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6 *Attorneys for Plaintiff HSBC Bank*
7 *USA, National Association*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

11 HSBC BANK USA, NATIONAL
ASSOCIATION, as Trustee for Wells Fargo
12 Asset Securities Corporation, Mortgage Pass-
Through Certificates, Series 2006-18;

13 Plaintiff,

14 vs.

15 MICHAEL GRIBOSKI, an individual; CODY
16 LOGAN, an individual; LAKE VILLAGE
HOMEOWNERS ASSOCIATION, a Nevada
17 non-profit corporation; and GAYLE A. KERN,
LTD., a Nevada professional corporation, d/b/a
18 Kern & Associates, Ltd.;

19 Defendants.

Case No.: 3:17-cv-00514-MMD-VPC

**STIPULATION AND ORDER FOR
DISMISSAL WITHOUT PREJUDICE
OF GAYLE A. KERN, LTD., DBA
KERN & ASSOCIATES, LTD.**

21 Plaintiff HSBC Bank USA, National Association, as Trustee for Wells Fargo Asset
22 Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-18 (“HSBC”) and
23 Defendant Gayle A. Kern, Ltd., dba Kern & Associates, Ltd., (“Kern,” and together with HSBC,
24 the “Parties”), by and through their undersigned counsel of record, hereby stipulate and agree as
25 follows:

26 WHEREAS, the above-captioned action concerns Defendant Lake Village Homeowners
27 Association’s (“Association”) NRS Chapter 116 foreclosure sale on or about December 16,
28 2015 (the “Foreclosure Sale”) of that certain real property in Douglas County, Nevada with

1 APN 1318-23-310-060, commonly known as 2 Manzanita Court, Zephyr Cove, Nevada 89448
2 (the “Property”);

3 WHEREAS, HSBC filed its Complaint on August 24, 2017, alleging several causes of
4 action against Kern; and

5 WHEREAS, Kern has never claimed any interest in the Property.

6 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

7 1. The Complaint is dismissed without prejudice as to Kern only, with each party to
8 bear its own fees/costs.

9 2. Any statute of limitations for the causes of action which may have expired since
10 the Complaint was filed on August 24, 2017, shall be tolled from the date this Stipulation is
11 signed by the Parties until the litigation is fully and finally concluded, which shall include any
12 appeals and proceedings following remand from an appellate court.

13 3. Except as is set forth in the preceding paragraph, nothing in this Stipulation shall
14 diminish or affect any defense available to any Party as of the date of this Stipulation, and this
15 Stipulation shall not be deemed to revive any claim, remedy, and/or cause of action, legal or
16 equitable, that is or was already barred as of the date of this Stipulation, nor shall this Stipulation
17 create any new claim, remedy, and/or cause of action, legal or equitable, against any Party
18 hereto. Nothing in this Stipulation, or in the circumstances that gave rise to this Stipulation shall
19 be construed as an acknowledgement by any Party that any claim, remedy, and/or cause of
20 action, legal or equitable, has or has not been barred, or is about to be barred, by the statute of
21 limitations, laches, or other defense based on the lapse of time.

22 4. This Stipulation shall not operate as an admission of liability by any Party.
23 Neither this Stipulation nor any action taken pursuant to this Stipulation shall be offered or
24 received in evidence in any action or proceeding as an admission of liability or wrongdoing by
25 any Party.
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1 5. Within 30 days after this Stipulation is executed by the Court, Kern shall provide
2 to the Association’s counsel of record the Association’s records, which are in Kern’s possession,
3 concerning the Association’s NRS Chapter 116 assessment lien foreclosure on the Property for
4 production by the Association’s defense counsel in the course of discovery under the Nevada
5 Rules of Civil Procedure, subject to any and all applicable objections. Notwithstanding the
6 foregoing, HSBC reserves its right to exercise all rights and remedies—including but not limited
7 to the rights and remedies set forth in the Federal Rules of Civil Procedure for procuring
8 evidence from non-parties—to seek and acquire documents directly from Kern. Likewise, Kern
9 reserves any and all rights, remedies, defenses, and objections including, but not limited to,
10 attorney client and/or work product privilege, to any discovery requests by HSBC.

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12 6. Upon proper notice by Plaintiff, in accord with the Nevada Rules of Civil
13 Procedure, Kern shall make available a knowledgeable witness for deposition limited to the
14 Association’s assessment lien foreclosure sale of the Property, and subject to any and all
15 applicable objections and privileges. Kern shall be provided 30 days’ notice of the deposition,
16 and an opportunity to coordinate with Counterclaimants’ counsel, a mutually convenient time,
17 date and location of such deposition.

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19 7. In regard to Kern’s appearance for depositions, as described in Paragraph 6 herein,
20 Kern shall have the same rights, defenses, and remedies as a party to the litigation relative to any
21 notice of deposition addressed to Kern. Notwithstanding the foregoing, HSBC reserves its right
22 to exercise all rights and remedies—including but not limited to the rights and remedies set forth
23 in the Federal Rules of Civil Procedure for compelling the appearance of non-parties for
24 deposition and trial—to secure Kern’s appearance for deposition or trial.

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26 8. The Parties reserve any and all rights, privileges, and defenses under applicable
27 law.
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9. Nothing herein shall be construed as a waiver of the attorney client and/or work product privileges that exists among and between Kern and the Association, or any other association client of Kern.

Wherefore, the undersigned request this Court enter an Order granting the above stipulation.

Dated: January 19, 2018.

Dated: January 19, 2018.

SNELL & WILMER L.L.P.

KERN & ASSOCIATES, LTD.

By: /s/ Adam Tully

By: /s/ Karen Ayarbe

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*Attorneys for Plaintiff HSBC Bank
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*Attorneys for Defendant Gayle A. Kern,
Ltd., dba Kern & Associates, Ltd.*

ORDER

IT IS SO ORDERED.



UNITED STATES DISTRICT COURT JUDGE

DATED: January 22, 2018