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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 WELLS FARGO BANK, N.A.,
16
17 Plaintiff,

Case No. 2:17-cv-01470-APG-CWH

18 vs.

**STIPULATION AND ORDER TO LIFT
LITIGATION STAY**

19 APOLLO DEVELOPMENTS, LLC, a Nevada
20 limited liability company; RIVERWALK
21 HOMEOWNERS ASSOCIATION, a Nevada
22 non-profit corporation; ABSOLUTE
23 COLLECTION SERVICES, LLC, a Nevada
24 limited liability company,
25
26 Defendants.

27 Plaintiff Wells Fargo Bank, N.A. (“Wells Fargo”) and Defendant Absolute Collection
28 Services, LLC (“Absolute” and with Wells Fargo, the “Parties”) hereby stipulate and agree as
follows:

This case was stayed by order of the Court dated May 23, 2017 (ECF No. 7) based on
proceedings then-pending in the Ninth Circuit in *Bourne Valley Court Trust v. Wells Fargo Bank,
N.A.*, 832 F.3d 1154 (9th Cir. 2016). The order staying the case stated that after the proceedings
in *Bourne Valley* were concluded, any party may move to lift the stay. Order at 3 (ECF No. 7).
Consistent with the Court’s Order staying the litigation, however, Wells Fargo completed service

1 on all defendants by June 2, 2017. *See* Summons Returned Executed (ECF Nos. 8-10). Absolute
2 along with Apollo Developments, LLC (“Apollo”) noticed an appearance through counsel. (ECF
3 Nos. 11, 12). Defendant Riverwalk Homeowners Association (the HOA) did not make an
4 appearance.

5 On September 11, 2018, Anthony A. Zmaila Limited PLLC (“Zmaila Firm”), moved to
6 withdraw as counsel of record for Apollo on the basis that the Zmaila Firm could not reach its
7 client. Motion to Withdraw as Counsel (ECF No. 13). The Court granted the Motion to
8 Withdraw on November 2, 2018, and ordered Apollo to retain new counsel. Order (ECF No. 15).
9 When Apollo neither appeared nor retained new counsel, the Magistrate Judge issued an Order to
10 Show Cause on January 15, 2019, compelling Apollo to show cause why it did not retain counsel,
11 and further indicating that default could be entered against Apollo if no response were
12 forthcoming. (ECF No. 17). Apollo was then given additional time in which to respond to the
13 Order to Show Cause. Amended Order to Show Cause (ECF No. 18).

14 When Apollo failed to respond to the Order to Show Cause, the Magistrate Judge
15 recommended, and the Court ordered, entry of clerk’s default against Apollo for failure to appear.
16 Report & Recommendation (ECF No. 20); Order Accepting Report & Recommendation (ECF
17 No. 22); Default (ECF No. 23).

18 Based on the Clerk’s Default against Apollo, only Absolute and Wells Fargo remain in
19 this litigation. Additionally, the United States Supreme Court has resolved the issues in *Bourne*
20 *Valley* by denying certification. *Bourne Valley*, 832 F.3d 1154, *cert. denied* 137 S.Ct. 2296
21 (2017). And further proceedings in the Nevada Supreme Court have further limited the
22 application of *Bourne Valley* in this Court. *See SFR Investments Pool 1, LLC v. Bank of N.Y.*
23 *Mellon*, 422 P.3d 1248 (Nev. 2018).

24 Therefore, the Parties stipulate and agree that no further reason exists for the litigation
25 stay and request that the Court lift the litigation stay. Once the stay is lifted, Wells Fargo
26 anticipates timely applying to the Court for Default Judgment against Apollo and Riverwalk.
27 Because Absolute disclaims any interest in the real property at issue in this case, Absolute takes
28 no position on the substance of Wells Fargo’s claim that its deed of trust survived the HOA’s

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foreclosure sale in this case.

Dated: June 21, 2019.

SNELL & WILMER L.L.P.

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N.A.*


IT IS SO ORDERED.

Dated: June 21, 2019.

ABSOLUTE COLLECTION SERVICES,
LLC

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*Attorneys for Defendant Absolute
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UNITED STATES DISTRICT JUDGE
Dated: June 24, 2019.