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 8 *The Bank of New York, as Trustee for the*
 9 *Certificateholders of CWALT, Inc., Alternative*
 10 *Loan Trust 2005-54CB, Mortgage Pass-Through*
 11 *Certificates Series 2005-54CB*

12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 THE BANK OF NEW YORK MELLON FKA
 15 THE BANK OF NEW YORK, AS TRUSTEE
 16 FOR THE CERTIFICATEHOLDERS OF
 17 CWALT, INC., ALTERNATIVE LOAN
 18 TRUST 2005-54CB, MORTGAGE PASS-
 19 THROUGH CERTIFICATES SERIES 2005-
 20 54CB,

Case No.: 2:17-cv-01916-RFB-EJY

**[PROPOSED] ORDER FOLLOWING
 REMAND**

Plaintiff,

vs.

21 HAROLD HILL, an individual;
 22 ENCHANTMENT AT SUNSET BAY
 23 CONDOMINIUM ASSOCIATION;
 732 HARDY WAY TRUST; and NEVADA
 ASSOCIATION SERVICES, INC.,

Defendants.

24 On June 25, 2021, the Ninth Circuit entered an opinion following an appeal of this court's
 25 order granting defendant 732 Hardy Way Trust's (the **Trust**) motion for summary judgment and
 26 denying The Bank of New York Mellon, fka The Bank of New York, as Trustee for the
 27 Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-54CB, Mortgage Pass-Through
 28 Certificates Series 2005-54CB's (**BoNYM**) motion for summary judgment, ECF No. 58. The Ninth

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1 Circuit's opinion reversed this court's grant of summary judgment in favor of the Trust, its denial of
2 summary judgment to BoNYM, and its dismissal of BoNYM's claims against Enchantment at Sunset
3 Bay Condominium Association (the **HOA**). The Ninth Circuit remanded the matter to this court for
4 proceedings consistent with its opinion.

5 Following the status conference between the court and parties on November 9, 2021, the
6 court enters this order, which supersedes the prior summary judgment motion order at ECF No. 58:

7 The court finds that a deed of trust was recorded in the Clark County Recorder's Office
8 against the subject property located at 732 Hardy Way #F, Mesquite, Nevada 89027 (the **subject**
9 **property**) as instrument no. 20050824-0004855 (the **deed of trust**). BoNYM is the current
10 recorded assignee of the deed of trust, as reflected by the assignment of deed of trust recorded in the
11 Clark County Recorder's office against the subject property as instrument no. 201311140000798.

12 The court finds that the HOA foreclosed on the subject property on September 19, 2014 (the
13 **HOA foreclosure sale**), as reflected on the foreclosure deed recorded in the Clark County
14 Recorder's Office against the subject property as instrument no. 20140922-0002777.

15 The court finds that the HOA foreclosure sale is void as to BoNYM's interest in the subject
16 property. The court finds the Trust and its successors and assigns' title to the subject property is
17 subject to the deed of trust.

18 IT IS THEREFORE ORDERED AND ADJUDGED that the Trust and its successors and
19 assigns' title to the property located at 732 Hardy Way #F, Mesquite, Nevada 89027, assessor's
20 parcel no. 001-08-211-032 and more particularly described as:

21 **PARCEL ONE (1):**

22 An undivided 1/10th interest as tenant(s) in common in Phase 2 of **ENCHANTMENT**
23 **CONDOMINIUMS, PHASE 2 A COMMON INTEREST COMMUNITY A**
24 **PLANNED DEVELOPMENT UNIT AT MESQUITE VISTAS** as shown by map
thereof on file in Book 108 of Plats, Page 5 in the Office of the County Recorder,
Clark County, Nevada.

25 Excepting Therefrom all Units in all Residential Buildings and Designated Limited
26 Common Elements as shown on the Plat referred to above.

27 And Reserving Therefrom the right to possession of all those areas designated as
28 Limited Common Elements shown upon the Plat referred to above.

1 And Further Reserving Therefrom for the benefit of Owners in future development,
2 non-exclusive easements on, over and under the Common Area as defined and shown
3 upon the Plat referred to above for ingress, egress and recreational use, subject to the
4 terms and as more particularly set forth in the Master Declaration of Covenants,
5 Conditions, Restrictions and Reservation of Easements for Mesquite Vistas
6 Community Association recorded December 15, 1994 in Book 941215 as Document
7 No. 01029 and the Supplemental Declaration of Covenants, Conditions, Restrictions
8 and Reservation of Easements for Enchantment Condominiums, recorded June 26,
9 1997 in Book 970626 as Document No. 01783 as the same may be amended and/or
10 supplemented in the Office of the County Recorder of Clark County, Nevada.

6 **PARCEL TWO (2):**

7 Living Unit Six Hundred Twenty Three (623) in Building Six (6) of
8 **ENCHANTMENT CONDOMINIUMS, PHASE 2 A COMMON INTEREST**
9 **COMMUNITY A PLANNED DEVELOPMENT UNIT AT MESQUITE VISTAS**
10 as shown by map thereof on file in Book 108 of Plats, Page 5 of Official Records in
11 the Office of the County Recorder of Clark County, Nevada.

10 **PARCEL THREE (3):**

11 A non-exclusive easement for ingress, egress and recreational use, on, over and under
12 the Common Areas and Private Streets of **ENCHANTMENT CONDOMINIUMS,**
13 **PHASE 1 A COMMON INTEREST COMMUNITY A PLANNED**
14 **DEVELOPMENT UNIT AT MESQUITE VISTAS** as shown upon the plat referred
15 to above and future units, which easement is appurtenant to Parcels One (1) and
16 Two (2) described above.

15 **PARCEL FOUR (4):**

16 An exclusive easement appurtenant to Parcels (1) and Two (2) described above for
17 purposes, over areas defined and described as Limited Common Elements in the
18 Declaration and as shown upon the Plat referred to above

18 remains encumbered by the above-referenced deed of trust.

19 Because BoNYM's claims for relief against the HOA were pled in the alternative and to the
20 extent that BoNYM's deed of trust was extinguished as a result of the HOA foreclosure sale, the
21 court dismisses these claims.

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1 As to any other entities that are not parties to this litigation, the court declines to address the
2 effect, if any, of the void HOA foreclosure sale.

3 IT IS SO ORDERED.

4 DATED this 15th day of November, 2021.



7 RICHARD F. BOULWARE, II
8 UNITED STATES DISTRICT JUDGE

9 Submitted by:

10 **AKERMAN LLP**

11 /s/ Natalie L. Winslow

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21 *Pass-Through Certificates, Series 2006-OA7*

22 Approved as to form and content by:

23 **LEACH KERN GRUCHOW ANDERSON SONG**

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