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15 Of Counsel

16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 BANK OF AMERICA, N.A.,

19 Plaintiff,

20 v.

21 M. DIANE HUTTON-POTTS, SURVIVING
22 TRUSTEE OF THE HUTTON-POTTS
23 FAMILY TRUST DATED SEPTEMBER 25,
24 1989; SECRETARY OF HOUSING AND
URBAN DEVELOPMENT; DEPARTMENT
OF TREASURY-INTERNAL REVENUE
SERVICE,

Defendants.

Civil No.: 3:17-cv-00684-MMD-WGC

**STIPULATION [AND] PROPOSED
ORDER BETWEEN BANK OF
AMERICA, N.A. AND UNTIED STATES
(IRS) REGARDING COMPLAINT FOR
QUIET TITLE AND DECLARATORY
RELIEF**

(Removed from the District Court for the
State of Nevada, Douglas County, Case No.
17-cv-0243)

22 COMES now Plaintiff, Bank of America, N.A. and Defendant, United States of America, on

23 behalf of the Internal Revenue Service, an agency of the Department of Treasury, by and through their

1 undersigned counsel, and submit the following stipulation to resolve issue issues in dispute between
2 the two parties:

3 1. On October 20, 2017, the Bank of America, N.A. filed a civil action in the Douglas
4 County District Court against M. Diane Hutton-Potts, surviving trustee of the Hutton-Potts Family
5 Trust Dated September 25, 1989 (“Hutton-Potts”), the Secretary of Housing and Urban Development
6 (“HUD”), and the Department of Treasury-Internal Revenue Service (“IRS”). The Plaintiff seeks to
7 reform a deed of trust on real property in Douglas County due to an error in the legal description of the
8 property as described in more detail in the Complaint. The Plaintiff also seeks declaratory relief that its
9 deed of trust has priority over the interests of the other defendants, including the subject federal tax
10 liens.

11 2. On November 20, 2017, the United States on behalf of the IRS, removed this action to
12 the United States District Court for the District of Nevada (Notice of Removal-ECF No. 1). On
13 December 7, 2017, Defendant HUD filed a Notice of Disclaimer of Interest (ECF No. 5). Defendant
14 Hutton-Potts has not responded to the Complaint or otherwise entered an appearance in either the State
15 Court or District Court proceedings.

16 7. On December 27, 2017, the Court granted the parties Joint Motion for extension for
17 United States to respond to Complaint (ECF No. 7). The United States’ response to the Complaint is
18 currently due by February 8, 2018.

19 8. In 2010, Hutton-Potts submitted a refinance application to Bank of America, N.A. in
20 order to refinance a loan secured by a Deed of Trust recorded in 2008 against real property commonly
21 known as 211 Mountain Reach Court, Gardnerville, Nevada 89460 (hereinafter “Subject Property”).
22 The 2008 Deed of Trust was released as a lien against the Subject Property after the close of the 2010
23 refinance escrow.

1 9. In conjunction with the refinance escrow, on May 3, 2010 a Deed of Trust in the
2 amount of \$690,000.00 against the subject Property was recorded with the Douglas County Recorder's
3 Office at Document 762979 with Hutton-Potts as the Borrower and Bank of America, N.A. as the
4 Lender. The legal description of the Subject Property attached to Bank of America, N.A.'s Deed of
5 Trust contained errors, as it did not contain easement language described as Parcel 2.

6 10. The Bank of America, N.A.'s Deed of Trust is secured by a Reverse Amortization Note.
7 The amount advanced at closing on March 30, 2010 was \$283,433.39. The Bank of America, N.A. has
8 represented that no further monies were advanced pursuant to the terms of the Note after the March
9 30, 2010 refinance escrow closed. Any increase in the amount owed under the Note secured by the
10 Deed of Trust is due solely to the accrual of interest and servicing costs and other charges.

11 11. On April 11, 2016, the Internal Revenue Service recorded a Notice of Federal Tax Lien
12 against Diane M. Hutton-Potts with the Douglas County Recorder's Office for unpaid income taxes for
13 the years 2013 and 2014 in the amount of \$20,818.23. Bank of America, N.A and the United States
14 agree and stipulate that the federal tax liens on this liability arose on the date of assessment, June 2,
15 2014, and currently encumber the Subject Property.

16 12. Bank of America, N.A. and the United States stipulate and agree that the Bank of America,
17 N.A.'s Deed of Trust recorded on May 3, 2010 with the Douglas County Recorder's Office at Document
18 762979 is secured by the Subject Property as of May 3, 2010, and is senior to the federal tax liens identified
19 above on the Subject Property.

20 13. The United States does not oppose Bank of America, N.A.'s reformation of its Deed of
21 Trust to incorporate the legal description set forth below, and does not oppose the retroactive application
22 of the reformation to the date the Deed of Trust was originally recorded with the Douglas County
Recorder's Office on May 3, 2010:

23 14. The United States stipulates and agrees that Bank of America, N.A.'s Deed of Trust may
24 be reformed with the following legal description (changes in bold):

1
2 **PARCEL 1:**

3 Parcel 4D-2, as set forth on Parcel Map No. 2 for JOE M. EDWARDS, et al,
4 filed for record in the office of the County Recorder of Douglas County, State
5 of Nevada on March 15, 1993, in Book 393, Page 3042, as Document No.
6 302061.

7 APN 1219-03-002-006

8
9 **PARCEL 2:**

10 **TOGETHER WITH: An exclusive fire and access easement across Parcel**
11 **4D-1 of Parcel Map recorded as Document No. 297458, Douglas County,**
12 **Nevada. Within Section 3, Township 12 North, range 19 East, M.D.B. & M.,**
13 **and more particularly described as follows:**

14 **COMMENCING at the West $\frac{1}{4}$ corner of Section 3, as shown on Parcel Map**
15 **recorded as Document No. 297458, Douglas County, Nevada; thence South**
16 **$00^\circ 09''$ East, 234.90 feet, thence south $00^\circ 06'52''$ East, 174.97 feet; thence**
17 **along the south line of Parcel 4D-1, South $88^\circ 42'59''$ East, 356.11 feet to the**
18 **Southeast corner of Parcel 4D-1, said point also being the TRUE POINT OF**
19 **BEGINNING; thence North $88^\circ 42'59''$ West, 19.69 feet; thence along a non-**
20 **tangent curve to the right with radius of 45.00 feet, central angle of $72^\circ 22'46''$**
21 **and arc length of 56.85 feet (chord bears North $47^\circ 44'27''$ East, 53.14 feet);**
22 **thence on a non-tangent curve to the left with radius of 45.00 feet, central**
23 **angle of $54^\circ 26'33''$ and arc length of 42.76 feet (chord bears South $28^\circ 30'17''$**
24 **West 41.17 feet) to the POINT OF BEGINNING.**

15 15. The United States and Bank of America, N.A. agree to bear their own respective costs
16 related to the litigation, including any possible attorneys' fees.

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18 ///

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16. Unless otherwise ordered by the Court, the United States is excused from further participation in this case; it will not have to appear at future hearings unless specifically requested by the Court. Should the Court grant Bank of America, N.A.'s request to reform the Deed of Trust, the judgment shall incorporate the terms of this stipulation regarding priority between Bank of America, N.A. and the United States as described above.

DATED: January 22, 2017

/s/Henry C. Darmstadter
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Acting United States Attorney

Attorneys for the United States

DATED: January 22, 2017

/s/ Kristan Lehtinen
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702-667-3000

Attorneys for Plaintiff

IT IS SO ORDERED:

UNITED STATES DISTRICT COURT
JUDGE

DATED: January 22, 2018

1 CERTIFICATE OF SERVICE

2 It is hereby certified that service of the foregoing **STIPULATION [AND] PROPOSED**
3 **ORDER BETWEEN BANK OF AMERICA, N.A. AND UNITED STATES (IRS) REGARDING**
4 **COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF** was made on Plaintiff
5 through the Court's electronic filing and notice system (CM/ECF) or, as appropriate, by sending a
6 copy of the same by first class mail, addressed to the following addresses:

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20 DATED this 22nd day of January 22, 2017.

22 /s/ Henry C. Darmstadter
23 Henry C. Darmstadter