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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 FEDERAL NATIONAL MORTGAGE
ASSOCIATION;

Case No.: 2:16-cv-02829-JAD-PAL

11 Plaintiff,

12 vs.

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

13 WARM SPRINGS RESERVE OWNERS
ASSOCIATION; FERRELL STREET TRUST;
14 ALESSI & KOENIG, LLC;

15 Defendants.

16 Federal National Mortgage Association ("Fannie Mae"), Warm Springs Reserve Owners
17 Association, and Ferrell Street Trust stipulate as follows¹:

- 18 1. This lawsuit involves quiet title/declaratory relief and other claims related to a non-
19 judicial homeowner's association foreclosure sale conducted pursuant to NRS 116.
20
- 21 2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in Bourne Valley
22 Court Tr. v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1159–60 (9th Cir. 2016), holding that NRS 116 is
23 facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,
24 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

25
26 ¹ Defendant Alessi & Koenig, LLC has not appeared. The case is currently temporarily stayed due to
27 Alessi's bankruptcy case, which is pending in the United States Bankruptcy Court for the District of
28 Nevada, Petition No. 16-16593-abl.

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 filed its petition for writ of certiorari of the Ninth
8 Circuit's Bourne Valley decision on April 3, 2017. See Bourne Valley Court Tr. v. Wells Fargo Bank,
9 NA, United States Supreme Court Case No. 16A753. Wells Fargo's deadline to file its petition for
10 writ of certiorari of the Nevada Supreme Court's Saticoy Bay decision is April 25, 2017. Thus, the
11 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).

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

26 a. Damage from Stay: Any damage from a temporary stay in this case will be minimal if
27 balanced against the potential fees, costs, and time which would surely ensue in this matter if litigation
28

1 were allowed to continue that could be mooted by a decision in Bourne Valley certiorari proceedings.
2 Indeed, the parties will be able to avoid the cost and expense of continued legal proceedings in light
3 of what is unsettled law to say the least. Moreover, the Court will be relieved of expending further
4 time and effort until the conflict between the circuit and Nevada Supreme Court is resolved. Thus, a
5 stay will benefit all parties involved herein.

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

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

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

21 9. Defendant Ferrell Street Trust shall be required to keep current on all property taxes
22 and assessments, HOA dues, maintain the property, and maintain insurance on the property at issue.
23 Ferrell Street Trust shall also be required to provide proof of payment and insurance upon reasonable
24 notice to counsel for Fannie Mae.

25 10. Defendant Ferrell Street Trust shall be prohibited from selling or encumbering the
26 property unless otherwise ordered by the Court.

27 11. Plaintiff Fannie Mae is prohibited from conducting foreclosure proceedings on the
28

1 property unless otherwise ordered by the Court.

2 12. Any party may file a written motion to lift stay at any time if such party determines it
3 appropriate.

4 DATED this April 11, 2017.

5
6 **AKERMAN LLP**

**LIPSON, NEILSON, COLE, SELTZER & GARIN,
P.C.**

7
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27 **ORDER**

28 **SO ORDERED.** The Motion to Dismiss [8] is DENIED without prejudice to its refileing within
10 days of an order lifting the stay.

Dated: April 12, 2017.


UNITED STATES DISTRICT JUDGE