

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL
) CIRCUIT
 COUNTY OF BEAUFORT) C/A NUMBER: 2013-CP-07-1340

GARY KUBIC, in his official capacity as)
 County Administrator for Beaufort)
 County, South Carolina, and DALE L.)
 BUTTS, in his official capacity as Register)
 of Deeds for Beaufort County, South)
 Carolina,)

Plaintiffs)

v.)

MERSCORP HOLDINGS, INC.,)
 MORTGAGE ELECTRONIC)
 REGISTRATION SYSTEMS, INC.,)
 BANK OF AMERICA, N.A., DEUTSCHE)
 BANK NATIONAL TRUST COMPANY,)
 JP MORGAN CHASE BANK, N.A.,)
 MORTGAGE NETWORK, INC.,)
 CITIMORTGAGE, INC., HSBC BANK)
 USA, N.A., HSBC MORTGAGE)
 CORPORATION (USA), HSBC)
 MORTGAGE SERVICES, INC., SOUTH)
 CAROLINA BANK AND TRUST, N.A.,)
 COASTAL STATES BANK, COASTAL)
 BANKING COMPANY, INC., and)
 TIDELANDS BANK,)

Defendants.)

AMENDED)
 SUMMONS)
 (JURY TRIAL DEMANDED)

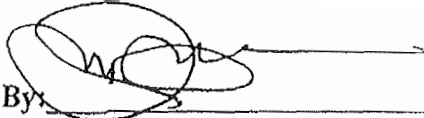
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 CLERK OF COURT
 BEAUFORT COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office, 1251 May River Road, Bluffton, S.C. 29910 or Post Office Box 769, Bluffton, S.C. 29910, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to do so,

judgment by default will be rendered against you for the relief demanded in the
Complaint.

VAUX & MARSCHER, P.A.



By: _____

Attorneys for the Defendants

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June 5, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2013-CP-07-1340

GARY KUBIC, in his official)
capacity as County Administrator)
for Beaufort County, South)
Carolina, and DALE L. BUTTS,)
in his official capacity as Register)
of Deeds for Beaufort County,)
South Carolina,)

Plaintiffs,)

v.)

MERSCORP HOLDINGS, INC.,)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS,)
INC., BANK OF AMERICA, N.A.,)
DEUTSCHE BANK NATIONAL)
TRUST COMPANY,)
JP MORGAN CHASE BANK,)
N.A., MORTGAGE NETWORK,)
INC., CITIMORTGAGE, INC.)
HSBC BANK USA, N.A., HSBC)
MORTGAGE CORPORATION)
(USA), HSBC MORTGAGE)
SERVICES, INC., SOUTH)
CAROLINA BANK AND TRUST,)
N.A., COASTAL STATES BANK,)
COASTAL BANKING)
COMPANY, INC., and)
TIDELANDS BANK,)

Defendants.)
_____)

VERIFIED
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

2013 JUN -5 AM 11:47
CLERK OF COURT
COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
BEAUFORT COUNTY, SOUTH CAROLINA

The Plaintiffs, Gary Kubic, in his official capacity as County Administrator for Beaufort County, South Carolina, and Dale L. Butts, in his official capacity as Register of Deeds for Beaufort County, South Carolina, by their attorneys, Vaux & Marscher, P.A., as and for their amended complaint, amended as of right pursuant to S.C.R.C.P. Rule 15(a), complaining of the Defendants, MERSCORP Holdings, Inc., Mortgage Electronic

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Registration Systems, Inc., Bank of America, N.A., Deutsche Bank National Trust Company, JP Morgan Chase Bank, N.A., Mortgage Network, Inc., CitiMortgage, Inc., HSBC Bank USA, N.A., HSBC Mortgage Corporation (USA), HSBC Mortgage Services, Inc., South Carolina Bank and Trust, N.A., Coastal States Bank, Coastal Banking Company, Inc., and Tidelands Bank, allege and respectfully show unto this Honorable Court as follows:

PARTIES

1. Plaintiff, Gary Kubic, in his capacity as County Administrator of Beaufort County, South Carolina, is a political officer and office created by the State of South Carolina with the right to sue and be sued in his official capacity.
2. Plaintiff, Dale L. Butts, in his official capacity as Register of Deeds for Beaufort County, South Carolina, is a political officer and office created by the State of South Carolina with the right to sue and be sued in his official capacity.
3. Defendant, MORTGAGE ELECTRONIC REGISTRATON SYSTEMS, INC. (hereinafter referred to as "MERS"), is a Delaware corporation and may be served through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.
4. Plaintiffs' claims against MERS arise out of MERS' business activities in South Carolina.
5. Defendant, MERSCORP HOLDINGS, INC. f/k/a MERSCORP, INC. (hereinafter referred to as "MERSCORP"), is a Delaware corporation and may be served through its registered agent, RL&F Service Corp., 920 N King St. F12, Wilmington, DE 19801.
6. Defendant, MERSCORP, owns and operates the MERS System.
7. Plaintiffs' claims against MERSCORP arise out of MERSCORP's business activities in South Carolina.
8. Defendant, BANK OF AMERICA, N.A. (hereinafter referred to as "BOA"), is a foreign corporation authorized to and doing business in the State of South

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Carolina and may be served through its registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

9. Defendant, BOA, is a shareholder of MERSCORP and is a Member of MERS.

10. Defendant, DEUTSCHE BANK NATIONAL TRUST COMPANY (hereinafter referred to as "DEUTSCHE"), is, upon information and belief, a national banking association chartered under the laws of the United States of America and its principal place of business is located at 300 South Grand Avenue, Suite 3950, Los Angeles, CA 90071.

11. Defendant, DEUTSCHE BANK NATIONAL TRUST COMPANY, is a Member of MERS.

12. Defendant, JP MORGAN CHASE BANK, N.A., is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

13. Defendant, JP MORGAN CHASE BANK, N.A., is a Member of MERS.

14. Defendant, MORTGAGE NETWORK, INC., is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its registered agent, David Crowell, Village at Wexford, Clarendon Building, Hilton Head Island, SC 29928.

15. Defendant, MORTGAGE NETWORK, INC., is a Member of MERS.

16. Defendant, CITIMORTGAGE, INC., is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

17. Defendant CITIMORTGAGE, INC., is a shareholder of MERSCORP and is a Member of MERS.

18. Defendants, BOA and CITIMORTGAGE, INC., shall hereinafter collectively be referred to as "MERSCORP SHAREHOLDER DEFENDANTS".

19. Defendant, HSBC BANK USA, N.A., is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its

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registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

20. Defendant, HSBC BANK USA, N.A., is a Member of MERS.

21. Defendant, HSBC MORTGAGE CORPORATION (USA), is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

22. Defendant, HSBC MORTGAGE CORPORATION (USA), is a Member of MERS.

23. Defendant, HSBC MORTGAGE SERVICES, INC., is a foreign corporation authorized to and doing business in the State of South Carolina and may be served through its registered agent, CT Corporation System, 2 Office Park Court Suite 103, Columbia, SC 29223.

24. Defendant, HSBC MORTGAGE SERVICES, INC., is a Member of MERS.

25. Defendant, SOUTH CAROLINA BANK AND TRUST, N.A. (hereinafter referred to as "SCBT"), is a domestic corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and may be served through its registered agent, Joe E. Burns, 520 Gervais Street, Columbia, SC 29201.

26. Defendant, SCBT, is a Member of MERS.

27. Defendant, COASTAL STATES BANK, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and may be served through its registered agent, Randy K. Dolyniuk, 5 Bow Circle, Hilton Head Island, South Carolina 29928.

28. Defendant, COASTAL STATES BANK, is a Member of MERS.

29. Defendant, COASTAL BANKING COMPANY, INC., is a domestic corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and may be served through its registered agent, Randolph C. Kohn, 36 West Sea Island Parkway, Beaufort, SC 29902.

30. Defendant, COASTAL BANKING COMPANY, INC., is a Member of MERS.

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31. Defendant, TIDELANDS BANK, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and may be served through its registered agent, Thomas H. Lyles, 840 Lowcountry Blvd., Mt. Pleasant, South Carolina 29464.

32. Defendant, TIDELANDS BANK, is a Member of MERS.

33. Defendants, BOA, DEUTSCHE, JP MORGAN CHASE BANK, N.A., MORTGAGE NETWORK, INC., CITIMORTGAGE, INC., HSBC BANK USA, N.A., HSBC MORTGAGE CORPORATION (USA), HSBC MORTGAGE SERVICES, INC., SCBT, COASTAL STATES BANK, COASTAL BANKING COMPANY, INC., and TIDELANDS BANK shall hereinafter be referred to as "MERS MEMBER DEFENDANTS".

JURISDICTION AND VENUE

34. Defendants, MERSCORP, MERS, BOA, DEUTSCHE, JP MORGAN CHASE BANK, N.A., MORTGAGE NETWORK, INC., CITIMORTGAGE, INC., HSBC BANK USA, N.A., HSBC MORTGAGE CORPORATION (USA), and HSBC MORTGAGE SERVICES, INC., are subject to in personam jurisdiction under the South Carolina long-arm statute (SC Code of Laws Section 36-2-803), specifically, the causes of action against said Defendants arise from their transaction of business in the State of South Carolina.

35. Venue is proper pursuant to SC Code of Laws Section 15-7-30(E)(2).

BACKGROUND

A. SECURITIZATION

I. **Financial collapse of 2008**

36. On January 27, 2011, the Financial Crisis Inquiry Commission ("FCIC") issued its Final Report on the causes of the financial collapse of 2008. According to the FCIC:

The profound events of 2007 and 2008 were neither bumps

in the road nor an accentuated dip in the financial and business cycles we have come to expect in a free market economic system. This was a fundamental disruption—a financial upheaval, if you will—that wreaked havoc in communities and neighborhoods across this country.

As this report goes to print, there are more than 26 million Americans who are out of work, cannot find full-time work, or have given up looking for work. About four million families have lost their homes to foreclosure and another four and a half million have slipped into the foreclosure process or are seriously behind on their mortgage payments. Nearly \$11 trillion in household wealth has vanished, with retirement accounts and life savings swept away. Businesses, large and small, have felt the sting of a deep recession. There is much anger about what has transpired, and justifiably so. Many people who abided by all the rules now find themselves out of work and uncertain about their future prospects. The collateral damage of this crisis has been real people and real communities. The impacts of this crisis are likely to be felt for a generation. And the nation faces no easy path to renewed economic strength.

We conclude this financial crisis was avoidable. The crisis was the result of human action and inaction, not of Mother Nature or computer models gone haywire. The captains of finance and the public stewards of our financial system ignored warnings and failed to question, understand, and manage evolving risks within a system essential to the well-being of the American public. Theirs was a big miss, not a stumble. While the business cycle cannot be repealed, a crisis of this magnitude need not have occurred. To paraphrase Shakespeare, the fault lies not in the stars, but in us.

Despite the expressed view of many on Wall Street and in Washington that the crisis could not have been foreseen or avoided, there were warning signs. The tragedy was that they were ignored or discounted. There was an explosion in risky subprime lending and **securitization**, an unsustainable rise in housing prices, widespread reports of egregious and predatory lending practices, dramatic increases in household mortgage debt, and exponential growth in financial firms' trading activities, unregulated derivatives, and short-term "repo" lending markets, among

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many other red flags. Yet there was pervasive permissiveness; little meaningful action was taken to quell the threats in a timely manner.

The prime example is the Federal Reserve's pivotal failure to stem the flow of toxic mortgages, which it could have done by setting prudent mortgage-lending standards. The Federal Reserve was the one entity empowered to do so and it did not. The record of our examination is replete with evidence of other failures: financial institutions made, bought, and sold mortgage securities they never examined, did not care to examine, or knew to be defective; firms depended on tens of billions of dollars of borrowing that had to be renewed each and every night, secured by subprime mortgage securities; and major firms and investors blindly relied on credit rating agencies as their arbiters of risk. What else could one expect on a highway where there were neither speed limits nor neatly painted lines?

We conclude there was a systemic breakdown in accountability and ethics. The integrity of our financial markets and the public's trust in those markets are essential to the economic well-being of our nation. The soundness and the sustained prosperity of the financial system and our economy rely on the notions of fair dealing, responsibility, and transparency. In our economy, we expect businesses and individuals to pursue profits, at the same time that they produce products and services of quality and conduct themselves well.

Unfortunately—as has been the case in past speculative booms and busts—we witnessed an erosion of standards of responsibility and ethics that exacerbated the financial crisis. This was not universal, but these breaches stretched from the ground level to the corporate suites. They resulted not only in significant financial consequences but also in damage to the trust of investors, businesses, and the public in the financial system.

For example, our examination found, according to one measure, that the percentage of borrowers who defaulted on their mortgages within just a matter of months after taking a loan nearly doubled from the summer of 2006 to late



2007. This data indicates they likely took out mortgages that they never had the capacity or intention to pay. You will read about mortgage brokers who were paid “yield spread premiums” by lenders to put borrowers into higher-cost loans so they would get bigger fees, often never disclosed to borrowers. The report catalogues the rising incidence of mortgage fraud, which flourished in an environment of collapsing lending standards and lax regulation. The number of suspicious activity reports—reports of possible financial crimes filed by depository banks and their affiliates—related to mortgage fraud grew 20-fold between 1996 and 2005 and then more than doubled again between 2005 and 2009. One study places the losses resulting from fraud on mortgage loans made between 2005 and 2007 at \$112 billion.

Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities. As early as September 2004, Countrywide executives recognized that many of the loans they were originating could result in “catastrophic consequences.” Less than a year later, they noted that certain high-risk loans they were making could result not only in foreclosures but also in “financial and reputational catastrophe” for the firm. But they did not stop.

In an interview with the Commission, Angelo Mozilo, the longtime CEO of Countrywide Financial—a lender brought down by its risky mortgages—said that a “gold rush” mentality overtook the country during these years, and that he was swept up in it as well: “Housing prices were rising so rapidly - at a rate that I’d never seen in my 55 years in the business - that people, regular people, average people got caught up in the mania of buying a house, and flipping it, making money. It was happening. They buy a house, make \$50,000 . . . and talk at a cocktail party about it . . . Housing suddenly went from being part of the American dream to house my family to settle down - it became a commodity. That was a change in the culture. . . It was sudden, unexpected.”

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37. The bubble that was the genesis of the Financial Crisis of 2008, burst when the collapse of the primary and secondary mortgage markets triggered a liquidity shortfall in the U.S. banking system. This collapse was a direct result of the financial system's commoditization, packaging, **securitization**, and sale of tens of millions of mortgages throughout the United States—activities in which Defendants actively participated. Without the fiction of the MERS System and the other wrongful actions of Defendants as alleged herein, these activities would not have been possible.

II. Mortgage Finance Before and After MERS

38. The typical residential mortgage finance transaction results in two legally operative documents: (1) a promissory note, a negotiable instrument which represents the borrower's repayment obligation over the term of the loan; and (2) a mortgage, representing the security interest in certain property as collateral for repayment of the note.

39. MERS enters a mortgage finance transaction when the lender and the borrower name MERS in the mortgage instrument "as the mortgagee (as nominee for the lender and its successors and assigns)."

40. The attendant promissory note is sold on the secondary mortgage market and may, over its term, have many owners. This is often achieved by a complex process called securitization. The note is transferred, along with many other notes, through several different entities into a special purpose vehicle ("SPV"), typically a trust; the trust then issues securities backed by the trust corpus, i.e., the notes, to investors. Regardless of the secondary market route which the note takes, MERS remains the named mortgagee as "nominee" for the subsequent owners of the note as long as the note is held by a MERS member. *In re. MERS*, 659 F. Supp. 2d 1368, 1370 n.6.

41. Before the formation of MERS, "secondary market investors generally require[ed] recorded assignments for most transfers of prior ownership interests [in security interests, i.e. mortgages]." *Slesinger & McLaughlin*, 31 Idaho L. Rev. at 808. For the lien to be perfected and inoculate the property against subsequent efforts by the mortgagor to sell the property or borrow against it, the mortgage instrument was recorded in the mortgage records of the county in which the property is located.


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III. The Public Recording System

42. The origins and reasons for public recordation of mortgage interests in the United States date back to at least the middle of the 17th Century. According to one commentator:

One of the most striking features of Anglo-American law is the requirement to file notice in public files of a nonpossessory secured transaction in order to enforce the transaction in the court against third parties. The transaction of interest first developed during the early seventeenth century. English mortgage law developed for real estate. Originally, the parties structured mortgages with the secured-mortgagee in possession of the landed collateral, not the debtor-mortgagor. But by the early seventeenth century, the English had developed the technique of leaving the debtor-mortgagor in possession of the land to work off the loan.

Not all legal systems have the filing requirement. Roman law recognized the transaction, but did not require a filing. The Napoleonic Code banned the transaction. The modern explanation of these three different legal rules involves the secret lien. When debtors retain possession of the personalty serving as collateral under the non-possessory secured transaction, subsequent lenders and purchasers have no way of discovering the prior ownership interest of the earlier secured creditors unless the debtor's honesty forces disclosure. Without that disclosure, the debtor could borrow excessively, offering the same collateral as security several times, possibly leaving some of the debtor's creditors without collateral sufficient to cover their loan upon the debtor's financial demise. Roman law solved the problem by providing a fraud remedy against the debtor. The Napoleonic Code solved the problem by banning the transactions. Anglo-American law solved the problem by requiring a filing. Potential subsequent lenders and purchasers could then become aware of the debtor's prior obligation by examining the public files and protect

themselves by taking the action they deemed appropriate, either not lending or charging higher interest.¹

43. Mortgage recordation in South Carolina is governed by Title 30 of the South Carolina Code of Laws. Section 30-7-10 provides, in part,

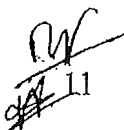
...all mortgages or instruments in writing in the nature of a mortgage of any real property are valid so as to affect the rights of subsequent creditors...or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated...

Once properly filed, a mortgage is notice to all persons of the existence of the instrument, protects the mortgagee's (lender's) security interest against creditors of the mortgagor, and places subsequent purchasers on notice that the property is encumbered by a mortgage lien. Unless the mortgage is recorded, the mortgage is void as to a creditor or as to a subsequent purchaser for a valuable consideration without notice.

44. Until recently, when a loan secured by a mortgage was sold, the assignee would record the assignment of the mortgage to protect the security interest. If a servicing company serviced the loan and the servicing rights were sold—an event that could occur multiple times during the life of a mortgage loan—multiple assignments were recorded to ensure that the proper servicer and/or note-holder appeared in the land records in the county clerk's office. This basic model has been followed throughout the United States for over three hundred years to provide the public with notice of the ownership of, and liens encumbering, real property throughout the United States. Defendants and others similarly situated have changed all of this and collapsed the public recordation system throughout the United States and in South Carolina.

45. The MERS business plan, as envisioned and implemented by the Defendants is based in large part on amending the traditional model of recording security interests in real property and introducing a third party into the equation—MERS. The motivation for creating MERS was Wall Street's and the major banks including

¹ George Lee Flint, Jr. and Marie Juliet Alfaro, *Secured Transactions History: The First Chattel Mortgage Act in the Anglo-American World*, 30:4 William Mitchell Law Review 1403, 1403-05.

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MERSCORP SHAREHOLDER DEFENDANTS' desire to alleviate the "inconvenience" of the public recording system and create their own privately owned shadow electronic recording system - the MERS System -- to increase the velocity and ease with which mortgages could be bought and sold. In the words of one court, the MERS System was designed "as a replacement for our traditional system of public recordation of mortgages."²

IV. Genesis of the MERS System

46. The public recording system and the South Carolina Recording System in particular, entailed what the banking industry perceived as substantial administrative burdens on secondary mortgage market participants. *Slesinger & McLaughlin, supra.*, at 809-810.

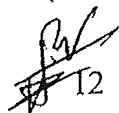
47. As a result, in 1993, "the [Mortgage Bankers' Association ("MBA") InterAgency Technology Task Force...published a 'white paper' at the MBA's Annual Convention that describes an electronic book entry system for the residential mortgage industry." *Id.* at 810. At the time, among other benefits to the mortgage industry, MERS proponents claimed that "[o]nce MERS is established as the mortgagee of record, all subsequent transfers of ownership would be recorded electronically, eliminating the need to physically prepare, deliver, record and track assignment documents.

48. The Defendants, MERSCORP and MERS, along with the MERS members, developed MERS along these lines. So, instead of effecting formal assignments of a mortgage when MERS members transfer the accompanying note between one another, the MERS members simply register the change in beneficial ownership in the MERS electronic database.

V. How MERS Works

49. MERS is a subsidiary of MERSCORP. MERSCORP is owned by various mortgage banks, title companies, and title insurance companies, including MERSCORP SHAREHOLDER DEFENDANTS. When a lender which is a "member" of MERS makes a mortgage loan, the lender instructs the title company to show not only the lender but also MERS, as "mortgagee" under the mortgage. The lender then registers the loan on the MERS System and causes the mortgage to be recorded in the mortgage records of the

² *In Re Agard*, 444 BR 231, 247 (E.D.N.Y. 2011).


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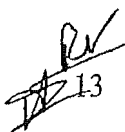
county in which the property subject to the mortgage is located. Because MERS is shown in the mortgage as having a security interest in the real property, the county clerk will index MERS in the mortgage records index as a "grantee." MERS has described its role in the mortgage banking industry as follows:

[MERS] and MERSCORP, Inc. were developed by the real estate industry to serve as the mortgagee of record and operate an electronic registration system for tracking interests in mortgage loans. . . Specifically, the MERS® System tracks the transfers of mortgage servicing rights and beneficial ownership interests in mortgage loans on behalf of MERS Members.

The promissory note is a negotiable instrument under Article 3 of the Uniform Commercial Code, and originating lenders routinely sell these notes on the secondary markets to investors. "The ability of lender to replenish their capital by selling loans in the secondary market is what makes money accessible for home ownership."

At the origination of the loan by a lender who is a MERS Member, the lender takes possession of the note (and becomes the holder of the note), and the borrower and lender designate MERS (as the lender's nominee) to serve as the mortgagee or beneficiary of record. The lender's secured interest is thus held by MERS. . . Rules, which are incorporated into all MERS' agreements with its members, provide that members "shall cause Mortgage Electronic Registration System, Inc. to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System."

Accordingly, when a MERS Member originates a loan, the original lender and the borrower contractually agree in the mortgage that MERS will be the mortgagee and will serve as nominee for the lender and its successors and assigns. In the event of a default on the loan, MERS as the beneficiary or mortgagee, is authorized to foreclose on the home. After the borrower signs the mortgage agreement, it is recorded in the public, local land records with MERS as the named beneficiary or mortgagee.


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The MERS Member then registers the mortgage loan information from the security instrument on the MERS® System. When the beneficial interest in a loan is sold, the promissory note is still transferred by an endorsement and delivery from the buyer to the seller, but MERS Members are obligated to update the MERS® System to reflect the change in ownership of the promissory note.

So long as the sale of the note involves a MERS Member, MERS remains the named mortgagee of record, and continues to act as the mortgagee, as the nominee for the new beneficial owner of the note (and MERS' Member). The seller of the note does not and need not assign the mortgage because under the terms of that security instrument, MERS remains the holder of title to the mortgage, that is, the mortgagee, as the nominee for the purchaser of the note, who is then the lender's successor and/or assign. Accordingly, there is no splitting of the note and mortgage for loans in the MERS® System. If, however, a MERS' Member is no longer involved with the note after it is sold, an assignment from MERS to the party who is not a MERS Member is executed by MERS, that assignment is recorded in the County Clerk's office where the real estate is located, and the mortgage is "deactivated" from the MERS® System.³

50. The lender agrees when registering a loan and security interest on the MERS System that the lender will update the MERS System with regards to any changes in the mortgage loan. Rule II, Section 3 of the MERSCORP Rules of Membership⁴ sets out a member's duties as regards keeping the MERS System current:

Section 3. Each Member shall promptly, or as soon as practicable, register on the MERS® System, in accordance with the Rules of Membership and the Procedures, any and all of the following transactions to which such Member is a party which involve a mortgage loan registered on the MERS® System until such time as the mortgage loan is deactivated from the MERS® System:

³ Exhibit 1, *In Re Agard, supra*, 2011, *Supplemental Brief of Mortgage Electronic Registration Systems, Inc. in Further Support of Motion to Lift Stay* at 3-4; 5-6.

⁴ Exhibit 2, *Merscorp Rules of Membership* at Rule II.3.

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- a) the pledge of any mortgage loan or security interest therein and the corresponding release of such security interests;
- b) the pledge of any servicing rights or security interest therein and the corresponding release of such servicing rights or security interests;
- c) the transfer of beneficial ownership of a mortgage loan by a Member to a Member;
- d) the transfer of beneficial ownership of a mortgage loan by a non-Member to a Member;
- e) the transfer of beneficial ownership of a mortgage loan by a Member to a non-Member;
- f) the transfer of servicing rights with respect to a mortgage loan by a Member to a Member;
- g) the registration of servicing rights with respect to a mortgage loan from a non-Member to a Member;
- h) the transfer of servicing rights with respect to a mortgage loan from a Member to a non-Member (requiring deactivation);
- i) the initiation of foreclosure of any mortgage loan registered on the MERS® System;
- j) the release of a lien with respect to a mortgage loan registered on the MERS® System;
- k) the creation of a sub-servicing relationship with respect to a mortgage loan registered on the MERS® System; and
- l) any renewal, extension or modification of a mortgage loan registered on the MERS® System that involves the recording of a new security instrument and does not merely change the rate, principal balance or term.

VI. The Truth about MERS

51. According to MERS (see “**MERS Quick Facts**”, a copy of which is annexed as Exhibit “3”), it appears as the mortgagee of record in over 70 million mortgages recorded in the mortgage records of counties throughout the United States. Thirty million of these mortgages remain active. *Id.* MERS, however, does not actually have a security interest in the real property that is the subject of such mortgages. Indeed, according to MERS:

MERS has no interest at all in the promissory note evidencing the mortgage loan. MERS has no financial or other interest in whether or not a mortgage loan is repaid. . .

MERS is not the owner of the promissory note secured by the mortgage and has no rights to the payments made by the debtor on such promissory note. . . . MERS is not the owner of the servicing rights relating to the mortgage loan and MERS does not service loans. **The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note.** In essence, MERS immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur. (citation omitted).⁵

52. MERS has also admitted that under its agreement with its members, MERS “cannot exercise, and is contractually prohibited from exercising, any of the rights or interests in the mortgages or other security documents” and has “no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans.” *Id.* at 10.

53. At this point, one might ask how MERS can be the “mortgagee” in a mortgage as to which the beneficial interest “runs to the owner and holder of the promissory note.” *Id.* at 11-12. Plainly, it cannot. As one court has observed:

MERS and its partners made the decision to create and operate under a business model that was designed in large

⁵ *Mortgage Electronic Registration Systems, Inc. Nebraska Dept. of Banking and Finance*, 704 N.W.2d 784 (Neb. 2005), *Brief of Appellant* at 11-12 (emphasis added). Copies of the relevant pages are annexed as Exhibit “4”.

part to avoid the requirements of the traditional mortgage recording process. This Court does not accept the argument that because MERS may be involved with 50% of all residential mortgages in the country, that is reason enough for this Court to turn a blind eye to the fact that this process does not comply with the law.

Aside from the inappropriate reliance upon the statutory definition of “mortgagee,” MERS’ position that it can be both the mortgagee and an agent of the mortgagee is absurd, at best.

This Court finds that MERS’ theory that it can act as a “common agent” for undisclosed principals is not supported by the law. The relationship between MERS and its lenders and its distortion of its alleged “nominee” status was appropriately described by the Supreme Court of Kansas as follows: “The parties appear to have defined the word [nominee] in much the same way that the blind men of Indian legend described an elephant – their description depended on which part they were touching at any given time.” *Landmark Nat’l Bank v. Kesler*, 216 P.3d 158, 166-67 (Kan. 2010).⁶

With regards to the legal accuracy of MERS’ recitation that it is the “mortgagee”, one scholar has stated:

At the most simple level, mortgages and deeds of trust recorded at origination represent that MERS is the mortgagee or deed of trust beneficiary. Taking the appellate decisions in Arkansas,⁷ Kansas,⁸ Maine,⁹ and Missouri¹⁰ at face value, (citation omitted), mortgages naming MERS as the mortgagee contain a false statement. Accordingly,

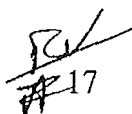
⁶ *In Re Agard, supra*.

⁷ *Mortgage Electronic Registration Systems, Inc. v. Southwest Homes*, 301 S.W.3d 1 (Ark. 2009).

⁸ *Landmark Nat’l Bank v. Kesler*, 216 P.3d 158 (Kan. 2009).

⁹ *Mortgage Electronic Registration Systems, Inc. v. Saunders*, 2 A.3d 289 (Me. 2010).

¹⁰ *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619 (Mo. Ct. App. 2009).


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MERS and its members use false information to avoid paying recording fees to county governments. While MERS-recorded mortgages and deeds of trust have qualifying language suggesting that MERS is also a nominee, the representation that MERS is the (citation omitted) owner of the lien is not some innocuous legalism. It causes county recorders that maintain grantor-grantee indexes to list MERS in the chain of title for the land. The false designation of MERS as a mortgagee or beneficiary creates a false lead in the true chain of title that defeats an essential purpose of recording mortgages and deeds of trust.¹¹

54. The havoc wrought by MERS was summarized aptly in an April 6, 2011 letter from the Guilford County, North Carolina Register of Deeds and Southern Essex District of Massachusetts Register of Deeds to Iowa Attorney General Tom Miller, leader of the Mortgage Foreclosure Multistate Group, comprised of state attorneys general in all 50 states. The letter outlines the concerns shared by county clerks and recorders nationwide and states, in part:

As County Land Record Recorders in Massachusetts and North Carolina, we have been gravely concerned about the role of the Mortgage Electronic Registration Systems (MERS) in not only foreclosure proceedings, but as it undermines the legislative intent of our offices as stewards of land records. MERS tracks more than 60 million mortgages across the United States and we believe it has assumed a role that has put constructive notice and the property rights system at risk. We believe MERS undermines the historic purpose of land record recording offices and the "chain of title" that assures ownership rights in land records.¹²

55. The MERS System has created massive confusion as to the true owners of beneficial interests in mortgage loans and mortgages throughout the United States,

¹¹ Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 Wm. & Mary L. Rev. 1 at 143-44 (2011), <http://scholarship.law.wm.edu/wmlr/vol53/>.

¹² Exhibit 5, April 6, 2011 Letter from John O'Brien and Jeff Thigpen to Iowa Attorney General Tom Miller at 1-2,

http://www.co.guilford.nc.us/departments/rod/ROD_Letter_To_AG_Miller.pdf.

including South Carolina, and has harmed U.S. counties, including Plaintiff Beaufort County. In short, the MERS System has eroded the transparency and corrupted the chain of title of the public recording system in the United States and the State of South Carolina.

VII. And the Fiction Continues

56. As a result of the MERS fiction, the mortgage remains in the name of MERS and is severed from the Note. The note is transferred, along with many other notes, through several different entities into a special purpose vehicle (“SPV”), typically a trust; the trust then issues securities backed by the trust corpus, i.e., the notes, to investors.

57. In order for securitization to work, however, the SPV has to qualify as a “Real Estate Mortgage Investment Conduit” (“REMIC”) which requires compliance with applicable sections of the Internal Revenue Code. An SPV which in fact qualifies as a REMIC offers investors two potential benefits that boost the SPV’s value relative to other investment options: bankruptcy-remoteness and favorable tax treatment. Bankruptcy remoteness means both that the SPV that issues the mortgage-backed securities cannot file for bankruptcy and that the SPV’s assets cannot be brought into the bankruptcy estate of other entities in the mortgage loans’ chain of title. These features isolate the SPV’s mortgage payment cash flow from claimants other than their investors. Additionally, REMIC status ensures that only the investors, and not the SPV, are taxed on the SPV’s cash flow.

58. In order for an SPV to qualify for REMIC status, the SPV must be formed in a particular way, and its assets must be transferred to it in a particular manner. There are two documents in particular that need to be properly transferred to the SPV - the promissory note and the mortgage. Possession of a note without a mortgage amounts to possession of unsecured debt and will ordinarily disqualify the SPV from enjoying REMIC status.

59. In order for an SPV to have REMIC status, substantially all of its assets must be qualified mortgages.¹³ A qualified mortgage is defined as “any obligation (including any participation or certificate of beneficial ownership therein) which is

¹³ 26 U.S.C. § 860D(a)(4).

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principally secured by an interest in real property.”¹⁴ REMIC status is lost when too many non-qualified mortgages are in the trust. For the SPV, retention of REMIC pass-through tax status was imperative because its loss added significant costs to securitization, driving investors to other investments.

60. SPV’s are usually formed pursuant to, and governed by, contracts called Pooling and Servicing Agreements (“PSAs”), which are crafted to ensure that the benefits of mortgage securitization flow to the SPV. In order for an SPV to qualify for the bankruptcy-remoteness benefits of a REMIC, there must be a “true sale” of the mortgage loans, which means that all rights to the mortgage loan are transferred to the SPV so that no other entity in the chain of title could claim control of the assets in the event of bankruptcy.

61. The PSAs contain express language to ensure that all rights to the mortgage loans have been transferred to the SPV, so that the transaction is considered a true sale and, accordingly, bankruptcy-remoteness is achieved and the SPV maximizes its ratings. The express language also requires that the loans sold to the SPV are subject to a security interest. The security interests transferred to the SPV must be perfected security interests.

62. Pursuant to the PSAs, the trust remains open for a relatively short period of time, approximately 30 days, in which to transfer all notes. As shown in the excerpts from the sample PSA attached as Exhibit “6”, the trust is dated August 1, 2006 and the closing date is August 30, 2006 – 30 days to transfer the notes. (Exhibit “6”, Sections 1.01 and 2.01(a)) The PSAs further set forth the manner in which the notes are to be transferred – with specific intervening endorsements so as to ensure that the trust’s assets cannot be brought into the bankruptcy estate of other entities and to protect the trust’s REMIC status. (Exhibit “6”, Section 2.01(c)). In addition, after the closing date of the PSAs, the trustee has a clean up period of three (3) months in which to transfer all mortgages – as mandated by US Treasury regulations governing REMICs. (26 U.S.C. Section 860D). Since the terms of the PSAs require that the trustee not take any action or omit to take any action that would jeopardize REMIC status (Exhibit “6”, Section 8.11(g)), these regulations must be followed.

¹⁴ 26 U.S.C. § 860G(a)(3).

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63. Furthermore, PSAs are governed by New York law. (Exhibit "6", Section 10.03). PSAs, in turn, govern acquisitions to the trust. New York's Estates, Powers & Trusts Law ("EPTL") Section 7-2.4 states:

If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust... is void.

EPTL Section 1-1.5 further provides that "the provisions of this chapter apply to the estates...of persons." Person is described in EPTL Section 1-2.12 as follows:

The term "person" includes a natural person, an association, board, any corporation, whether municipal, stock or non-stock, court, governmental agency, authority or subdivision, partnership or other firm and the state.

The provisions of EPTL Section 7-2.4 are therefore applicable to PSAs which govern acquisitions to the trust. Any transfer to the trust in contravention of the governing PSA would be void under New York law - the law that was chosen to govern by Defendants.

64. Specifically, if a trustee acquired a mortgage after three (3) months of the closing date, the trustee would exceed its authority and violate the terms of the trust. This transfer is not a mere technicality but rather a material violation of the trust's terms which jeopardizes the trust's REMIC status and is in effect a nullity. Exhibit "7", *Wells Fargo Bank, N.A. v. Erobo*, 2013 NY Slip Op 50675(U).

65. In actuality, notes are not transferred to the PSAs with the required intervening endorsements, and neither the notes nor the mortgages are transferred within the time constraints set forth in the PSAs.¹⁵ Rather, the lender endorses the note in blank to be held by a MERS member within the MERS system. There are then three possible scenarios:

1. The loan is paid off at which time a satisfaction of mortgage must be filed by the MERS member currently holding the note. The problem is that the mortgage was not previously assigned to this MERS member by the original lender. In order to

¹⁵ Mere recital of assignment, holding or receipt of an asset is insufficient to transfer an asset to a trust. The grantor must actually transfer the asset. EPTL Section 7-1.18.

A handwritten signature, possibly "J. B. K.", is written above the number "21".

close the gap in the chain of title, an employee of the MERS member, posing as a MERS employee, executes an assignment of the mortgage using MERS purported status as “mortgagee”. MERS has no employees and the individual posing as a MERS employee executes the assignment of mortgage fraudulently, without the requisite authority, and without verification. Hence, these individuals have been dubbed “robo-signers”;

2. The loan is sold to a non-MERS member and must be assigned from the MERS member to the non-MERS member. The same problem – mortgage was not previously assigned to the MERS member by the original lender. Same solution - a fraudulent assignment executed by an employee of the MERS member posing as a MERS employee and using MERS purported status as “mortgagee”; or
3. The borrower defaults and it is necessary to foreclose on the mortgage. In these cases, either MERS (which has disavowed any interest in the note or mortgage) or a MERS member bank which holds the mortgage endorsed in blank by the original lender have commenced a foreclosure action merely as a holder of the note and without an assignment of the mortgage. It is only subsequent to the commencement of the foreclosure action, that the mortgage is actually assigned to the MERS member. Here again there is a gap in the chain of title since the original lender never assigned the note to the MERS member. To resolve the problem, the MERS member, in the midst of foreclosure litigation, has its own employees fraudulently execute an assignment of the mortgage posing as a MERS employee and using MER’ purported status as “mortgagee”.

In each of these scenarios, the assignment is not only fraudulent but also legally void. None of these scenarios results in an assignment of the mortgage within the three (3) month clean up period mandated by 26 U.S.C. Section 860D (which the trust terms require that the trustee adhere to in order to protect the trust’s REMIC status). Each of these scenarios results in a void transfer. EPTL Section 7-2.4. Nevertheless, these fraudulent and legally ineffective documents are recorded in the public records and MERS is indexed as the “grantor”. MERS has, moreover, disavowed any beneficial interest in the mortgage.

66. From beginning to end, securitization, facilitated by the MERS system, has eroded the transparency of public records and rendered these records virtually worthless.

B. SOUTH CAROLINA’S RECORDING SYSTEM

67. Section 30-9-30(A) of the South Carolina Code of Laws provides, in part, that:

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...each clerk of court and register of deeds in this State **shall** keep a record, in the office in which he files all conveyances, mortgages, ...and papers relating to real...property,...by entering in the record the names of the **grantor** and **grantee**, mortgagor and mortgagee, obligor and obligee...(emphasis supplied)

Moreover, Section 30-9-40 provides that:

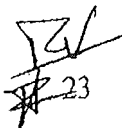
The register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished **shall** immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in Section 30-7-10 or Chapter 9 of Title 36 enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes whatsoever, and this **shall** likewise apply to any copy of the indexes made subsequently by the register of deeds or clerk of court, or the deputy of either, or by his authority for the purpose of replacing the original indexes. The entries in the indexes required to be made are notice to all persons sufficient to put them upon inquiry as to the purport and effect of the deed, mortgage, or other written instrument so filed for record, but the recordation of a deed, mortgage, or other written instrument is not notice as to the purport and effect of the deed, mortgage, or other written instrument unless the filing of the instrument for record is entered as **required** in the indexes. (emphasis supplied)

I. MERS as "Grantee"

68. Under policies in effect for many years, employees of the Office of the Register of Deeds of the State of South Carolina record as a "grantee" any person identified as a "lender," "grantee," or "mortgagee" in a mortgage and as a "grantor" any person who is denominated in an instrument as the person releasing, transferring, assigning, or taking any other action pursuant to which a lien upon or interest in real property is released, transferred, or assigned, *e.g.*, "assignor," "lender," "holder of Note and Lien," or "the legal and equitable owner and holder" of a promissory note.

69. In the past, the lender whose note was secured by a mortgage would be identified in the mortgage as the "mortgagee".

70. By 2006, however, lenders such as MERS MEMBER DEFENDANTS were routinely identifying MERS as the "mortgagee" of mortgages recorded nationwide and in South Carolina. For example, mortgages filed by Defendant SCBT in 2006 and in


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2012 contain the following language with specific words in bold:

MERS” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lenders successors and assigns. **MERS is the mortgagee under this security instrument...**

The purpose of the bold print is to ensure that MERS is indexed as the grantee of record¹⁶. This instrument was recorded in the Beaufort County mortgage records, and MERS was indexed as the “grantee.”¹⁷

71. MERS MEMBER DEFENDANTS’ denomination of MERS as the “mortgagee” of this mortgage is false. MERS MEMBER DEFENDANTS have each recorded mortgages containing this language in Beaufort County.

72. The reason that MERS MEMBER DEFENDANTS did not limit their denomination of MERS to that of nominee or agent is simple—in order to be shown in mortgage records in South Carolina as a “grantee,” and therefore a party whose interest is protected by recording, one must ordinarily be identified in a mortgage as a “lender,” “mortgagee,” or “grantee”. As noted above, however, MERS has admitted that it is none of these. According to MERS:

MERS has no interest at all in the promissory note evidencing the mortgage loan. MERS has no financial or other interest in whether or not a mortgage loan is repaid. . .

MERS is not the owner of the promissory note secured by the mortgage and has no rights to the payments made by the debtor on such promissory note. . . MERS is not the owner of the servicing rights relating to the mortgage loan and MERS does not service loans. **The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note.** In essence, MERS immobilizes the mortgage lien while transfers of the

¹⁶ Exhibit 8, SCBT mortgages recorded on June 30, 2006 in Book 2400 at Page 876 and on July 13, 2012 in Book 3157 at Page 2318 in the Office of the Register of Deeds for Beaufort County, South Carolina.

¹⁷ In sampling mortgages recorded by each of MERS MEMBER DEFENDANTS in Beaufort County, Plaintiffs have located instances where MERS is indexed in the Statutory Grantor/Grantee Indexes as a “grantee” in its capacity as the lender’s nominee or agent.

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promissory notes and servicing rights continue to occur.
(citation omitted).¹⁸

73. Defendants' conundrum is that, as the lender's "nominee" or "agent," MERS itself has no security interest in the real property that is the subject of the mortgage and therefore MERS has no rights which qualify it to assert that it is a mortgagee. But unless MERS itself is identified as the "mortgagee," MERS will not ordinarily be indexed as a "grantee" in the mortgage records. And unless MERS is identified as a "grantee" in the mortgage records, the MERS System does not work because the protections of the recording statutes are not extended to MERS. For Defendants, the solution was to ignore the law and falsely state in recorded instruments that MERS has a lien upon or interest in real property, which MERS does not actually have, in order to cause MERS to be indexed as a "grantee" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs.

74. Another example of Defendants' disregard of long-settled South Carolina law is Defendants' inclusion of the following language in the subject mortgages:

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrowers understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or customs, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing

¹⁸ See Exhibit 4, *Mortgage Electronic Registration Systems, Inc. Nebraska Dept. of Banking and Finance*, 704 N.W.2d 784 (Neb. 2005), *Brief of Appellant* at 11-12 (emphasis added). MERS does not explain how it can be a "mortgage lien" holder or how it can "inoculate" loans "against future assignments" while simultaneously insisting that "MERS is not the owner of the promissory note secured by the mortgage.

and canceling this Security Instrument.¹⁹

The infirmity of this assertion is manifest. A mortgage does not transfer legal title to anything; it creates a lien. Therefore, MERS cannot be the holder of “legal title” to the security interest conveyed, just as it has no beneficial title to the security interest conveyed.

II. MERS as “Grantor”

75. Defendants have also violated South Carolina law by falsely stating in recorded instruments that MERS has a lien upon or interest in real property (which MERS does not have) with the intent to cause MERS to be indexed as the “grantor” in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs.

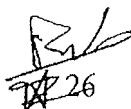
76. MERS has been falsely identified by MERS’ members as the “lender,” “mortgagee” or otherwise denominated as a party to the mortgage for the purpose of causing MERS to be indexed as a “grantor” in the statutory Grantor/Grantee Indexes maintained by Plaintiffs. MERS is none of these, and denominating it as such is fraudulent.

77. In a common MERS mortgage transaction, the lender endorses the note in blank to be held by a MERS member within the MERS system. As noted earlier, there are then three possible scenarios:

1. The loan is paid off at which time a satisfaction of mortgage must be filed by the MERS member currently holding the note;
2. The loan is sold to a non-MERS member and must be assigned from the MERS member to the non-MERS member; or
3. The borrower defaults and it is necessary to foreclose on the mortgage.

In each of these scenarios, there is a gap in the chain of title since the mortgage has not been previously assigned by the Lender to the MERS member currently holding the mortgage. In each of these scenarios, none of the mortgages are assigned within the three (3) month clean up period mandated by 26 U.S.C. Section 860D which the trust terms require that the trustee adhere to in order to protect the trust’s REMIC status. The

¹⁹ See Exhibit 8.


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solution in each of these scenarios has been to have “robo-signers” fraudulently execute legally void assignments of the mortgage using MERS purported status as “mortgagee” and to cause this assignment to be recorded in the public records and MERS indexed as the “grantor”. MERS, however, has disavowed any beneficial interest in the mortgage. This scenario has played out millions of times throughout the United States and in South Carolina, causing an exponential corruption of the public records.

III. South Carolina Statutory Remedies

78. South Carolina Code of Laws Section 30-9-30, in part, reads as follows:

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may **refuse to accept** the document for filing if he reasonably believes that the document is **materially false or fraudulent** or is a **sham legal process**...

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is **materially false or fraudulent**, or is a **sham legal process**, the clerk of court or the register of deeds may **remove** the document from the public records...(emphasis supplied)

As demonstrated by these statutory directives, South Carolina public policy favors a reliable and functioning public recordation system to avoid destructive breaks in title, confusion as to the true identity of the lien holder, fraudulent foreclosures, and uncertainty as to title when real property is sold. The MERS System has all but collapsed this system throughout the United States, including South Carolina.

C. CORPORATE VEILS OF MERSCORP AND MERS

79. Plaintiffs move the Court pierce the MERSCORP and MERS corporate veils and impose liability upon MERSCORP SHAREHOLDER DEFENDANTS for the actionable conduct of MERSCORP and MERS alleged herein. As demonstrated by the facts set forth below, recognizing the corporate existence of MERSCORP and MERS separate from their shareholders, including MERSCORP as shareholder in MERS and MERSCORP SHAREHOLDER DEFENDANTS, would cause an inequitable result or injustice and would be a cloak for fraud or illegality; MERSCORP and MERS were


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undercapitalized in light of the nature and risk of their business; and the corporate fiction is being used to justify wrongs, as a means of perpetrating fraud, as a mere tool or business conduit for others, as a means of evading existing legal obligations, to perpetrate monopoly and unlawfully gain monopolistic control over the real property recording system in the State of South Carolina.

80. MERSCORP is the operating company that owns and operates the MERS System, charges and receives all fees for use of the MERS System, establishes and promulgates Rules of Membership in MERSCORP for those lenders and loan servicers desiring to become members for purposes of utilizing the MERS System, determines the *bona fides* of membership applications in MERSCORP, and is responsible for the day-to-day operation of the MERS System. Accordingly, the acts of misconduct alleged herein against MERS are alleged as well against MERSCORP as the owner and operator of MERS.

81. MERS is a wholly-owned subsidiary of MERSCORP. MERS has been utilized by MERSCORP to shift liability away from MERSCORP and its shareholders for the wholesale destruction of the public recording system, to perpetrate a fraud in the form of falsely stating in instruments recorded in Plaintiffs' records that MERS has a lien upon or interest in real property which MERS does not have, to evade the ongoing obligation to maintain the accuracy of mortgages and other instruments recorded in Plaintiffs' records, and to justify the wrongs set forth herein. Thus, MERSCORP is liable for all of the acts of misconduct alleged against MERS herein. According to MERSCORP in its June 4, 2012, MERS® OnLine User Guide (Version 22.0):

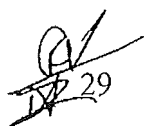
MERSCORP [] owns and operates a national electronic registry to track ownership and changes to ownership of mortgage rights, and Mortgage Electronic Registration Systems, Inc. (MERS), its wholly owned subsidiary which acts as the mortgagee of record in the public land records and as nominee for the lender and its successors and assigns, were created by the real estate finance industry to eliminate the need to prepare and record assignments.

The electronic registry to which this passage applies is also referred to as "the MERS System" and MERSCORP "is the service provider for MERS."


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82. MERSCORP SHAREHOLDER DEFENDANTS (or their predecessors-in-interest) established MERSCORP, and MERSCORP established MERS, without sufficient capitalization in view of the businesses in which MERSCORP and MERS engage. MERSCORP and MERS have failed to retain an appropriate number of employees to engage in the activities legally attributable to MERSCORP and MERS, opting instead to direct MERS System members to have the members' employees appointed as "Vice-Presidents" or "Secretaries" of MERS for purposes of having the members, including MERSCORP SHAREHOLDER DEFENDANTS, purport to take actions as "MERS" through members' employees falsely or improperly denominated as officers of MERS. MERSCORP and MERS are effectively "front" organizations for MERS System members, including MERSCORP SHAREHOLDER DEFENDANTS, which have created a systemically important mortgage registry but fail to properly oversee that registry or enforce their own rules on the members that participate in the registry. For example, rather than maintaining an adequate staff to provide MERSCORP's and MERS' services, MERSCORP and MERS operate through a network of over 20,000 non-employee "corporate officers," including employees of MERSCORP SHAREHOLDER DEFENDANTS, who cause MERSCORP and MERS to act without any meaningful oversight from anyone who works at MERSCORP or MERS. Instead of meaningful internal controls, MERSCORP and MERS rely on an "honor system" of MERS System members which fails to ensure the integrity of the MERS System. The lack of internal controls at MERSCORP and MERS have facilitated MERS System members' recording of so-called "robo-signed" documents in Plaintiffs' records and has also resulted in MERSCORP's and MERS' failure to follow their own rules regarding proper institution of foreclosure proceedings.

83. The 20,000 individuals who identify themselves as MERS' corporate officers are actually employees of MERS' members, including MERSCORP SHAREHOLDER DEFENDANTS, rather than MERS. These so-called "corporate officers" act on behalf of MERS in foreclosing mortgages in which MERS is identified as a "mortgagee" and in recording, causing to be recorded, or approving the recording of instruments falsely denominating MERS as the "mortgagee" of mortgages so as to make it appear that MERS has a lien upon or interest in real property and with the intent to


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cause MERS to be indexed as a “grantee” or “grantor” in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs.

84. In reality, MERSCORP, MERS, and the MERS System operate like puppets whose strings are pulled by MERS System members’ employees, including MERSCORP SHAREHOLDER DEFENDANTS. Members’ employees undertake legally operable actions using MERS’ name, such as assigning mortgages, signing checks, and foreclosing on homeowners. MERS System members purchase corporate seals for their signing officers from MERS at a cost of \$25 each. While MERS purports to act as agent for the holder or owner of a note, each act MERS purportedly performs on a MERS System member’s behalf is actually done by that member’s own employee, acting as a MERS “signing officer.” Moreover, MERSCORP and MERS encourage the widespread use of MERS’ corporate authority but perform no meaningful oversight over the acts of these signing officers. This use of member employees purportedly acting as MERS “officers” obfuscates the real entity dealing with consumers.

85. Employees of MERS System members who identify themselves as MERS “officers” are not paid any compensation by MERS, nor does MERSCORP or MERS supervise or direct (nor have the right to supervise or direct) any of the work performed by these so-called MERS “signing officers.” MERS “signing officers” do not seek, nor do they receive, any instruction, permission or approval from MERSCORP or MERS to act on MERS’ behalf.

86. The structure of MERSCORP and MERS and the fact that they undertake virtually no action except through the members of MERS, including MERSCORP SHAREHOLDER DEFENDANTS, justify the Court’s ignoring the corporate fiction and imposing liability for the conduct of MERSCORP and MERS on the shareholders of MERSCORP, including MERSCORP SHAREHOLDER DEFENDANTS.

87. In addition to the actionable conduct of MERSCORP SHAREHOLDER DEFENDANTS alleged herein, Plaintiffs seek a determination of the Court that it is appropriate to pierce the MERSCORP and MERS corporate veils for the reasons set forth above and hold MERSCORP SHAREHOLDER DEFENDANTS liable for the conduct of MERSCORP and its subsidiary, MERS. Recognizing the corporate existence of MERSCORP and MERS separate from their shareholders, including MERSCORP

SHAREHOLDER DEFENDANTS, would bring about an inequitable result or injustice and would be a cloak for fraud or illegality.

AS AND FOR FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(FRAUD AND MISREPRESENTATION)

88. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

89. Defendants engaged in fraud and misrepresentation by recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantee" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs.

90. MERS MEMBER DEFENDANTS did identify and continue to identify MERS as the "mortgagee" of mortgages recorded in South Carolina. These mortgages contained the following language with specific words in bold:

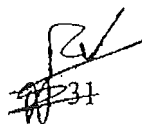
"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lenders successors and assigns. MERS is the mortgagee under this security instrument...

The purpose of the bold print is to ensure that MERS is indexed as the grantee of record.

91. These instruments were and are recorded in the records of Beaufort County and MERS was and is being indexed as the "grantee."

92. Defendants' denomination of MERS as the "mortgagee" of these mortgages is false and was and is known by Defendants to be false. MERS itself has stated in the course of litigation that:

MERS has no interest at all in the promissory note evidencing the mortgage loan. MERS has no financial or other interest in whether or not a mortgage loan is repaid. . .

A handwritten signature, possibly "R.V.", is written over the date "11/31".

MERS is not the owner of the promissory note secured by the mortgage and has no rights to the payments made by the debtor on such promissory note. . . . MERS is not the owner of the servicing rights relating to the mortgage loan and MERS does not service loans. **The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note.** In essence, MERS immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur. (citation omitted).

(See Exhibit "4".)

93. The aforescribed misrepresentation is material in that it played a pivotal role in the MERS system and ultimately in securitization.

94. Defendants intended that Plaintiffs rely upon the false statements described above, and Plaintiffs did so rely to their detriment by accepting such instruments for recording and by indexing MERS as a "grantee" in Plaintiffs' Statutory Grantor/Grantee Indexes.

95. Plaintiffs were ignorant of the falsity of the Defendants' representations.


96. Plaintiffs justifiably relied upon the Defendants' false and misleading representations and were thereby consequently and proximately injured.

97. Plaintiffs' damages include, but are not limited to, direct and consequential damages in the form of:

a. damages to and corruption of the Statutory Grantor/Grantee Indexes maintained by Plaintiffs in the form of rendering such records unreliable and inaccurate and stripping these records of their value; and

b. the cost of remediating the Statutory Grantor/Grantee Indexes maintained by Plaintiffs so that such records accurately reflect liens upon and interests in real property located in Beaufort County, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system.

98. Defendants acted in reckless and conscious disregard of Plaintiffs' right and obligation to maintain accurate public records, thereby entitling Plaintiffs to punitive damages.


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AS AND FOR SECOND CAUSE OF ACTION AGAINST
MERSCORP, MERS, BOA, DEUTSCHE, JP MORGAN CHASE BANK, N.A.,
MORTGAGE NETWORK, INC., CITIMORTGAGE, INC., HSBC BANK USA,
N.A., HSBC MORTGAGE CORPORATION (USA), and
HSBC MORTGAGE SERVICES, INC.
(FRAUD AND MISREPRESENTATION)

99. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

100. "Defendants" as that term is used in this second cause of action only shall refer to Defendants, MERSCORP, MERS, BOA, DEUTSCHE, JP MORGAN CHASE BANK, N.A., MORTGAGE NETWORK, INC., CITIMORTGAGE, INC., HSBC BANK USA, N.A., HSBC MORTGAGE CORPORATION (USA), and HSBC MORTGAGE SERVICES, INC..

101. Defendants engaged in fraud and misrepresentation by recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantor" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs.

102. Defendants have caused assignments of mortgages to be fraudulently executed by employees of Defendants posing as MERS' employees and using MERS purported status as "mortgagee". These assignments were executed fraudulently, without the requisite authority, and without verification.

103. These instruments were and are recorded in the Beaufort County records, and MERS was and is being indexed as the "grantor."

104. Defendants representation of MERS as the "mortgagee" of these mortgages was and is false, and Defendants had knowledge of its falsity and/or a reckless disregard for the truth. MERS itself has stated in the course of litigation that:

MERS has no interest at all in the promissory note evidencing the mortgage loan. MERS has no financial or other interest in whether or not a mortgage loan is repaid. . .

ral
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MERS is not the owner of the promissory note secured by the mortgage and has no rights to the payments made by the debtor on such promissory note. . . . MERS is not the owner of the servicing rights relating to the mortgage loan and MERS does not service loans. **The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note.** In essence, MERS immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur. (citation omitted).

(See Exhibit "4".)

105. The aforescribed representations are material in that they played a pivotal role in the MERS system and ultimately in securitization.

106. Defendants intended that Plaintiffs rely upon the false representations described above, and Plaintiffs did so rely to their detriment by accepting such instruments for recording and by indexing MERS as a "grantor" in Plaintiffs' Statutory Grantor/Grantee Indexes.

107. Plaintiffs were ignorant of the falsity of Defendants' representations.

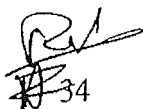
108. Plaintiffs justifiably relied upon Defendants' false and misleading representations and were thereby consequently and proximately injured.

109. Plaintiffs' damages include, but are not limited to, direct and consequential damages in the form of:

a. damages to and corruption of the Statutory Grantor/Grantee Indexes maintained by Plaintiffs in the form of rendering such records unreliable and inaccurate and stripping these records of their value; and

b. the cost of remediating the Statutory Grantor/Grantee Indexes maintained by Plaintiffs so that such records accurately reflect liens upon and interests in real property located in Beaufort County, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system.

110. Defendants acted in reckless and conscious disregard of Plaintiffs' right and obligation to maintain accurate public records, thereby entitling Plaintiffs to punitive damages.


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AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(UNFAIR TRADE PRACTICES)

111. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

112. The aforescribed acts of the Defendants were fraudulent, unfair, and deceptive and performed in the course of and are inextricably connected to the Defendants' trade of providing and servicing loans to the public.

113. Defendants participated in the MERS system in order to avoid and circumvent the burdens and costs of traditional public recording systems.

114. Defendants presented and continue to present for filing in the public records of Beaufort County, documents that were and are false, misleading, and legally void. This wrongful conduct is not only capable of repetition, but is being repeated.

115. Defendants' actions have resulted in the wholesale destruction of the public records maintained by the Plaintiffs and have eroded the transparency and corrupted the chain of title of real property records maintained by the Plaintiffs and have rendered these records inaccurate and unreliable for public use.

116. Plaintiffs were damaged as a direct and proximate result of the Defendants' wrongful conduct as heretofore described, thereby entitling the Plaintiffs to treble damages.

117. By reason of the foregoing, Plaintiffs seek compensatory damages, and upon determination of Plaintiffs' compensatory damages, that the Court treble that award.

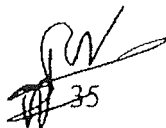
AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(CONVERSION)

118. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

119. Section 30-9-30(A) of the South Carolina Code of Laws provides, in part, that:

...each clerk of court and register of deeds in this State **shall** keep


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a record, in the office in which he files all conveyances, mortgages, ...and papers relating to real...property,... by entering in the record the names of the **grantor** and **grantee**, mortgagor and mortgagee, obligor and obligee...(emphasis supplied)

Moreover, Section 30-9-40 provides that:

The register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished **shall** immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in Section 30-7-10 or Chapter 9 of Title 36 enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes whatsoever, and this **shall** likewise apply to any copy of the indexes made subsequently by the register of deeds or clerk of court, or the deputy of either, or by his authority for the purpose of replacing the original indexes. The entries in the indexes required to be made are notice to all persons sufficient to put them upon inquiry as to the purport and effect of the deed, mortgage, or other written instrument so filed for record, but the recordation of a deed, mortgage, or other written instrument is not notice as to the purport and effect of the deed, mortgage, or other written instrument unless the filing of the instrument for record is entered as **required** in the indexes. (emphasis supplied)

120. Plaintiffs have expended substantial time, effort, and monies in performing the aforescribed duties.

121. By reason of the Defendants' false and fraudulent claims and the filing of legally void documents, Defendants have, for their own advantage, misused the Plaintiffs' recording systems, have altered their condition, and have rendered the Plaintiffs' recording systems inaccurate and unreliable.

122. By reason of the foregoing, Defendants converted the Plaintiffs' property for their own use and benefit.

123. Plaintiffs had no knowledge of the Defendants' wrongful actions, and Plaintiffs did not acquiesce in any manner whatsoever in the Defendants' wrongful conduct.

124. Plaintiffs' damages include, but are not limited to, direct and consequential damages in the form of:

a. damages to and corruption of the Statutory Grantor/Grantee Indexes maintained by Plaintiffs in the form of rendering such records unreliable and inaccurate and stripping these records of their value; and

b. the cost of remediating the Statutory Grantor/Grantee Indexes maintained by Plaintiffs so that such records accurately reflect liens upon and interests in real property located in Beaufort County, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system.

125. Defendants acted in reckless and conscious disregard of Plaintiffs' right and obligation to maintain accurate public records, thereby entitling Plaintiffs to punitive damages.

AS AND FOR A FIFTH CASE OF ACTION AGAINST ALL DEFENDANTS

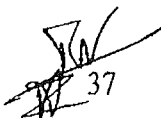
(TRESPASS TO CHATTELS)

126. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

127. Section 30-9-30(A) of the South Carolina Code of Laws provides, in part, that:

...each clerk of court and register of deeds in this State **shall** keep a record, in the office in which he files all conveyances, mortgages, ...and papers relating to real...property,...by entering in the record the names of the **grantor** and **grantee**, mortgagor and mortgagee, obligor and obligee...(emphasis supplied)

Moreover, Section 30-9-40 provides that:


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The register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished **shall** immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in Section 30-7-10 or Chapter 9 of Title 36 enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes whatsoever, and this **shall** likewise apply to any copy of the indexes made subsequently by the register of deeds or clerk of court, or the deputy of either, or by his authority for the purpose of replacing the original indexes. The entries in the indexes required to be made are notice to all persons sufficient to put them upon inquiry as to the purport and effect of the deed, mortgage, or other written instrument so filed for record, but the recordation of a deed, mortgage, or other written instrument is not notice as to the purport and effect of the deed, mortgage, or other written instrument unless the filing of the instrument for record is entered as **required** in the indexes.
(emphasis supplied)

128. Plaintiffs have expended substantial time, effort, and monies in performing the aforescribed duties.

129. By reason of the Defendants' false and fraudulent claims and the filing of legally void documents, Defendants have, for their own advantage, misused the Plaintiffs' recording systems and have altered their condition and rendered the Plaintiffs' recording systems inaccurate and unreliable.

130. Plaintiffs had no knowledge of the Defendants' wrongful actions, and Plaintiffs did not acquiesce in any manner whatsoever in the Defendants' wrongful conduct.

131. Plaintiffs' damages include, but are not limited to, direct and consequential damages in the form of:

a. damages to and corruption of the Statutory Grantor/Grantee Indexes maintained by Plaintiffs in the form of rendering such records unreliable and inaccurate and stripping these records of their value; and

b. the cost of remediating the Statutory Grantor/Grantee Indexes maintained by Plaintiffs so that such records accurately reflect liens upon and interests in real property located in Beaufort County, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system.

A handwritten signature, possibly 'PK', with the number '38' written below it.

132. Defendants acted in reckless and conscious disregard of Plaintiffs' right and obligation to maintain accurate public records, thereby entitling Plaintiffs to punitive damages.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(DECLARATORY JUDGMENT)

133. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein and if heretofore set forth at length.

134. Plaintiffs hereby seek a judicial declaration that:

- a. Defendants have caused substantial damage to Plaintiffs' records by:
 - i. recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantee" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs; and
 - ii. recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantor" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs; and
 - iii. recording, causing to be recorded, or approving the recording of documents which are legally void; and

- b. Plaintiffs are not required by South Carolina Law to index MERS as a “grantee” or “grantor” in the Statutory Grantor/Grantee Indexes of Plaintiffs when MERS is acting in a representative capacity in an instrument presented for recording, or to record an assignment of mortgage which is legally void and in contravention of the terms of the governing PSA.

AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(INJUNCTIVE RELIEF)

135. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the Complaint herein as if heretofore set forth at length.

136. South Carolina Code of Laws Section 30-9-30, in part, reads as follows:

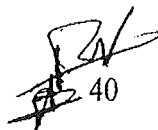
(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may **refuse to accept** the document for filing if he reasonably believes that the document is **materially false or fraudulent** or is a **sham legal process**...

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is **materially false or fraudulent**, or is a **sham legal process**, the clerk of court or the register of deeds **may remove** the document from the public records...(emphasis supplied)

137. In accordance with the aforescribed statutes, Plaintiffs seek injunctive relief enjoining Defendants and all those in active concert or participation with them from recording, causing to be recorded, or approving the recording of instruments which state that MERS has a lien upon or interest in real property in which MERS does not have such an interest and/or which are legally void.

138. Plaintiffs further seek an order of this Court requiring Defendants, jointly and severally, to correct the false, deceptive, and legally ineffective filings described herein by causing the recordation of corrective instruments setting forth accurately the identity of the actual parties-in-interest to the instruments about which complaint is made.

139. Plaintiffs further seek an order of this Court requiring Defendants, jointly and severally, to correct the false, deceptive, and legally ineffective filings described


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herein by causing the recordation of corrective instruments setting forth the entire chain of title for each instrument described herein.

WHEREFORE, Plaintiffs pray for judgment as follows:

I. On the First Cause of Action against all Defendants, that the Court award direct and consequential damages for the damage to and corruption of the Plaintiffs' statutory Grantor/Grantee indexes and for the remediation of said records, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system, as well as punitive damages;

II. On the Second Cause of Action against Defendants, MERSCORP, MERS, BOA, DEUTSCHE, JP MORGAN CHASE BANK, N.A., MORTGAGE NETWORK, INC., CITIMORTGAGE, INC., HSBC BANK USA, N.A., HSBC MORTGAGE CORPORATION (USA), and HSBC MORTGAGE SERVICES, INC., that the Court award direct and consequential damages for the damage to and corruption of the Plaintiffs' statutory Grantor/Grantee indexes and for the remediation of said records, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system, as well as punitive damages;

III. On the Third Cause of Action against all Defendants, that the Court award compensatory damages, and upon determining Plaintiffs' consequential damages, that the Court treble that award;

IV. On the Fourth Cause of Action against all Defendants, that the Court award direct and consequential damages for the damage to and corruption of the Plaintiffs' statutory Grantor/Grantee indexes and for the remediation of said records, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system, as well as punitive damages;

V. On the Fifth Cause of Action against all Defendants, that the Court award direct and consequential damages for the damage to and corruption of the Plaintiffs' statutory Grantor/Grantee indexes and for the remediation of said records, or in the event remediation is not possible, compensatory damages for the loss of an accurate and reliable public recording system, as well as punitive damages;

VI. On the Sixth Cause of Action against all Defendants, that the Court issue a

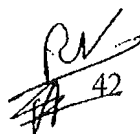
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judicial declaration that:

- a. Defendants have caused substantial damage to Plaintiffs' record by:
 - i. recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantee" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs; and
 - ii. recording, causing to be recorded, or approving the recording of instruments which falsely state that MERS has a lien upon or interest in real property which MERS does not have with the intent to cause MERS to be indexed as a "grantor" in the Statutory Grantor/Grantee Indexes maintained by Plaintiffs; and
 - iii. recording, causing to be recorded, or approving the recording of documents which are legally void; and
- b. Plaintiffs are not required by South Carolina Law to index MERS as a "grantee" or "grantor" in the Statutory Grantor/Grantee Indexes of Plaintiffs when MERS is acting in a representative capacity in an instrument presented for recording, or to record an assignment of mortgage which is legally void and in contravention of the terms of the governing PSA;

VII. On the Seventh Cause of Action against all Defendants:

- a. That the Defendants and al those in active concert or participation with them be enjoined from recording, causing to be recorded or approving the recording of instruments that state that MERS has a lien upon or interest in real property which MERS does not have and/or which are legally void; and
- b. That the Defendants jointly and severely be required to correct the false, deceptive, and legally ineffective filings described in this Complaint by causing the recordation of correct

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instruments setting forth accurately the identities of the actual parties and interest to the instruments about which the Complaint is made; and

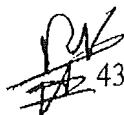
- c. That the Defendants jointly and severely be required to correct the false, deceptive, and legally ineffective filings described herein by causing the recordation of corrective instruments setting forth the entire chain of title for each instrument described herein; and

VII. On all causes of action, that the judgment of this Court include:

- a. judgment against MERSCORP SHAREHOLDER DEFENDANTS as the alter ego of Defendants, MERSCORP and MERS, for any and all damages awarded against Defendant MERSCORP and/or Defendant MERS; and

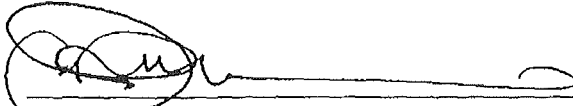
- b. attorneys' fees and costs incurred in the prosecution of this action together with such other and further relief as the Court deems just and proper.

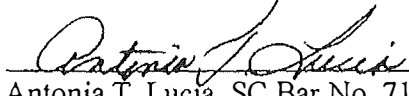
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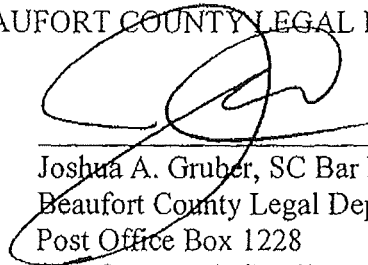
VAUX & MARSCHER, P.A.
Attorneys for the Plaintiffs

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Telephone 843-757-2888
Facsimile 843-757-2889

BEAUFORT COUNTY LEGAL DEPARTMENT

By: 
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Beaufort County Legal Department
Post Office Box 1228
Beaufort, South Carolina 29901-1228
Telephone 843-255-2059
Facsimile 843-255-9414

June 7th, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2013-CP-07-1340

GARY KUBIC, in his official)
capacity as County Administrator)
for Beaufort County, South)
Carolina, and DALE L. BUTTS,)
in his official capacity as Register)
of Deeds for Beaufort County,)
South Carolina,)

Plaintiffs,)

v.)

MERSCORP HOLDINGS, INC.,)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS,)
INC., BANK OF AMERICA, N.A.,)
DEUTSCHE BANK NATIONAL)
TRUST COMPANY,)
JP MORGAN CHASE BANK,)
N.A., MORTGAGE NETWORK,)
INC., CITIMORTGAGE, INC.)
HSBC BANK USA, N.A., HSBC)
MORTGAGE CORPORATION)
(USA), HSBC MORTGAGE)
SERVICES, INC., SOUTH)
CAROLINA BANK AND TRUST,)
N.A., COASTAL STATES BANK,)
COASTAL BANKING)
COMPANY, INC., and)
TIDELANDS BANK,)

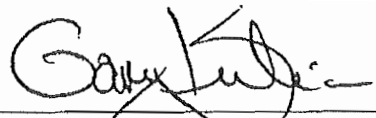
Defendants.)
_____)

VERIFICATION

2013 JUN -5 AM 11:48
GARY KUBIC, COUNTY CLERK
BEAUFORT COUNTY, S.C.

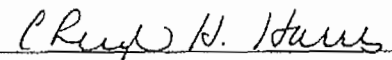
PERSONALLY appeared before me, GARY KUBIC, County Administrator for Beaufort County, South Carolina, who being duly sworn, deposes and says that he is a Plaintiff in the within action; that he has read the foregoing Amended Complaint, and all of the allegations contained therein are true of his own knowledge, and as to those things

alleged upon information and belief, he believes the same to be true.



Gary Kubie

SWORN TO BEFORE ME this
this 4th day of June, 2013



Notary Public for South Carolina
My Commission Expires: 10/8/18



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2013-CP-07-1340

GARY KUBIC, in his official)
capacity as County Administrator)
for Beaufort County, South)
Carolina, and DALE L. BUTTS,)
in his official capacity as Register)
of Deeds for Beaufort County,)
South Carolina,)

Plaintiffs,)

v.)

VERIFICATION

MERSCORP HOLDINGS, INC.,)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS,)
INC., BANK OF AMERICA, N.A.,)
DEUTSCHE BANK NATIONAL)
TRUST COMPANY,)
JP MORGAN CHASE BANK,)
N.A., MORTGAGE NETWORK,)
INC., CITIMORTGAGE, INC.)
HSBC BANK USA, N.A., HSBC)
MORTGAGE CORPORATION)
(USA), HSBC MORTGAGE)
SERVICES, INC., SOUTH)
CAROLINA BANK AND TRUST,)
N.A., COASTAL STATES BANK,)
COASTAL BANKING)
COMPANY, INC., and)
TIDELANDS BANK,)

Defendants.)

FILED
CLERK OF COURT
BEAUFORT COUNTY, S.C.

2013 JUN -5 AM 11:48

PERSONALLY appeared before me, DALE L. BUTTS, Register of Deeds for Beaufort County, South Carolina, who being duly sworn, deposes and says that he is a Plaintiff in the within action; that he has read the foregoing Amended Complaint, and all of the allegations contained therein are true of his own knowledge, and as to those things

alleged upon information and belief, he believes the same to be true.

Dale L. Butts

Dale L. Butts

SWORN TO BEFORE ME this
this 4th day of June, 2013

Ceryl H. Harris

Notary Public for South Carolina

My Commission Expires: 10/8/2018

