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9

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 BELLA HOMES, LLC, a Limited Liability
Company,

13 Plaintiff,

14 v.

15 RECONTRUST COMPANY, N.A.; an entity of
unknown form; BANK OF AMERICA, N.A.; an
16 entity of unknown form; and DOES 1-100,
inclusive,

17 Defendants.
18

Case No.: 2:12-cv-00068

**PETITION FOR REMOVAL TO
FEDERAL COURT PURSUANT TO 28
USC §§ 1332, 1441(b) AND 1446**

19 Defendants Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP
20 (**BANA**) and ReconTrust Company, N.A (**ReconTrust**) remove the action filed in the Eighth
21 Judicial District Court as Case No. A-11-653791-C to this Court pursuant to 28 U.S.C §§ 1332, 1441
22 and 1446. In support of this removal Petition, Removing Defendants state as follows:

23 **BACKGROUND**

24 1. On December 27, 2011, Plaintiff filed its action in the Eighth Judicial District Court
25 of the State of Nevada as Case No. A-11-653791-C.

26 2. Removing Defendants are unaware of proper service of copy of the Summons and
27 Complaint on any defendant. Copies of the documents faxed to ReconTrust are attached as **Exhibit**
28 **A** pursuant to 28 U.S.C. § 1446(a).

DIVERSITY JURISDICTION

3. Plaintiff does not allege its citizenship in the Complaint. Upon information and belief, Bella Homes, LLC is an Arizona limited liability corporation with its headquarters in Arizona.

4. Defendant ReconTrust is a national association. It is a citizen of California because its articles of organization describe that state as the home of its main office. *See* 28 U.S.C. § 1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006).

5. BANA is a National Banking Association. Its principal office is in North Carolina. BANA is a citizen of North Carolina for purposes of diversity jurisdiction.

6. The citizenship of the unknown Defendants Does 1-100 are not considered for diversity purposes in a petition for removal. *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980); 28 U.S.C. § 1441(a).

7. There is complete diversity among the parties. Plaintiff is an Arizona citizen. No properly named Defendant is an Arizona citizen.

8. The amount in controversy in this action exceeds \$75,000. Plaintiff seeks injunctive and declaratory relief along with special, general and punitive damages. *See* Compl., pp. 8-9. "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Cohn v. Petsmart*, 281 F.3d 837, 840 (9th Cir. 2002). Plaintiff challenges the validity of a \$268,831.00 promissory note secured by a deed of trust on subject property. *See* Deed of Trust, attached as **Exhibit B**. Plaintiff challenges the note and deed of trust and asks the Court to enjoin defendants from enforcing the deed of trust through a non-judicial foreclosure sale. The value of the object of Plaintiff's injunctive relief, together with Plaintiff's demand for general and special damages is well over \$75,000.00, exclusive of costs and interest.

9. Plaintiff also seeks unspecified punitive damages. *See* Compl., p. 9. Plaintiff's demand for punitive damages also satisfies the amount in controversy requirement. *See* Nev. R. Civ. P. 42.005(b) (allow plaintiffs to recover \$300,000 for punitive damages where they are awarded compensatory damages of less than \$100,000 and where they prove defendants are guilty of

1 oppression, fraud or malice) and *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir.
 2 2007) (holding punitive damages should be taken into consideration in determining whether a
 3 defendant has satisfied the amount in controversy requirement).

4 10. In sum, Plaintiff is a citizen of Arizona, while no Defendant is a citizen of Arizona.
 5 The amount in controversy exceeds the \$75,000, exclusive of costs and interest. The Court has
 6 diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

7 **ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN MET**

8 11. Defendants filed this petition for removal within the 30-day time limit allowed under
 9 28 U.S.C. § 1446(b) where Defendants were never properly served with a Summons an Complaint.
 10 The removal period is calculated from the date the last defendant was served. *See Destfino v.*
 11 *Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011); *Coleman v. Assurant, Inc.*, 463 F. Supp. 2d 1164, 1168
 12 (D. Nev. 2006).

13 12. The consent of the unknown and unserved Defendants Does 1-100, is not required in
 14 a petition for removal. *See Fristoe*, 615 F.2d at 1213.

15 **CONCLUSION**

16 13. By this notice of removal and the associated attachments, Defendants do not waive
 17 any objections that they may have as to service, jurisdiction or venue, or any other defenses or
 18 objections they may have to this action. Defendants intend no admission of fact, law or liability by
 19 this notice, and expressly reserve all defenses, motions and/or pleas.

20 DATED this 13th day of January, 2012.

21 **AKERMAN SENTERFITT LLP**

22
 23 /s/ Diana S. Erb

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January, 2012, and pursuant to FRCP 5, I served via the CM/ECF electronic filing system and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **PETITION FOR REMOVAL TO FEDERAL COURT PURSUANT TO 28 USC §§ 1332, 1441(b) AND 1446**, postage prepaid and addressed to:

James R. Stout, Esq.
STOUT LAW FIRM
9555 Hillwood Drive, Suite 150
Las Vegas, NV 89134

Attorneys for Plaintiff

/s/ Sarah Starkey
An employee of AKERMAN SENTERFITT LLP

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