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## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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FEDERAL NATIONAL MORTGAGE  
ASSOCIATION; and ROUNDPOINT  
MORTGAGE SERVICING CORPORATION,

Plaintiffs,

v.

RAINBOW BEND HOMEOWNERS  
ASSOCIATION; DANIEL HALL; and  
DIANA HALL,

Defendants.

Case No. 3:17-cv-00398-LRH-VPC

ORDER

This matter centers on a nonjudicial foreclosure sale. The foreclosure sale was conducted under Nevada Revised Statute (“N.R.S.”) § 116.3116 et seq. in 2013. See ECF Nos. 10, 16, 28. After the foreclosure sale, the Ninth Circuit struck down the notice scheme employed by N.R.S. § 116.3116 et seq. as facially unconstitutional. *Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), cert. denied, 137 S. Ct. 2296 (2017). As a result, plaintiffs Federal National Mortgage Association (“Fannie Mae”) and Roundpoint Mortgage Servicing Corporation (“Roundpoint”) brought this action, seeking declaratory relief or an order quieting title on the at-issue property. ECF No. 1.

Now, three motions come before the court. First, defendant Rainbow Bend Homeowners’ Association (the “HOA”) moves to dismiss or, alternatively, for summary judgment on Fannie Mae and Roundpoint’s complaint. ECF No. 10. Second, defendants Daniel Hall and Diana Hall move to dismiss or, alternatively, for summary judgment on the complaint. ECF No. 16. And

1 third, Fannie Mae and Roundpoint oppose both motions and counter-move for summary  
2 judgment. ECF No. 28. The defendants filed a joint reply. ECF No. 33. The court resolves the  
3 three pending motions by turning to Bourne Valley—a Ninth Circuit opinion that binds the court  
4 in its decision. Under the guidance of Bourne Valley, the court denies the HOA’s motion, denies  
5 the Hall’s motion, and grants Fannie Mae and Roundpoint’s counter-motion.

6 **I. BACKGROUND**

7 The court takes the following facts from the HOA’s motion for summary judgment unless  
8 otherwise noted.<sup>1</sup>

9 In 2003, a pair of trustees (James Loftis and Jean Loftis) obtained a loan from Morgan  
10 Stanley Dean Witter Credit Corporation to purchase property at 53 Avenue Bleu De Clair,  
11 Sparks, Nevada 89434 (Parcel Number 003-531-23).<sup>2</sup> ECF No. 10 at 6. This transaction gave rise  
12 to the first deed of trust on the property, which was recorded in Storey County, Nevada. ECF  
13 No. 10 at 8; ECF No. 1, Ex. 1.<sup>3</sup> After multiple assignments, Roundpoint came to hold the  
14 beneficial interests under the deed of trust. ECF No. 10 at 9; ECF No. 1, Exs. 1–4.

15 The purchased property sits in a community governed by the HOA and is subject to HOA  
16 assessments. ECF No. 10 at 7. In 2012, the trustees failed to pay the required assessments. ECF  
17 No. 10 at 12. The HOA therefore recorded a Notice of Delinquent Assessment Lien in March  
18 2012. *Id.*; ECF No. 1, Ex. 5. Approximately five months later, the HOA recorded a Notice of  
19 Default and Election to Sell. ECF No. 10 at 12; ECF No. 1, Ex. 6. The delinquent assessments  
20 remained unpaid, prompting the HOA to record a Notice of Foreclosure Sale in August 2013.  
21 ECF No. 10 at 13; ECF No. 1, Ex. 7. At the nonjudicial foreclosure sale, which was held in

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24 <sup>1</sup> The Hall’s motion for summary judgment contains a nearly identical fact section. Compare ECF No. 10 at 3–13  
25 with ECF No. 16 at 3–13. The court therefore omits citations to the Hall’s motion for the sake of brevity.

26 <sup>2</sup> The at-issue property has a Sparks, Nevada address but is located in Storey County. Sparks addresses are most  
often located in Washoe County.

27 <sup>3</sup> The court takes judicial notice of the publicly-recorded documents attached to the complaint and cited in the  
28 parties’ motions. *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n. 1 (9th Cir. 2004)  
(citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)) (stating matters of public record may be  
judicially noticed unless the matter is a fact in reasonable dispute).

1 September 2013, the HOA purchased the property. ECF No. 10 at 13; ECF No. 1, Ex. 8. The  
2 Halls then purchased the property in 2014. ECF No. 10 at 13, ECF No. 1, Ex. 9.

3 Fannie Mae and Roundpoint brought this action after the foreclosure sale, alleging five  
4 causes of action: (1) declaratory relief under 12 U.S.C. § 4617(j)(3); (2) quiet title under 12  
5 U.S.C. § 4617(j)(3); (3) declaratory relief under the Fifth and Fourteenth Amendment of the U.S.  
6 Constitution; (4) quiet title under the Fifth and Fourteenth Amendment of the U.S. Constitution;  
7 and (5) permanent and preliminary injunction. ECF No. 1. The HOA and the Halls now move to  
8 dismiss or, alternatively, for summary judgment. ECF Nos. 10, 16. Fannie Mae and Roundpoint  
9 counter-move for summary judgment. ECF No. 28. The HOA and the Halls filed a joint reply.  
10 ECF No. 33.

## 11 **II. LEGAL STANDARD**

### 12 **A. Motion to Dismiss**

13 Federal Rule of Civil Procedure (“Rule”) 8(a)(2) requires a pleading to contain a “short  
14 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
15 8(a)(2). A court may dismiss a complaint that fails to meet this standard under Rule 12(b)(6).  
16 Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) permits dismissal on the basis of either (1) the “lack of a  
17 cognizable legal theory,” or (2) “the absence of sufficient facts alleged under a cognizable legal  
18 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

19 In considering whether the complaint is sufficient to state a claim, the court accepts as  
20 true all factual allegations contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
21 (2009). However, a court need not “accept as true allegations that contradict matters properly  
22 subject to judicial notice or by exhibit” or “allegations that are merely conclusory, unwarranted  
23 deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049,  
24 1055 (9th Cir. 2008) (internal quotations omitted). While a complaint need not allege detailed  
25 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to  
26 relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*,  
27 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the  
28 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

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**B. Summary Judgment**

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the record show that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In assessing a motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

The moving party bears the initial burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986); see also *Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

To successfully rebut a motion for summary judgment, the non-moving party must point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. See *v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the party’s position is insufficient to establish a genuine dispute; there must be evidence on which a jury could reasonably find for the party. See *Id.* at 252.

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1 **III. DISCUSSION**

2 In the dueling motions, the parties’ debate the applicability of 12 U.S.C. § 4617(j)(3), the  
3 constitutionality of 12 U.S.C. § 4617(j)(3); and the applicability of Bourne Valley. But the court  
4 need only address the applicability of Bourne Valley to decide the instant motions. The court  
5 therefore considers the effect of Bourne Valley first and resolves the quiet-title claim second. The  
6 court does not reach the parties’ remaining arguments.

7 **A. Bourne Valley binds this court’s decision.**

8 In Bourne Valley, the Ninth Circuit held the opt-in-notice scheme of N.R.S. § 116.3116 et  
9 seq. facially violated the plaintiffs’ due process rights under the Fourteenth Amendment of the  
10 U.S. Constitution. 832 F.3d 1156. The Ninth Circuit declared the opt-in-notice provisions  
11 facially unconstitutional because the provisions permitted a homeowners’ association to  
12 foreclose on a property without giving notice to a mortgage lender—“[e]ven though such  
13 foreclosure forever extinguished the mortgage lenders’ property rights[.]” Id. at 1158.

14 Here, the foreclosure sale was conducted under N.R.S. § 116.3116 et seq. prior to the  
15 Ninth Circuit finding the notice scheme facially unconstitutional. Nevertheless, the HOA argues  
16 that Bourne Valley does not require the court to find for Fannie Mae and Roundpoint for four  
17 reasons. First, the HOA argues a facial challenge to N.R.S. § 116 et seq. would not succeed on  
18 the facts in this matter. ECF No. 10 at 28. Second, the HOA asserts that the court should follow  
19 the Nevada Supreme Court’s decisions in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408  
20 (Nev. 2014)<sup>4</sup> and Satico Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div.  
21 of Wells Fargo Bank, N.A., 388 P.3d 970 (Nev. 2017), arguing the interpretation of a state statute  
22 is at issue.<sup>5</sup> ECF No. 10 at 28–29; ECF No. 33 at 3–5. Third, the HOA argues the Ninth Circuit’s  
23 decision was erroneous. ECF No. 10 at 29–30. And finally, the HOA contends that it could not

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25 <sup>4</sup> In SFR Investments Pool 1, the Nevada Supreme Court held N.R.S. § 116(2) gives an HOA a superpriority lien,  
26 allowing an HOA to conduct a proper foreclosure that extinguishes a first deed of trust.

27 <sup>5</sup> In Satico Bay, the Nevada Supreme Court determined N.R.S. § 116 et seq. does not implicate due process  
28 concerns because nonjudicial foreclosure sales do not involve state action. 388 P.3d at 974. The Nevada Supreme  
Court acknowledge the Bourne Valley decision but “decline[d] to follow [the Ninth Circuit’s] holding” after finding  
N.R.S. § 116 et seq. does not entail state action. Id. at n. 5.

1 have given notice to Roundpoint regardless of the N.R.S. § 116 et seq. notice scheme because an  
2 earlier assignment of the deed of trust was incorrectly filed in another county. ECF No. 10 at 30.  
3 The Halls join the HOA’s argument that Bourne Valley does not control the instant decision in  
4 the parties’ reply. ECF No. 33.

5 Despite the HOA and the Hall’s arguments, the Ninth Circuit decided a federal issue in  
6 Bourne Valley, making Bourne Valley binding upon the decision of this court. See *Watson v.*  
7 *Estelle*, 886 F.2d 1093, 1095 (9th Cir. 1989) (stating a decision on an issue regarding the federal  
8 constitution by a state’s highest court does not bind federal courts). The Ninth Circuit found the  
9 opt-in-notice provisions facially violated the mortgage lenders’ due process rights under the U.S.  
10 Constitution. *Id.* at 1160. The Ninth Circuit therefore decided an issue regarding the federal  
11 constitution: whether due process rights under the federal constitution were violated. Because the  
12 decision rests on a federal issue rather than an interpretation of state law, Bourne Valley binds  
13 this court in its decision. The court rejects the HOA and the Hall’s second and third arguments  
14 accordingly.

15 The court also rejects the HOA and the Hall’s remaining arguments that rely on the  
16 factual differences between this matter and Bourne Valley. “The factual particularities  
17 surrounding the foreclosure notices in this case—which would be of paramount importance in an  
18 as-applied challenge—cannot save the facially unconstitutional statutory provisions [of N.R.S. §  
19 116 et seq.]” *Cohen v. Bank of Am., N.A.*, No. 215-cv-01393-GMN-CWH, 2017 WL 4185464, at  
20 \*3 (D. Nev. Sept. 21, 2017). Because the opt-in-notice provisions were struck down as facially  
21 unconstitutional in Bourne Valley, the HOA and the Hall’s first and fourth arguments also fail.

22 **B. The court grants summary judgment in favor of Fannie Mae and Roundpoint’s**  
23 **quiet-title claim brought under the U.S. Constitution.**

24 The court now turns to Fannie Mae and Roundpoint’s fourth claim: the quiet-title claim  
25 brought under the U.S. Constitution. In Nevada, courts possess “the inherent equitable power to  
26 consider quiet title actions[.]” *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105, 1110  
27 (Nev. 2016) (internal citations omitted). “An action may be brought by any person against  
28 another who claims an estate or interest in real property, adverse to the person bringing the

1 action, for the purpose of determining such adverse claim.” Nev. Rev. Stat. § 40.010. Under  
2 Bourne Valley, the opt-in-notice provisions of N.R.S. § 116 et seq. are facially unconstitutional.  
3 The foreclosure sale here occurred under the same provisions. Accordingly, because the  
4 foreclosure sale occurred under facially unconstitutional provisions, the foreclosure sale did not  
5 extinguish the first deed of trust on the property that existed at the time of the sale. The court  
6 therefore grants Fannie Mae and Roundpoint’s motion for summary judgment as to claim four  
7 and holds that the first deed of trust continues to encumber the property. But the court does not  
8 disturb the validity of the foreclosure sale itself.

9 Based on the above, the court dismisses the claims arising under 12 U.S.C. § 4617(j)(3)  
10 and the claim for declaratory relief under the Fifth and Fourteenth Amendment of the U.S.  
11 Constitution as moot. The court also dismisses the claim for permanent and preliminary  
12 injunction as an improper cause of action. See *In re Wal-Mart Wage & Hour Emp’t Practices*  
13 *Litig.*, 490 F.Supp. 2d 1091, 1130 (D. Nev. 2007).

14 **IV. CONCLUSION**

15 IT IS THEREFORE ORDERED that plaintiffs Federal National Mortgage Association  
16 and Roundpoint Mortgage Servicing Corporation’s counter-motion for summary judgment (ECF  
17 No. 28) is **GRANTED in part and DENIED in part**. It is granted with respect to plaintiffs’  
18 quiet title-claim brought under the Fifth and Fourteenth Amendment of the U.S. Constitution  
19 (claim four). It is denied with respect to the remaining claims.

20 IT IS FURTHER ORDERED that defendant Rainbow Bend Homeowners’ Association’s  
21 motion for summary judgment (ECF No. 10) is **DENIED**.

22 IT IS FURTHER ORDERED that defendants Daniel Hall and Diana Hall’s motion for  
23 summary judgment (ECF No. 16) is **DENIED**.

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IT IS FURTHER ORDERED that the remaining claims in this matter are **DISMISSED**.

The court instructs the clerk of the court to close this matter accordingly.

IT IS SO ORDERED.

DATED this 7th day of November, 2017.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE