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 11 *AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE*
 12 *LOAN TRUST 2006-41CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-*
 13 *41CB*

14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

16 THE BANK OF NEW YORK MELLON FKA
 17 THE BANK OF NEW YORK, AS TRUSTEE
 18 FOR THE CERTIFICATEHOLDERS OF THE
 19 CWALT, INC., ALTERNATIVE LOAN
 20 TRUST 2006-41CB, MORTGAGE PASS-
 21 THROUGH CERTIFICATES, SERIES 2006-
 22 41CB,

Case No.: 2:17-cv-02327-RFB-PAL

**THE BANK OF NEW YORK MELLON'S
 APPLICATION FOR TIME TO SERVE
 COMPLAINT AGAINST SOUTHERN
 HIGHLAND COMMUNITY
 ASSOCIATION**

Plaintiff,

vs.

SOUTHERN HIGHLAND COMMUNITY
 ASSOCIATION, a Nevada non-profit
 corporation,

Defendants

23 THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS
 24 TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE
 25 LOAN TRUST 2006-41CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-
 26 41CB (hereinafter "BNYM" or "Plaintiff") by and through its attorneys of record, Christina V.
 27 Miller, Esq. and Edgar C. Smith, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby
 28

1 move for an order extending the time in which to serve process on Defendant SOUTHERN
2 HIGHLAND COMMUNITY ASSOCIATION by a period of forty-five (45) days.

3 This Application is based on the attached Memorandum of Points and Authorities, all
4 papers and pleadings filed herein, and on any oral or documentary evidence that may be
5 presented at a hearing on this matter.

6 DATED this 4th day of December, 2017

7 WRIGHT FINLAY & ZAK LLP

8 /s/ Edgar Smith, Esq.

9 Edgar Smith, Esq.

10 Nevada Bar No. 5506

11 Christina V. Miller, Esq.

12 Nevada Bar No. 11310

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 On September 5, 2017, BNYM filed a Complaint for Wrongful Foreclosure, Unjust
4 Enrichment, and Breach of Contract against Defendant Southern Highland Community
5 Association. However, at the time the Complaint was filed, BNYM was aware that the required
6 Nevada Real Estate Division (“NRED”) mediation with the HOA had not yet been completed.
7 Absent completion of the NRED mediation with the HOA, the Complaint was subject to a
8 possible Motion to Dismiss based on lack of jurisdiction. For that reason, BNYM did not attempt
9 to serve the complaint so as to permit the NRED process to finish first.

10 The NRED mediation proceeding went forward on November 15, 2017. However, based
11 on the results from that mediation and Nevada Supreme Court precedent which issued within the
12 past two weeks, including *Nationstar v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev.
13 Adv. Op. 91 (Nov. 22, 2017) and *U.S. Bank National Association vs. Nevada New Builds, LLC*,
14 Case No. 69421, Order of Affirmance Filed Nov. 29, 2017, BNYM became aware of a need to
15 amend its Complaint prior to service on the HOA.

16 BNYM is currently in the process of drafting an Amended Complaint and anticipates
17 filing that document within the next 10 days. Therefore, BNYM respectfully requests that the
18 designated period of time to complete service of process be extended for forty-five (45) days
19 from the date that an Order is entered in this case

20 **II. LEGAL ARGUMENTS**

21 **A. EXTENDING TIME TO SERVE.**

22 Federal Rules of Civil Procedure (F.R.C.P.) 4(m) states, in pertinent part, that

23 If a defendant is not served within 90 days after the complaint is filed, the court—on
24 motion or on its own after notice to the plaintiff—must dismiss the action without
25 prejudice against that defendant or order that service be made within a specified time. But
26 if the plaintiff shows good cause for the failure, the court must extend the time for service
for an appropriate period.

27 In the instant case, good cause exists to extend the time for service. The complaint was
28 filed so that it was timely. BNYM did not serve the summons and complaint, because the

1 complaint would have been ripe for the HOA to file a Motion to Dismiss for lack of jurisdiction.
2 NRED mediation with the HOA had not then been completed.

3 Mediation was completed November 15, 2017, and BNYM was prepared to go forward.
4 However, the Nevada Supreme Court has issued two significant decisions since that date, and
5 BNYM's counsel had to evaluate the new decisions on the claims for relief. BNYM has
6 determined that the complaint should be amended before service. In addition, information
7 learned at the mediation relevant to the Amended Complaint allegations is also being
8 incorporated into the amended pleading. BNYM will file the same within the next ten days.

9 In order to provide time to serve the Summons and yet to be filed Amended Complaint,
10 BNYM requests that this Court enter an order enlarging the time period for service of the
11 Summons and Amended Complaint in this case by forty-five (45) days.

12 **III. CONCLUSION**

13 Based on the above, BNYM respectfully requests that the period for service of process in
14 this matter be extended by forty-five (45) days, for the purpose of allowing BNYM to file an
15 Amended Complaint and serve the HOA with the same.

16 DATED this 4th day of December, 2017

17 WRIGHT FINLAY & ZAK LLP

18 */s/ Edgar Smith, Esq.*

19 Edgar Smith, Esq.

20 Nevada Bar No. 5506

21 Christina V. Miller, Esq.

22 Nevada Bar No. 11310

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25 (702) 475-7964; Fax: (702) 946-1345

26 esmith@wrightlegal.net

27 *Attorneys for Plaintiff*

28 **IT IS SO ORDERED** this 6th day of December, 2017.



Peggy A. Leen

United States Magistrate Judge