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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 BANK OF AMERICA, N.A.,

11 Plaintiff,

12 vs.

13 EMERALD RIDGE LANDSCAPE
 14 MAINTENANCE ASSOCIATION; SFR
 INVESTMENTS POOL 1, LLC; and RED ROCK
 15 FINANCIAL SERVICES, LLC,

16 Defendants.

Case No.: 2:16-cv-02759-RFB-NJK

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

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

19 Counter/cross-claimant,

20 v.

21 BANK OF AMERICA, N.A.; U.S. BANK
 22 TRUST, N.A., AS TRUSTEE FOR LSF9
 MASTER PARTICIPATION TRUST; RONALD
 23 M. RHEES, an individual; CAMELLIA F.
 PEEBLES, an individual,

24 Counter-Defendant.

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1 Plaintiff/counter-defendant Bank of America, N.A., Defendant/counter-plaintiff SFR
2 Investments Pool 1, LLC, and Defendant Emerald Ridge Landscape Maintenance Association,
3 Defendant Red Rock Financial Services, LLC, stipulate as follows¹:

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

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

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

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

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

25 6. Several judges in this district have stayed similar cases pending exhaustion of all
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27 ¹ Defendants Camellia Peebles and Ronald M. Rhees have not appeared.
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1 appeals before the United States Supreme Court. See e.g., *Nationstar Mortg. LLC v. Green Valley S.*
2 *Owners Ass'n*, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); *Bank of America,*
3 *N.A. v. Canyon Willow Trop Owners' Ass'n*, No. 2:16-cv-01327-GMN-VCF, ECF No. 25 (D. Nev.
4 Oct. 26, 2016); *Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA*, No. 2:16-cv-00763-JAD-CWH,
5 ECF No. 29 (D. Nev. Feb. 28, 2017).

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

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

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

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

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

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

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1 Once the stay is lifted, the parties agree they will submit a new proposed scheduling order
2 addressing any currently unexpired deadlines.

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4 DATED this April 11, 2017.

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6 **AKERMAN LLP**

5 **KOCH & SCOW LLC**

7
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21 Maintenance Association

22 **ORDER**

23 IT IS SO ORDERED.

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24 _____
25 UNITED STATES DISTRICT JUDGE

26 DATED: April 12, 2017
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