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14 Fremont Home Loan Trust Series 2006-3

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

12 DEUTSCHE BANK NATIONAL TRUST
13 COMPANY, as Trustee for Fremont Home
14 Loan Trust Series 2006-3,

14 Plaintiff,

15 vs.

16 LV REAL ESTATE STRATEGIC
17 INVESTMENT GROUP LLC, a Nevada
18 limited-liability company; LV REAL
19 ESTATE STRATEGIC INVESTMENT
20 GROUP LLC SERIES 9128, a Nevada
21 limited-liability company; TERRA WEST
22 COLLECTIONS GROUP LLC d/b/a
23 ASSESSMENT MANAGEMENT
24 SERVICES, a Nevada limited liability
25 company; and TAPESTRY AT TOWN
26 CENTER HOMEOWNERS ASSOCIATION,
27 a Nevada nonprofit corporation;

23 Defendants.

Case No. 2:17-cv-00605-RFB-CWH

**STIPULATION AND ORDER TO
STAY LITIGATION PENDING FINAL
RESOLUTION OF PETITIONS FOR
WRIT OF CERTIORARI TO UNITED
STATES SUPREME COURT**

24
25 **STIPULATION**

26 It is hereby stipulated by and between Plaintiff DEUTSCHE BANK NATIONAL TRUST
27 COMPANY, as Trustee for Fremont Home Loan Trust Series 2006-3, (“Plaintiff”), and
28

1 Defendants LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC, a Nevada limited-
2 liability company, LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES
3 9128, a Nevada limited-liability company; TERRA WEST COLLECTIONS GROUP LLC d/b/a
4 ASSESSMENT MANAGEMENT SERVICES, a Nevada limited liability company, and
5 TAPESTRY AT TOWN CENTER HOMEOWNERS ASSOCIATION, a Nevada nonprofit
6 corporation, (collectively, the “Parties”), by and through their counsel, as follows:
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9 1. This lawsuit involves a claim for quiet title/declaratory relief and other claims
10 related to a non-judicial homeowner’s association foreclosure sale conducted on a property
11 pursuant to NRS Chapter 116.

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

16 3. On January 26, 2017, the Nevada Supreme Court issued its decision in Saticoy Bay
17 LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.,
18 133 Nev. Adv. Op. 5, ___ P.3d ___, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct
19 contrast to Bourne Valley, that no state action supported a challenge under the Due Process
20 Clause of the United States Constitution.

21 4. The Saticoy Bay decision by the Nevada Supreme Court conflicts directly with
22 Ninth Circuit’s ruling in Bourne Valley, making the issue appropriate for consideration by the
23 United States Supreme Court. See Sup. Ct. Rule 10(a) & (b) (noting that the High Court will
24 consider review when “a United States court of appeals has . . . decided an important federal
25 question in a way that conflicts with a decision by a state court of last resort * * * [or] a state
26 court of last resort has decided an important federal question in a way that conflicts with the
27 decision of . . . a United States court of appeals.”)

28 5. Since then, several judges in this district have stayed similar cases pending the

1 exhaustion of the appeal of the Ninth Circuit’s decision in Bourne Valley pending before the
2 United States Supreme Court. E.g., Nationstar Mtg. LLC v. Green Valley S. Owners Assoc., No.
3 2:16-cv-00883-GMN-GWF; Bank of America, N.A. v. Canyon Willow Trop Owners' Assoc., No.
4 2:16-cv-01327-GMN-VCF (D. Nev. Oct. 26, 2016); Deutsche Bank Nat'l Trust Co. v. Copper
5 Sands HOA, No. 2:16-cv-00763-JAD-CWH (D. Nev. Feb. 28, 2017).

6 6. Terra West/AMS filed a Motion to Dismiss Complaint (“Motion to Dismiss,” ECF
7 No. 22) on May 19, 2017.

8 7. The Parties believe the conflict should be resolved. Counsel in Bourne Valley has
9 sought review of the state action issue in the United States Supreme Court. Bourne Valley’s
10 petition for writ of certiorari of the Ninth Circuit’s Bourne Valley decision is pending in the
11 United States Supreme Court. See Bourne Valley Court Trust v. Wells Fargo Bank, NA., United
12 States Supreme Court Case No. 16A753. Thus, the parties believe that a continued litigation stay
13 is appropriate and will not be indefinite.

14 8. To determine if a continued stay is appropriate, the Court considers (1) damage
15 from the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the
16 orderly course of justice. Maheu v. Eighth Judicial Dist. Court In & For Clark County, Dept. No.
17 6, 88 Nev. 26, 51, 493 P.2d 709, 725 (1972), quoting Landis v. North American Co., 299 U.S.
18 248, 254-55 (1936). Here, the factors support a continued stay of litigation.

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

27 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls
28 one party more than the other. This relatively equal balance of equities results from the need

1 for the parties to have finality, given the split in the state and federal court decisions. Any
2 hardship would be equal in terms of resources expended without a stay. A stay prevents this
3 expenditure for all Parties and the parties agree that any hardship or inequity falling on any of
4 them is outweighed by the benefits of a stay.

5 c. Orderly Course of Justice: At the center of this case is an association foreclosure
6 sale under NRS Chapter 116. The outcome of the petition for writ in Bourne Valley has the
7 potential to moot this litigation. Without a stay, the Parties will expend resources that will be
8 unnecessary if the petition is denied. A stay would also avoid a likely appeal from any
9 subsequent judgment in this case. A temporary stay would substantially promote the orderly
10 course of justice in this case. A stay will avoid the moving forward without final resolution of
11 the federal issues and the state court / federal court conflict.

12 9. The Parties agree that all proceedings in the instant case are stayed pending final
13 resolution of the Bourne Valley certiorari proceedings before the United States Supreme Court.
14 The Parties agree that the pending Motion to Dismiss is withdrawn, **without prejudice**.

15 10. The Parties further agree that their claims and defenses will be tolled, if necessary,
16 for the duration of the stay, beginning on the date this stipulation is filed until the Court issues an
17 order lifting the stay.

18 11. LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES 9128
19 shall be required to keep current on all property taxes and assessments, HOA dues, and to
20 reasonably maintain the property at issue, and shall also be required to provide proof of payment
21 upon reasonable notice to counsel for Plaintiff.

22 12. LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES 9128
23 shall be prohibited from selling or encumbering the property unless otherwise ordered by the
24 Court.

25 13. Plaintiff is prohibited from conducting a foreclosure sale on the property unless
26 otherwise ordered by the Court.

27 14. Any party may file a written motion to lift stay at any time, and any party may file
28 an opposition to the motion within fourteen (14) calendar days after the written motion is filed

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with the Court.

IT IS SO STIPULATED.

(Signatures and Order for Stipulation and Order to Stay Litigation on next page)

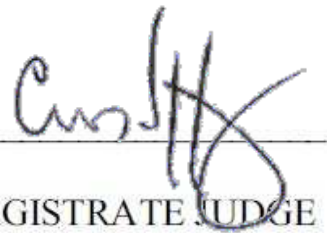
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Dated June 14, 2017

<p>Snell & Wilmer L.L.P.</p> <p>By: <u>/s/ Tanya N. Lewis</u> Erica J. Stutman, Esq. Nevada Bar No. 10794 Tanya N. Lewis, Esq. Nevada Bar No. 8855 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169 Attorneys for Plaintiff Deutsche Bank National Trust Company</p>	<p>LAW OFFICES OF RICHARD VILKIN, PC</p> <p>By: <u>/s/ Richard Vilkin</u> Richard Vilkin, Esq. LAW OFFICE OF RICHARD VILKIN, PC 1286 Crimson Sage Ave. Henderson, NV 89012 (signed with permission)</p> <p>Attorneys for Defendant Terra West/AMS</p> <p>AYON LAW PLLC</p> <p>By: <u>/s/ Luis A. Ayon</u> Luis A Ayon Ayon Law, PLLC 9205 West Russell Road Building 3, Suite 240 Las Vegas, NV 89148 702-600-3200 Fax: 702-447-7936 Email: laa@ayonlaw.com</p> <p>WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN</p> <p>By: <u>/s/ Douglas M. Cohen</u> Douglas M. Cohen Wolf, Rifkin, Shapiro, Schulman & Rabkin 3556 E. Russell Road Las Vegas, NV 89120 702-341-5200 Fax: 702-341-5300 Email: dcohen@wrslawyers.com</p>
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IT IS SO ORDERED.

DATED: June 15, 2017



C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE