

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT ASHLAND**

BOYD COUNTY, ex rel Phillip Hedrick, County
Attorney of Boyd County, Kentucky,
BREATHITT COUNTY, ex rel Brendon Miller, County
Attorney of Breathitt County, Kentucky,
CARTER COUNTY, ex rel Patrick Flannery, County
Attorney of Carter County, Kentucky,
CHRISTIAN COUNTY, ex rel Michael Foster, County
Attorney of Christian County, Kentucky,
CLARK COUNTY, ex rel Brian Thomas, County
Attorney of Clark County, Kentucky,
FLOYD COUNTY, ex rel Keith Bartley, County
Attorney of Floyd County, Kentucky,
FRANKLIN COUNTY, ex rel Rick Sparks, County
Attorney of Franklin County, Kentucky,
GREENUP COUNTY, ex rel Michael Wilson, County
Attorney of Greenup County, Kentucky,
JOHNSON COUNTY, ex rel Michael Endicott, County
Attorney of Johnson County, Kentucky,
LETCHER COUNTY, ex rel Jamie Hatton, County
Attorney of Letcher County, Kentucky,
MAGOFFIN COUNTY, ex rel Greg Allen, County
Attorney of Magoffin County, Kentucky,
MASON COUNTY, ex rel John Estill, County Attorney
of Mason County, Kentucky,
PIKE COUNTY, ex rel Howard Keith Hall, County
Attorney of Pike County, Kentucky,
WARREN COUNTY, ex rel Amy Milliken, County
Attorney of Warren County, Kentucky,

on behalf of themselves and all others similarly situated,

PLAINTIFFS,

v.

MERSCORP, INC.,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEM, INC.,
MERSCORP HOLDINGS, INC.,
AMERICAN LAND TITLE ASSOCIATION,
BANK OF AMERICA,

Case No. _____

DEMAND FOR JURY TRIAL

CCO MORTGAGE CORPORATION,
JPMORGAN CHASE BANK,
CITIMORTGAGE, INC.,
CRE FINANCIAL COUNCIL, AS SUCCESSOR TO
COMMERCIAL MORTGAGE SECURITIES
ASSOCIATION,
CORELOGIC,
CORINTHIAN MORTGAGE CORPORATION,
EVERHOME MORTGAGE COMPANY,
FEDERAL HOME LOAN MORTGAGE
CORPORATION (“FREDDIE MAC”),
FEDERAL NATIONAL MORTGAGE ASSOCIATION
(“FANNIE MAE”),
FIRST AMERICAN TITLE INSURANCE CORP.,
GMAC RESIDENTIAL FUNDING CORPORATION,
BBVA COMPASS BANCSHARES AS SUCCESSOR
TO GUARANTY BANK,
HSBC FINANCE CORPORATION,
MERRILL LYNCH CREDIT CORPORATION,
MGIC INVESTOR SERVICES CORPORATION,
MORTGAGE BANKERS ASSOCIATION INC.,
NATIONWIDE ADVANTAGE MORTGAGE
COMPANY,
PMI MORTGAGE INSURANCE COMPANY,
STEWART TITLE COMPANY,
SUNTRUST MORTGAGE, INC.,
UNITED GUARANTY CORPORATION,
WELLS FARGO BANK, N.A.,
LENDER PROCESSING SERVICES, INC., AND
RECONTRUST, N.A.

DEFENDANTS.

CLASS ACTION COMPLAINT

Plaintiffs, by and through undersigned counsel, on behalf of themselves and all other Kentucky counties, for their class action complaint against the above-captioned defendants, state as follows:

PARTIES AND JURISDICTION

1. This is a class action pursuant to Fed.R.Civ.P. 23 commenced by Plaintiffs Boyd County, Breathitt County, Carter County, Christian County, Clark County, Floyd County, Franklin County, Greenup County, Johnson County, Letcher County, Magoffin County, Mason County, Pike County, and Warren County, on behalf of themselves and all other Kentucky counties. This class action has been brought because Defendants deliberately have failed to record required mortgage assignments in the proper Kentucky county recording offices, have deprived each county and the Commonwealth of Kentucky of recording fees required by Kentucky law, have filed false mortgage documents, and have deprived mortgagees of their statutorily required notice of mortgage assignments.

2. Plaintiff Boyd County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Phillip Hedrick, as County Attorney of Boyd County, sues on behalf of Boyd County and all other Kentucky Counties.

3. Plaintiff Breathitt County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Brendon Miller, as County Attorney of Breathitt County, sues on behalf of Breathitt County and all other Kentucky Counties.

4. Plaintiff Carter County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Patrick Flannery, as County Attorney of Carter County, sues on behalf of Carter County and all other Kentucky Counties.

5. Plaintiff Christian County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, J. Michael Foster, as County Attorney of Christian County, sues on behalf of Christian County and all other Kentucky Counties.

6. Plaintiff Clark County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Brian Thomas, as County Attorney of Clark County, sues on behalf of Clark County and all other Kentucky Counties.

7. Plaintiff Floyd County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Keith Bartley, as County Attorney of Floyd County, sues on behalf of Floyd County and all other Kentucky Counties.

8. Plaintiff Franklin County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Rick Sparks, as County Attorney of Franklin County, sues on behalf of Franklin County and all other Kentucky Counties.

9. Plaintiff Greenup County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Michael Wilson, as County Attorney of Greenup County, sues on behalf of Greenup County and all other Kentucky Counties.

10. Plaintiff Johnson County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Michael Endicott, as County Attorney of Johnson County, sues on behalf of Johnson County and all other Kentucky Counties.

11. Plaintiff Letcher County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Jamie Hatton, as County Attorney of Letcher County, sues on behalf of Letcher County and all other Kentucky Counties.

12. Plaintiff Magoffin County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Greg Allen, as County Attorney of Magoffin County, sues on behalf of Magoffin County and all other Kentucky Counties.

13. Plaintiff Mason County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, John Estill, as County Attorney of Mason County, sues on behalf of Mason County and all other Kentucky Counties.

14. Plaintiff Pike County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Howard Keith Hall, as County Attorney of Pike County, sues on behalf of Pike County and all other Kentucky Counties.

15. Plaintiff Warren County is situated within the boundaries of the Commonwealth of Kentucky. Pursuant to KRS § 69.210, Amy Milliken, as County Attorney of Warren County, sues on behalf of Warren County and all other Kentucky Counties.

16. Each of the Plaintiffs are acting through their respective County Attorneys under the authority of their Fiscal Courts pursuant to KRS § 67.080.

17. Defendant MERSCORP., INC. is a Delaware corporation which maintains its principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. As a national organization, this Defendant conducts business in the Commonwealth of Kentucky.

18. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware corporation, and a national organization which conducts business in the Commonwealth of Kentucky. MERS has its principal place or business located at 1818 Library Street, Reston, Virginia 20191.

19. Defendant MERSCORP Holdings, Inc. is a Delaware corporation, and a national organization which conducts business in the Commonwealth of Kentucky. MERSCORP Holdings, Inc. has its principal place or business located at 1818 Library Street, Reston, Virginia 20191.

20. Defendant American Land Title Association is a national trade association with its principal place of business located at 1828 L Street, N.W., Suite 705, Washington, DC 20036, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/title business in the Commonwealth of Kentucky.

21. Defendant Bank of America, N.A. is a Delaware corporation with its principal place of business located at 100 N. Tryon St., Charlotte, NC 28255, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

22. Defendant CCO Mortgage Corporation (CCO) (f/k/a American Home Funding, Inc. and Charter One Mortgage Corporation), a division of RBS Citizens, N.A. and a subsidiary of Citizens Financial Group, Inc., is an Ohio corporation with its principal place of business located at 10561 Telegraph Road, Glen Allen, Virginia 23059 and, according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

23. Defendant JPMorgan Chase Bank, parent company to Chase Home Mortgage Corporation (f/k/a Chase Home Finance), a division of Chase Bank, N.A. and J.P. Morgan Chase & Company, is a Delaware corporation with its principal place of business at 270 Park Avenue, 38th Floor, New York, New York 10017, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

24. Defendant CitiMortgage, Inc., a wholly owned subsidiary of CitiBank, N.A. is a New York corporation with its principal place of business located at 1000 Technology Drive, MS 140, O’Fallon, Missouri 63304, and according to www.mersinc.org, is a shareholder in

“MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

25. Defendant CRE Finance Council, formerly known as the Commercial Mortgage Securities Association, is a New York corporation and a national organization that conducts business in Kentucky. CRE Financial Council has its principal place of business located at 330 Broad Street, 30th Floor, New York, New York 10004, and according to www.mersinc.org, is a shareholder in “MERS.”

26. Defendant CoreLogic is a Florida corporation and a national organization that conducts business in Kentucky. CoreLogic has its principal place of business located at 4 First American Way, Santa Ana, CA 92707, and according to www.mersinc.org, is a shareholder in “MERS.”

27. Defendant Corinthian Mortgage Corporation is a Mississippi corporation with its principal place of business at 5750 W 95th Street, Suite 155, Overland Park, KS 66207, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

28. Defendant EverHome Mortgage Company (f/k/a Alliance Mortgage Company), a fully owned subsidiary of EverBank Financial Corp., is a Florida corporation with its principal place of business located at 8100 Nations Way, Jacksonville, Florida 32256, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

29. Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”) is a government-sponsored enterprise with its principal place of business located at 8200 Jones Branch Drive, McLean, VA 22102-3110, and according to www.mersinc.org, is a shareholder in

“MERS.” Federal courts have original jurisdiction over this defendant. Freddie Mac owns mortgage notes secured by real estate in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

30. Defendant Federal National Mortgage Association (“Fannie Mae”) is a government-sponsored enterprise with its principal place of business located at 3900 Wisconsin Avenue, NW, Washington, DC 20016-2892, and according to www.mersinc.org, is a shareholder in “MERS.” It owns mortgage notes secured by real estate in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

31. Defendant First American Title Insurance Corp. is a California corporation with its principal place of business located at 1 First American Way, Santa Ana CA 92707, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts title insurance business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

32. Defendant GMAC Residential Funding Corporation (d/b/a GMAC Bank, GMAC Commercial Mortgage Corp., GMAC Mortgage, GMAC Mortgage Corp., GMAC Mortgage LLC), a wholly owned subsidiary of Ally Financial, Inc., is a Delaware corporation with its principal place of business located at 8400 Normandale Lake Blvd., Minneapolis, Minnesota 55437, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

33. Defendant BBVA Compass Bancshares, Inc. as successor to Guaranty Bank is an Alabama corporation with its principal place of business at 15 South 20th Street, Birmingham, AL 35233, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts

mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

34. Defendant HSBC Finance Corporation is a Delaware corporation with its principal place of business at 26525 N. Riverwoods Blvd., Mettawa, Illinois 60045, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

35. Defendant Merrill Lynch Credit Corporation is a Delaware corporation with its principal place of business at 4804 Deer Lake Drive East, Jacksonville, Florida 32246, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

36. Defendant MGIC Investor Services Corporation is a Wisconsin corporation with its principal place of business located at 250 E. Kilbourn Ave., Milwaukee, WI 53202, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage insurance business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

37. Defendant Nationwide Advantage Mortgage Company (d/b/a Nationwide Bank, Nationwide Mortgage Concepts, Inc., Nationwide Mortgage Corp.), is an Iowa corporation with its principal place of business located at 1100 Locust Street, Dept. 2009, Des Moines, Iowa 50391, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

38. Defendant PMI Mortgage Insurance Company is an Arizona corporation with its principal place of business located at 3003 Oak Road, Walnut Creek CA 94597, and according to

www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage insurance business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

39. Defendant Stewart Title Company is a Texas corporation with its principal place of business located at 1980 Post Oak Boulevard, Suite 800, Houston, Texas 77056, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage-related business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

40. Defendant SunTrust Mortgage, Inc. is a Virginia corporation with its principal place of business located at 901 Semmes Avenue, Richmond, Virginia 23224, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

41. Defendant United Guaranty Corporation is a North Carolina corporation with its principal place of business located at 230 North Elm Street, Greensboro NC 27420, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage insurance business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

42. Defendant Wells Fargo Bank, N.A. (d/b/a Americas Mortgage Outsource Program), is a national bank that is set up under the laws of United States with its principal place of business at 101 N. Phillips Avenue, Sioux Falls, South Dakota 57104, and according to www.mersinc.org, is a shareholder in “MERS.” It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

43. Defendant Lender Processing Services, Inc., is a Delaware corporation with its principal place of business at 601 Riverside Ave., Jacksonville FL 32204. It conducts mortgage-related business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

44. Defendant ReconTrust Company , NA, is a wholly-owned subsidiary of Bank of America with its principal place of business at 2380 Performance Drive, Richardson, TX 75082. It conducts mortgage/banking business in the Commonwealth of Kentucky, and is subject to the jurisdiction of this Court.

45. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because the amount in controversy is greater than \$5 million and the Plaintiffs are all citizens of Kentucky and Defendants are not citizens of Kentucky. This Court also has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, made applicable by 12 U.S.C. § 1452(f), because Federal Home Loan Mortgage Corporation is a defendant herein.

46. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to the claims herein occurred in this judicial district.

FACTS

47. For hundreds of years, the combination of recorded deeds, recorded mortgages, and recorded mortgage assignments have provided the public in Kentucky with the tools necessary to effectuate real estate transactions with the knowledge that all potential interests in the property have been addressed with legal finality. The county recording system in Kentucky has been in place since the Commonwealth joined the United States.

48. Defendants have failed to record mortgage assignments in contravention of Kentucky law depriving Kentucky counties of millions of dollars in unpaid fees for mortgage assignments. The Defendants have taken advantage of the protections afforded by Kentucky's laws by recording mortgages in land records maintained by Kentucky's counties while at the same time they have failed to comply with Kentucky's laws requiring accurate information in

mortgage instruments, the recording of assignments of the same mortgages, and the payment of required recording fees for the statutorily required recording of mortgage assignments.

49. Kentucky counties are charged with maintaining a property records system that provides Kentucky citizens with accurate notice of property interests in land. Kentucky specifically requires that all mortgages be recorded in the county clerk's office: "All deeds, mortgages and other instruments required by law to be recorded to be effectual against purchasers without notice, or creditors, shall be recorded in the county clerk's office..." KRS 382.110(1). After the initial recording of a mortgage, Kentucky law requires that all assignments of a mortgage be recorded in the county clerk's office, KRS 382.360(3), and that a fee be paid for each assignment by the assignee. KRS 64.012(1)(a).

50. Kentucky's public policy for accurate, transparent, and current land records makes it a criminal offense to file records that are forged, are groundless or contain material misstatements. Kentucky law further provides that instruments missing complete and accurate information regarding the person preparing the instrument and the address information of a person receiving an interest in the property by way of the instrument should not be received or permitted to be recorded. Defendants have participated in a scheme utilizing material misstatements of interests in mortgages filed in Kentucky and Plaintiffs no longer intend to receive such instruments for recording.

51. The recording fees required to be paid by mortgage assignees are, by statute, used to fund the counties' land records services, and also provide funding for Kentucky's Affordable Housing Trust Fund, a fund established to address homelessness and inadequate housing for families in Kentucky, with surpluses to go to the local county governments to help fund other services. The typical recording fee historically has been twelve dollars (for a document that is

three pages or less), with six dollars designated by statute to go to the Affordable Housing Trust Fund. Accordingly, the scheme the Defendants devised and executed to circumvent paying fees for mortgage assignments have deprived Plaintiffs of funds to support both county land record services they provide for the benefit of the Defendants as well as other services and benefits for their residents.

52. To finance the purchase of real property, a borrower typically receives a loan, often in the form of a mortgage, from an originating lender comprised of two separate documents: (1) a promissory note, which establishes the borrower's obligation to repay the loan, and (2) the mortgage itself, which gives the lender a security interest in the borrower's property to secure repayment of the loan. Typically, a lender will record its mortgage in the appropriate county's public land records to reflect and protect its interest in the real property. Transfers of those interests would similarly be recorded as mortgage assignments. In 2006, the Commonwealth of Kentucky passed legislation making the recording of mortgage assignments mandatory for previously-recorded mortgages.

53. Beginning in the 1990s, securitization of mortgages became a more common practice wherein mortgage lenders would originate as many residential mortgage loans as possible for sale to various banks and financial institutions. Those banks and financial institutions would, in turn, trade the mortgages amongst themselves and subsequently pool them into trusts for eventual sale to investors as mortgage-backed securities ("MBS").

54. Securitizing a mortgage requires several assignments to be made as:
(i) originating lenders sell mortgages (each of which includes both the promissory note and the mortgage documents) to an aggregator or sponsor, which usually is a special purpose entity, often affiliated with a large financial institution or investment bank; (ii) the sponsor initiates

securitization by transferring (i.e., assigning) the mortgage to a depositor; and, (iii) the depositor then transfers the mortgage to a “special purpose vehicle” (usually a trust) to be held for the eventual sale to and subsequent benefit of investors. The typical life of a securitized Kentucky mortgage, therefore, entails at least three assignments that should be recorded under Kentucky law.

55. The Defendant shareholders of Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) established MERS in the mid-1990s to act as an electronic clearinghouse for the transfer of mortgage interests among its members expressly to avoid recording mortgage assignments with local recording systems and to avoid paying requisite recording fees. The MERS system circumvents the mortgage assignment recordation system of Kentucky’s counties by facilitating the selling and buying of notes secured by real property without complying with Kentucky’s requirements for the recordation of mortgage assignments. As stated on its website, “MERS eliminates the need to prepare and record assignments when trading residential and commercial mortgage loans.” See <http://www.mersinc.org/> (last viewed November 14, 2011).

56. Defendants herein include MERS shareholders, MERS members and other real estate transaction participants who caused and aided and abetted MERS to act as a privately run mortgage recording system for its members to the detriment of the Plaintiffs, the class the Plaintiffs seek to represent, and the citizens of the Commonwealth of Kentucky. MERS from the outset anticipated depriving local land recording systems of millions of dollars in recording fees and estimated that its scheme would save its members \$77 to \$200 million annually nationwide.

57. MERS was devised to increase profits in the primary and secondary mortgage market, and to facilitate securitization of mortgages through the rapid assignment of mortgages

between financial institutions. MERS maintains a private computer system that allows its users to, among other things, register and track changes in ownership interests in mortgages outside the applicable state or county property recording systems (while at the same time taking advantage of those systems by recording mortgages in the first instance). Mortgagor property owners and other non-members, however, cannot access the private MERS system. Members pay MERS membership fees to register and track mortgage ownership interests and servicing rights on the MERS system, and fees for each transaction conducted, instead of paying recording fees to state and county governments.

58. MERS members avoid recording every mortgage assignment by first recording mortgage on which they claim “MERS” as their agent through a series of designations, such as “MERS as assignee,” “MERS as nominee,” or “MERS as beneficiary.” Once “MERS land instruments” – such as mortgages and mortgage assignments – are recorded in county land records and purportedly registered on the MERS private system (either as a mortgage or mortgage assignment), MERS members usually do not record subsequent, intermediate mortgage assignments. They often only record a mortgage assignment when MERS members seek to initiate a terminating event (e.g., foreclosure when the mortgage is in default, or release when the mortgage is refinanced or otherwise satisfied).

59. By circumventing Kentucky’s county recording requirements, the Defendants have evaded, and continue to evade, the requirement for recordation of mortgage assignments and have evaded, and continue to evade, paying the attendant recording fees. Upon information and belief, MERS is, or has been, the “assignee” or “nominee” or “beneficiary” on hundreds of thousands of mortgages recorded in Kentucky and the Defendants have not paid fees to record mortgage assignments multiple times for each such mortgage.

60. Franklin County land records and public filings for one mortgage sold into a mortgage-backed security illustrate how assignments take place but are not recorded by the participants in the MERS scheme, as follows:

- In March of 2006, “Couple X” bought a home in Franklin County. Their lender, Mortgage Lenders Network USA, Inc. identified MERS in the mortgage instrument as its nominee.
- A mortgage assignment was recorded in the Franklin County Clerk’s office in June 2011 stating that MERS, as nominee for Mortgage Lenders Network USA, Inc. assigned the mortgage to U.S. Bank, NA, as Trustee for RASC 2006-EMX4.
- Mortgage Lenders Network USA, however, ceased all lending and servicing operations shortly after it filed for bankruptcy in February 2007. Pursuant to the RASC 2006-EMX4 prospectus, the originator had sold mortgage loans to Residential Funding Corporation which then sold the mortgage loans to Residential Asset Securities Corporation which then sold the mortgage loans to Trustee U.S. Bank that were ultimately held by Wells Fargo Bank as custodian.
- The subject note was assigned at least three times, but only a single assignment, executed by an employee of Wells Fargo Bank as an Assistant Secretary of MERS, was filed more than five years later.

This illustration is typical of the path of mortgage assignments not recorded by the Defendants, which number in the thousands.

61. The Defendants simultaneously take advantage of the county land records systems to protect their property interests while deliberately not fulfilling their concomitant statutory obligations to file mortgage assignments. Kentucky counties operate registration systems that protect lien priority where MERS acts as nominee, but the Defendants do not provide the public with notice of assignments within MERS and have failed to pay statutorily required fees to support the system that protects their interests.

62. Kentucky law mandates that a certain portion of recording fees fund county expenses while another portion is earmarked for the Kentucky Affordable Housing Trust. As a direct result of the Defendants' failure to pay fees for mortgage assignments, every Kentucky county has been deprived of revenue needed to maintain the recording systems that lenders, including many of the Defendants, use to perfect their security interests in real estate in Kentucky. County governments that are entitled to any excess funds from county clerks' budgets have been denied valuable resources to provide services to their residents. Moreover, Kentucky counties have been denied opportunities to collect funds from filing fees intended, by statute, to fund the affordable housing trust for grants and loans to provide low income housing opportunities for their residents.

63. The county clerk is a constitutional office created by § 99 of the Kentucky Constitution. It is the duty of each county to budget for its clerk's expenses, including maintaining land records, and must use fee revenue to support that budget. Any funds in excess of the budget are to be paid to the fiscal court to be used for county expenses. Through their scheme to evade paying mandatory filing fees for mortgage assignments, the Defendants have deprived counties of revenue used to fund either their land records operations or, to the extent the fees generated a surplus, vital county services, in addition to profiting at the expense of the revenue stream envisioned by the Kentucky legislature for the Affordable Housing Trust.

64. Regarding affordable housing, KRS § 64.012 directs that six dollars from every fee collected for the first three pages of any mortgage-related document filed be paid to the Kentucky Affordable Housing Trust. The legislature amended KRS § 64.012 in 2006 to provide the Affordable Housing Trust, administered by the Kentucky Housing Corporation, with a permanent source of funding. This amendment occurred contemporaneously with the legislature

also amending KRS 382.360 to make filing mortgage assignments mandatory. Kentucky counties have a duty to collect mortgage assignment fees to fund the Affordable Housing Trust, which provides valuable services for their low income families.

65. In 2010, the Affordable Housing Trust assisted low income families throughout Kentucky to obtain affordable housing using just over \$5 million in funding. Unfortunately, according to the Kentucky Housing Corporation, the Affordable Housing Trust required at least another \$3 million to meet the needs of low income Kentucky families in 2010. Meanwhile, in 2010 in Franklin County, more than 600 mortgages were recorded with MERS as nominee. Assuming Franklin County is representative of Kentucky counties, MERS in 2010 was the nominee on mortgages at the rate of 28 per 1,000 housing units, or 54,000 mortgages Kentucky-wide, potentially depriving the Affordable Housing Trust of more than \$1 million in 2010 alone from unfiled assignments.

66. Because the MERS database is a private system, it hides chain of title problems, and does not create a system of records accessible by the public that can easily resolve disputes. The point of mortgage assignment recording statutes is to create a public record of who owns the security interest in a particular piece of property. The recording laws considered together create a system for determining who has enforceable rights regarding the land within a state's boundaries and, as such, establish a dispute resolution method.

67. It is part of a county's inherent powers to manage the land within its boundaries and the MERS business model affects every Kentucky county's ability to manage its land records. Any MERS error in documenting note transfers frustrates the ability of individuals to transfer property. It further subjects any chain of title dispute to a lengthy process that could otherwise be avoided by use of the state-mandated recording and priority system.

INDIVIDUAL AND CLASS ALLEGATIONS

68. The allegations of paragraphs 1-67 above are re-alleged and incorporated herein by reference.

69. Plaintiffs bring this action pursuant to Fed.R.Civ.P. 23 on behalf of themselves and all others similarly situated. The class consists of all counties by and through their County Attorneys located in the Commonwealth of Kentucky where the Defendants have failed to record mortgage assignments and pay applicable fees for said recordings of mortgages pursuant to KRS 382.360 and KRS 64.012(1)(a).

70. Pursuant to Fed.R.Civ.P. 23(a), Plaintiffs may sue the Defendants as representatives of a class because (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

71. There are 120 counties in the Commonwealth of Kentucky and, thus, the members of the class are so numerous that joinder of all members is impracticable.

72. There are questions of law and fact which are common to all members of the class, and those questions predominate over any question affecting only individual class members.

73. The principal common issues are whether Defendants violated KRS §§ 382-360 and 434.155; whether Defendants conspired to violate KRS §§ 382.360 and 434.155 by their use of Defendant MERS; whether Defendants committed fraud; and whether Defendants were unjustly enriched by their conduct.

74. Two additional common issues are (a) whether the Plaintiffs and the class of individuals that Plaintiffs seek to represent are entitled to an order declaring that these practices, as described above, are in violation of KRS § 382.360; and (b) the appropriate amount of damages and other relief to be granted to Plaintiffs and the class of individuals that Plaintiffs seek to represent.

75. The only individual questions concern the computation of the relief to be afforded each class member which can be determined by a ministerial examination of the relevant files.

76. Plaintiffs' claims are typical of the claims of the potential class members. All are based on the same legal and remedial theories.

77. Plaintiffs will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. Plaintiffs are similarly situated with the members of the class that Plaintiffs seek to represent. Plaintiffs have retained counsel experienced in handling class action suits involving unfair business practices and consumer credit law. Neither the named Plaintiffs nor Plaintiffs' counsel have any interest which might cause them not to vigorously pursue this action.

78. Certification under Fed.R.Civ.P. 23(b)(2) is appropriate. Defendants have acted in a uniform manner toward the Plaintiffs, and the class of counties that Plaintiffs seek to represent, by violating KRS § 382.360.

79. Certification under Fed.R.Civ.P. 23(b)(3) is also appropriate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

a. Concentration of the litigation concerning this matter in this Court is desirable.

b. The claims of the representative plaintiffs are typical of the claims of the class members.

c. A failure of justice will result from the absence of a class action.

d. The class is of moderate size and the difficulties likely to be encountered in the management of a class action are not great.

**FIRST CLAIM – NEGLIGENT AND/OR WILLFULL VIOLATION OF
KRS SECTION 382.360**

80. The allegations of paragraphs 1-79 above are re-alleged and incorporated herein by reference.

81. The conduct of the Defendants in this case has substantially frustrated the statute and has caused Plaintiffs and the class they seek to represent a loss of substantial fees that would have been collected had the statute not been violated.

82. As a proximate result of the Defendants' negligent, willful, and wanton violations of KRS § 382.360, Plaintiffs and the class they seek to represent have been damaged.

**SECOND CLAIM – NEGLIGENT AND/OR WILLFULL VIOLATION OF
KRS SECTION 434.155**

83. The allegations of paragraphs 1-82 above are re-alleged and incorporated herein by reference.

84. The conduct of the Defendants in this case has violated the statute and has caused Plaintiffs and the class they seek to represent to incur additional time and expense resolving issues arising from the false documents recorded by the Defendants.

85. As a proximate result of the Defendants' negligent, willful, and wanton violations of KRS § 434.155, Plaintiffs and the class they seek to represent have been damaged.

THIRD CLAIM – FRAUD

86. The allegations of paragraphs 1-85 above are re-alleged and incorporated herein by reference.

87. The Defendants have knowingly developed and participated in a private mortgage registration scheme intended to avoid paying recording fees for mortgage assignments which misrepresented the true holders of mortgage obligations.

88. The Defendants have engaged in a regular and routine practice of falsely representing to the county recording offices and the public the true mortgage holder in documents designating MERS as assignee, nominee or beneficiary.

89. The Defendants have systematically and purposefully misrepresented to the Plaintiffs and to every other similarly situated Kentucky county their true interests in mortgages registered in each county's registration system.

90. The Defendants have systematically and purposefully deprived the Plaintiffs and every other similarly situated Kentucky county of recording fees for mortgages that they assigned to one another within the MERS system.

FOURTH CLAIM – UNJUST ENRICHMENT

91. The allegations of paragraphs 1-90 above are re-alleged and incorporated herein by reference.

92. Defendants' actions were performed with the specific purpose of evading recording assignments of mortgages and to not pay expenses associated with the same.

93. As a proximate result, Plaintiffs assert that Defendants have been unjustly enriched by this willful violation of the Commonwealth of Kentucky statutes.

94. As a proximate result of the unjust enrichment, Plaintiffs and the class they seek to represent have been injured. Defendants' conduct conferred a benefit upon themselves at the expense of Plaintiffs and the class they seek to represent. Defendants were fully aware of this benefit to themselves at the expense of Plaintiffs and the Plaintiffs' class. Finally, Defendants have retained the benefit (namely, the fees saved by circumventing the recordation of assignments of mortgages when transferred) without compensating Plaintiffs and the Plaintiffs' class.

**FIFTH CLAIM – CIVIL CONSPIRACY TO VIOLATE
KRS §§ 382.360 AND 434.155**

95. The allegations of paragraphs 1-94 above are re-alleged and incorporated herein by reference.

96. Defendants in this action have conspired together to thwart the provisions of KRS §§ 382.360 and 434.155.

97. Defendants' actions were done with the specific purpose to not have to record assignments of mortgages and payment of associated expenses.

98. As a proximate result, Plaintiffs and the class that Plaintiffs seek to represent have been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court certify a class of counties whom Defendants have conspired against to violate KRS §§ 382.360 and 434.155; who have suffered damages due to Defendants' negligent, willful, and wanton violations of the statute, and who have suffered damages due to Defendants' conduct; enter judgment against Defendants, and award class-wide relief to all members of the Plaintiffs' class, as follows:

- a. Find for the Plaintiffs and the Plaintiffs' class and award compensatory and punitive damages for the Defendants' illegal conduct;
- b. Award exemplary or punitive damages to Plaintiffs and to the class that Plaintiffs seek to represent as a whole for damages they suffered due to Defendants' fraud, willful and intentional violation(s) of the Commonwealth of Kentucky statutes and for the Defendants' unjust enrichment;
- c. Award costs and reasonable attorneys' fees to Plaintiffs and the Plaintiff's class;
- d. Award interest on the amounts improperly withheld by the Defendants;
- e. Enter an injunction ordering Defendants, Defendants' agents and employees, and all other persons in active concert and participation with Defendants to immediately cease the practice of not recording of assignments of mortgages in the Commonwealth of Kentucky; and
- f. Order such other and further relief as may be just.

DEMAND FOR JURY TRIAL

Pursuant to Fed.R.Civ.P. 38, Plaintiffs demand a jury trial as to all issues triable by a jury.

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