 

22 **UNITED STATES DISTRICT COURT JUDGE**

23 **DATED:** April 11, 2017