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9 Backed Certificates, Series 2006-22

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 THE BANK OF NEW YORK MELLON FKA  
13 THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF THE  
14 CWABS INC., ASSET-BACKED  
CERTIFICATES, SERIES 2006-22

15 Plaintiff,

16 vs.

17 THE MEWS HOMEOWNERS ASSOCIATION;  
SATICOY BAY LLC SERIES 1218 COACH;  
18 HOMEOWNER ASSOCIATION SERVICES,  
INC.,

19 Defendants.

Case No.: 2:17-cv-00473-KJD-PAL

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

20  
21 The Bank of New York Mellon fka The Bank of New York, as Trustee for the  
22 Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2006-22 (**BONYM**) and  
23 The Mews Homeowners Association (**Mews**) (collectively the **parties**)<sup>1</sup> stipulate as follows:

24 **I. Stipulation to Stay Proceedings**

25 1. This lawsuit involves the parties seeking quiet title/declaratory relief and other claims

26  
27 <sup>1</sup> Defendants Saticoy Bay LLC Series 1218 Coach and Homeowner Association Services, Inc. have not been served with  
the First Amended Complaint. Cross-defendant Homeowner Association Services, Inc. has been served with the  
28 Crossclaim, but has not yet made an appearance.

1 related to a non-judicial homeowner's association foreclosure sale conducted on a property pursuant  
2 to NRS 116.

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

8 3. On January 26, 2017, the Nevada Supreme Court issued its decision in Saticoy Bay LLC  
9 Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo Bank, N.A., 388 P.3d  
10 970 (Nev. Jan. 26, 2017), holding, in direct contrast to Bourne Valley, that no state action supported  
11 a challenge under the Due Process Clause of the United States Constitution.

12 4. The parties in Bourne Valley are seeking review of the decision in the United States  
13 Supreme Court. Bourne Valley filed a petition for writ of certiorari of the Ninth Circuit's Bourne  
14 Valley on April 3, 2017. See Bourne Valley Court Tr. v. Wells Fargo Bank, NA., United States  
15 Supreme Court Case No. 16A753.

16 5. Several judges in this district have stayed similar cases pending the exhaustion of all  
17 appeals before the United States Supreme Court. See, e.g., Nationstar Mortg. LLC v. Green Valley  
18 S. Owners Ass'n, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); Bank of  
19 America, N.A. v. Canyon Willow Trop Owners' Ass'n, No. 2:16-cv-01327-GMN-VCF, ECF No. 25  
20 (D. Nev. Oct. 26, 2016); Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA, No. 2:16-cv-00763-  
21 JAD-CWH, ECF No. 29 (D. Nev. Feb. 28, 2017); Ditech Fin. Servs., LLC v. Highland Ranch  
22 Homeowners Ass'n, 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 6. To determine if a continued stay is appropriate, the Court considers (1) damage from the  
25 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.

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

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

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

22 7. The parties agree that all proceedings in the instant case, including any deadlines for  
23 responsive pleadings, are stayed pending final resolution of the Bourne Valley certiorari  
24 proceedings before the United States Supreme Court.

25 8. Saticoy Bay LLC Series 1218 Coach is required to keep current on all property taxes  
26 and assessments, HOA dues, maintain the property, and maintain insurance on the property at issue.

27 9. Saticoy Bay LLC Series 1218 Coach is prohibited from selling or encumbering the  
28

1 property unless otherwise ordered by the Court.

2 10. BONYM is prohibited from conducting foreclosure proceedings on the property unless  
3 otherwise ordered by the Court.

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

6  
7 DATED this 22<sup>nd</sup> day of June, 2017..

8  
9 **AKERMAN LLP**

**PENGILLY LAW FIRM**

10 /s/ Vatana Lay

/s/ Elizabeth B. Lowell

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17 as Trustee for the Certificateholders of the  
18 CWABS, Inc., Asset-Backed Certificates,  
19 Series 2006-22

Attorneys for Defendant The Mews  
Homeowners Association

20 **IT IS SO ORDERED.**

21   
22 **UNITED STATES DISTRICT JUDGE**

23 DATED: June 26, 2017

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26  
27 Case No.: 2:17-cv-00473