

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MONTGOMERY COUNTY, PENNSYLVANIA,
RECORDER OF DEEDS, by and through
NANCY J. BECKER, in her official capacity as
the Recorder of Deeds of Montgomery County,
Pennsylvania, on its own behalf and on behalf
of all others similarly situated,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, THE
BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., CITIBANK, N.A., DEUTSCHE
BANK NATIONAL TRUST COMPANY,
DEUTSCHE BANK TRUST COMPANY
AMERICAS, HSBC BANK USA, N.A.,
JPMORGAN CHASE BANK, N.A., and WELLS
FARGO BANK, N.A.,

Defendants.

CIVIL ACTION

NO. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, the Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker in her official capacity as the Recorder of Deeds of Montgomery County, Pennsylvania (“Plaintiff”), on behalf of herself and all other similarly situated Pennsylvania County Recorders of Deeds, submits this Complaint (the “Complaint”) against The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Citibank N.A., Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, HSBC Bank USA, N.A., JPMorgan Chase Bank, N.A., and Wells Fargo Bank, N.A. The allegations are asserted on information and belief after due investigation, except as to those matters that relate to Plaintiff and its own acts, which are asserted on personal knowledge.

I. NATURE OF THE ACTION

1. The Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker, the Montgomery County Recorder of Deeds, brings this action on its own behalf and on behalf of a class of all other similarly situated Pennsylvania County Recorders of Deeds (collectively, the “Recorders” or the “Class”) against The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Citibank N.A., Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, HSBC Bank, N.A., JPMorgan Chase N.A., and Wells Fargo Bank, N.A. (“Defendants”) to remedy Defendants’ failures to properly and timely record mortgage assignments as required by Pennsylvania law.

2. Defendants have been among the most active participants in the mortgage-backed securities (“MBS”) industry, including as trustees for numerous MBS trusts into which the securitized mortgage loans are ultimately conveyed. In a securitization, a mortgage loan typically is transferred multiple times before it is conveyed to the trustee on behalf of the MBS trust. Each of the Defendants has engaged in transfers of mortgage loans secured by real property located in Montgomery County and throughout Pennsylvania,

3. Each of the Defendants is also a member of, and participates in, the “MERS System,” a private, members-only electronic registry for recording and tracking transfers of mortgage loans without recording mortgage assignments in public land records offices.

4. In *Montgomery County, Pa. v. MERSCORP, Inc.*, 11-CV-6968, 2014 WL 2957494 (E.D. Pa. Jun. 30, 2014), this Court, per the Honorable J. Curtis Joyner, entered a declaratory judgment in Plaintiff’s favor, finding that the failure to create and record mortgage assignments evincing the transfers of promissory notes secured by mortgages on Pennsylvania

real estate, under the MERS System and otherwise, violates Pennsylvania recording statutes, including 21 P.S. §§ 351, 444 and 623-1.

5. Each of the Defendants has systematically failed to create and timely record mortgage assignments in connection with transfers of promissory notes secured by mortgages on Pennsylvania real estate, both when operating within the MERS System and otherwise. These failures to record mortgage assignments have damaged the integrity of Pennsylvania's public land records by creating gaps in the chain of title and creating confusion amongst property owners and others about the identity of the owners of their mortgages, and have wrongfully deprived the Montgomery County Recorder of Deeds and all of the other Pennsylvania Recorders of millions of dollars in recording fees, in violation of 21 P.S. §§ 351, 444 and 623-1 (together, the "Pennsylvania Recording Statutes"). Plaintiff seeks an award of damages for these violations, to quiet title on all of the adversely affected Pennsylvania properties by requiring Defendants to record the missing mortgage assignments and pay the related recording fees, restitution for Defendants' unjust enrichment, and for declaratory and permanent injunctive relief.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Court's diversity jurisdiction, 28 U.S.C. § 1332(a)(1). Plaintiff and each Class member is a citizen of Pennsylvania. Each Defendant is a citizen of a state other than Pennsylvania. The amount in controversy with respect to Plaintiff's claim exceeds \$75,000, exclusive of interest and costs.

7. Venue in this Judicial District is proper under 28 U.S.C. § 1391(b)(2). A substantial part of the acts or omissions giving rise to the claims occurred within this District, and a substantial number of the properties that are the subject of this action are situated in this District.

III. PARTIES

8. Plaintiff is the Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker in her official capacity as the Recorder of Deeds of Montgomery County. Plaintiff is charged with maintaining the accuracy and integrity of the public land records for properties in Montgomery County, Pennsylvania, and with collecting the associated fees for recording deeds, mortgages, mortgage assignments, and other documents relating to transactions in real property. Plaintiff brings this action on its own behalf and on behalf of a class of all other similarly situated Pennsylvania County Recorders of Deeds.

9. Defendant The Bank of New York Mellon (“BNY Mellon”) is a New York state chartered bank with its principal place of business at 1 Wall Street, New York, NY, 10005. BNY Mellon directly, and indirectly through its agents, employees, subsidiaries, predecessor companies, and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. BNY Mellon is a MERS member.

10. Defendant The Bank of New York Mellon Trust Company, N.A. (“BNY Mellon Trust”), is a national banking association with its main office, as set forth in its articles of association, at 400 South Hope Street, Los Angeles, CA 90071, and is therefore a California citizen for purposes of diversity jurisdiction. BNY Mellon Trust directly and indirectly, through its agents, employees, subsidiaries, predecessor companies, and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. BNY Mellon Trust is a MERS member.

11. Defendant Citibank, N.A., d/b/a CitiBank, N.A. as Trustee, a Division of CitiBank, N.A., Inc. (“Citibank”) is a national banking association with its main office, as set forth in its articles of association, at 701 East 60th Street North, Sioux Falls, SD 57104, and is therefore a South Dakota citizen for purposes of diversity jurisdiction. Citibank, directly and indirectly, through its agents, employees, subsidiaries, predecessor companies, and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. Citibank is a MERS member, and its affiliate, CitiMortgage, Inc., is a shareholder of MERSCORP.

12. Defendant Deutsche Bank National Trust Company (“DBNTC”) is a national banking association with its main office, as set forth in its articles of association, at 300 South Grand Avenue, Suite 3950, Los Angeles, CA 90071, and is therefore a California citizen for purposes of diversity jurisdiction. DBNTC directly and indirectly, through its agents, employees, subsidiaries, predecessor companies and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. DBNTC is a MERS member.

13. Defendant Deutsche Bank Trust Company Americas (“DBTC Americas”) is a New York banking corporation with its principal place of business at 60 Wall Street, New York, NY 10005, and is therefore a New York citizen for purposes of diversity jurisdiction. DBTC Americas directly and indirectly, through its agents, employees, subsidiaries, predecessor companies and/or related companies, engaged in transfers of engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania

without properly or timely recording mortgage assignments. DBTC Americas is a MERS member.

14. Defendant HSBC Bank USA, N.A. (“HSBC”) is a national banking association with its main office, as set forth in its articles of association, at 1800 Tysons Blvd, McLean, VA 22102, and is therefore a Virginia citizen for purposes of diversity jurisdiction. HSBC directly and indirectly, through its agents, employees, subsidiaries, predecessor companies and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. HSBC is a MERS member and its affiliate, HSBC Finance Corporation, is a shareholder of MERSCORP.

15. Defendant JPMorgan Chase Bank, N.A. (“JPM Chase”) is a national banking association with its main office, as set forth in its articles of association, at 1111 Polaris Parkway, Columbus, OH 43240, and is therefore an Ohio citizen for purposes of diversity jurisdiction. JPM Chase directly and indirectly, through its agents, employees, subsidiaries, predecessor companies and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. JPM Chase is a MERS member and David Beck, the Chief Financial Officer of Chase Legacy Services, has been a Director of MERSCORP since 2014.

16. Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) is a national banking association with its main office, as set forth in its articles of association, in Sioux Falls, South Dakota, and is therefore a South Dakota citizen for purposes of diversity jurisdiction. Wells Fargo directly and indirectly, through its agents, employees, subsidiaries, predecessor companies

and/or related companies, engaged in transfers of promissory notes secured by real property located in Montgomery County and throughout Pennsylvania without properly or timely recording mortgage assignments. Wells Fargo is a MERS member and a shareholder of MERSCORP. Kathy Gray, Executive Vice President for Wells Fargo, has been a Director of MERSCORP since 2012.

17. Defendants have at all times relevant to this litigation conducted business in the Commonwealth of Pennsylvania including in this Judicial District.

IV. FACTUAL BACKGROUND

A. Pennsylvania's Recording Laws

18. In Pennsylvania, a mortgage loan involves two legal instruments, a promissory note (or "note") and a mortgage. The note contains the terms of the borrower's promise to repay the loan, and the mortgage operates as a lien on the real estate providing the lender security for repayment of the note. That security includes the right to foreclose upon and sell the mortgaged property in a sheriff's sale.

19. Promissory notes for mortgage loans are negotiable instruments under Pennsylvania's version of the Uniform Commercial Code, and they may be bought and sold in the so-called "secondary market" for mortgage loans. In some cases, mortgage loans are bought and sold for the purpose of being "securitized." Securitization is a complex process in which an investment bank or other sponsor purchases numerous mortgage loans and pools them into a trust or other special purpose vehicle, and then issues marketable securities backed by the mortgage loans in the trust. In a typical securitization, a mortgage loan may be sold at least three – but often many more times – as the promissory note passes through several intermediaries between the originating lender and the MBS trust into which the mortgage loans are pooled.

20. Under Pennsylvania law, however, a mortgage is more than merely a lien on the property securing the note. For purposes of Pennsylvania's property recording laws, a mortgage is also conditional conveyance of title to the real estate securing the note. When the mortgage is paid off and satisfied, the title is re-conveyed back to the homeowner.

21. 21 P.S. § 351 provides that, "All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate."

22. Mortgages and mortgage assignments constitute "conveyances" within the meaning of Pennsylvania recording statutes including, *inter alia*, 21 P.S. § 351. *Pines v. Farrell*, 577 Pa. 564, 848 A.2d 94 (2004).

23. Pursuant to 21 P.S. 351, the recording of conveyances of interests in real property – including mortgage assignments – is mandatory. *Montgomery Cnty., Pa. v. MERSCORP, Inc.*, 904 F.Supp.2d 436, 445 (E.D. Pa. 2012).

24. Title 21 P.S. § 444 requires all mortgage assignments to be acknowledged and recorded within 90 days.

25. In Pennsylvania the mortgage and the promissory note it secures are legally interwoven and inseparable, such that a transfer of ownership of the mortgage debt also operates to assign the mortgage in the property. As such, "the assignment or transfer of a promissory note secured by a mortgage on real estate is, in Pennsylvania, equivalent to a mortgage assignment."

Montgomery Cnty., Pa. v. MERSCORP, Inc., 11-CV-6968, 2014 WL 2957494 (E.D. Pa. June 30, 2014).

26. Pennsylvania law also requires that mortgage assignments be in writing. 21 P.S. § 623-1. Accordingly, if a promissory note secured by a mortgage is transferred, the resulting mortgage assignment – which occurs automatically as a matter of law – must be documented in a form suitable for recording and then recorded in office of the Recorder of Deeds for the county in which the property is situated, within 90 days as required by 21 P.S. §§ 351 and 444.

B. Securitization

27. Beginning in the 1990s, securitization of mortgage loans became more common. Mortgage lenders would originate as many residential mortgage loans as possible and then sell them to various banks and financial institutions. Investment banks would then pool the mortgages into special purpose trusts and issue securities backed by the mortgage loans in the trusts.

28. To securitize a mortgage loan, several assignments must be made: (a) the originating lender sells the mortgage loans (promissory notes and mortgages) to a sponsor, which typically is a special purpose entity affiliated with a bank or financial institution; (b) the sponsor initiates the securitization by transferring the mortgage loans to a depositor; and (c) the depositor then transfers the mortgage loans to the trustee of a special purpose investment trust into which the mortgage loans are pooled.

29. The securitization process thus requires at least three mortgage assignments and often involves more than three such assignments as the mortgage loan moves from origination, through several intermediaries the secondary market, and into the investment trust. Under Pennsylvania law, each such assignment must be documented in a recordable form and timely recorded in the office of the Recorder of Deeds for the county in which the property is situated.

30. A key assumption underlying the mortgage backed securities that are the end-product of the securitization process is that the mortgage is integral to, and inseparable from, the ownership of the debt. All participants in the MBS market fully expect and intend that the mortgage collateral is inseparable from the promissory note, and that the mortgage provides recourse for the owner of the mortgage loan at every step of the securitization process if there is a default on the note. To this end, MBS offering materials and the related pooling and servicing agreements recite that both the mortgages and the notes are conveyed together into the MBS trust, evidencing the importance of the inseparability of the notes and the mortgages in the trusts.

31. In practice, while the mortgage itself is recorded at the time of origination, the participants in the securitization process routinely fail to timely record subsequent assignments as the promissory notes are sold and resold in the secondary market to a sponsor, then to a depositor, and ultimately conveyed to the trustee of the MBS trust. Many such promissory notes on properties in Montgomery County and throughout Pennsylvania have been sold and assigned on multiple occasions, but there is no recording of these conveyances in the public record.

32. Each of the Defendants serves or has served as a trustee of MBS trusts that contain mortgages for properties situated in Montgomery County, Pennsylvania, and in all other Pennsylvania counties. Upon information and belief, Defendants or their respective affiliated companies have also participated in securitizations in other roles, including as sponsors of MBS offerings. Defendants have, however, routinely failed to timely record mortgage assignments when they bought or sold promissory notes as part of the securitization process.

33. To the extent that Defendants record mortgage assignments at all in connection with their transfers of promissory notes, they usually do so only well after the 90-day deadline imposed by 21 P.S. § 444 in order to facilitate foreclosure proceedings in the event of a default.

In such cases, the mortgage assignment is often recorded many years recording deadline has passed.

34. Their failure to timely record mortgage assignments, or to record them at all, creates gaps in the record of ownership of the title on Pennsylvania properties. Gaps in title cloud ownership, increase questions about foreclosure procedures, and raise doubts about the accurate satisfaction of mortgages, all of which undermine the time-honored recording requirements in Pennsylvania and the purpose of the recording laws in assuring an accurate public record of ownership interests in land.

35. In addition to clouding title, Defendants' failures to record mortgage assignments have caused collateral difficulties for homeowners, who are unable to tell from public land records who owns their loan. For example, homeowners insurance policies routinely require homeowners with a mortgage to name their lender as a primary insured. Montgomery County residents have complained to Plaintiff that they have been unable to obtain payment of insurance claims for storm damage due to the inability of the insurer to determine the identity of the then-current lender.

C. The MERS System.

36. Since 1995, a common means that Defendants have used to avoid recording mortgage assignments in connection with mortgage loan transfers is known as the "MERS System."

37. The MERS System is a members-only, private electronic mortgage loan registry owned and operated by MERSCORP Holdings, Inc., f/k/a/ MERSCORP, Inc. ("MERSCORP"). MERSCORP administers MERS membership, maintains the MERS System electronic mortgage registry, and promulgates and enforces the MERS System rules of membership and policies.

38. Mortgage Electronic Registration Systems, Inc. (“MERS”), a wholly owned subsidiary of MERSCORP, exists solely to be “nominated” as a mortgagee of record in the public land records on behalf, and in the place, of the MERS members who originate the mortgage loans and their undisclosed successors and assigns.

39. The MERS System was conceived and described in a 1993 “white paper” created by the Mortgage Banker’s Association (“MBA”) Interagency Technology Task Force, entitled “Whole Loan Book Entry Concept for the Mortgage Finance Industry” (“White Paper”). The White Paper was published at the MBA’s 1993 Annual Convention and used to solicit comments from the real estate finance industry on the MERS concept.

40. The central purpose and intent behind the MERS concept was to avoid the time and expense of publicly recording mortgage assignments and paying the associated recording fees. The mortgage industry considers recording laws to be an anachronism – “creatures of 17th-century real property law [that] do not coexist easily with high-volume, late 20th-century secondary mortgage market transactions.” Phyllis K. Slesinger, “The MERS Project,” *Mortgage Banking* (June 1995). In 1997, MERS’ former CEO said that “MERS is owned and operated by and for the mortgage industry” and stressed that its express purpose was to circumvent recording assignments and paying fees to recorders of deeds in connection with such recording. Today, MERSCORP markets the MERS System as providing these benefits, stating on its website that, “Any loan – where MERS is the mortgagee – registered on the MERS® System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded.”

41. Under the MERS System, the originating lender usually names MERS as the original mortgagee in the documents signed by the lender and borrower at closing. Lenders can

also assign their mortgages to MERS after origination. Under MERS' suggested residential mortgage clause, the borrower must agree that:

MERS is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument.

The original mortgage is then recorded in MERS' name in the county land records while the promissory note is bought and sold any number of times in the secondary market without the preparation or timely recording of corresponding mortgage assignments in the appropriate Recorder of Deeds office. There have been over 130,000 mortgages recorded in Montgomery County, Pennsylvania naming MERS as the mortgagee since 2004 alone. More than 78 million mortgages have been recorded with MERS as the mortgagee nationwide, including an estimated 26 million currently active loans.

42. MERSCORP maintains a computerized database for use by MERS System members, purportedly to track transfers of servicing and ownership rights of mortgage loans throughout the United States. MERSCORP also offers a separate electronic registry called "MERS eRegistry," a computerized trading platform through which members can buy and sell mortgage loans in the secondary market.

43. While the originating lender is listed on the original recorded MERS mortgage, the identities of the subsequent "successors and assigns" in the secondary market such as Defendants – for whom MERS is also acting as agent – are undisclosed and concealed from the public land records.

44. Despite being the designated mortgagee of record for as many as half of the residential mortgages in the United States, MERS reportedly has no employees. Instead, MERS operates through the use of "signing officers" (formerly known as "certifying officers") –

employees of MERS members who are appointed as “Vice Presidents” or “Assistant Secretaries” of MERS at the request of the MERS member for a small fee. Through these appointments, each of the Defendants employs resident, on-staff MERS “officers” who are authorized and empowered to execute legally binding assignments and satisfactions of MERS mortgages on behalf of MERS.

45. If a MERS member who owns a MERS mortgage wishes to foreclose on the mortgage, the member can direct its in-house employee/MERS signing officer to execute and record a mortgage assignment so that the MERS member can prove its mortgage rights in the foreclosure proceedings. These assignments for foreclosure purposes are often recorded years after the mortgage loan was acquired, and there might have been two, three, or more prior assignments that were never recorded.

46. On July 1, 2014, this Court entered a Declaratory Judgment in favor of Plaintiff herein and against MERSCORP and MERS, holding that the failure to document and record a mortgage assignment when a promissory note secured by a MERS mortgage is transferred among MERS members violates Pennsylvania Recording Statutes. *Montgomery Cnty., Pa. v. MERSCORP, Inc.*, 11-CV-6968, 2014 WL 2957494 (E.D. Pa. Jun. 30, 2014). To the extent Defendants were parties to such transfers and did not timely document and record mortgage assignments, Defendants have likewise violated the Pennsylvania Recording Statutes.

47. Defendants’ avoidance of filing mortgage assignments, through the MERS System and otherwise, has resulted in the loss of millions of dollars in recording fees to Plaintiff and the Class. In the Commonwealth of Pennsylvania alone, Plaintiff estimates that over \$100 million was lost in recording fees because interim mortgage assignments were not recorded, including approximately \$15 million in lost recording fees in Montgomery County alone.

V. CLASS ACTION ALLEGATIONS

48. This case meets all of the requirements to proceed as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

49. Plaintiff seeks to certify a Class consisting of each County Recorder of Deeds in Pennsylvania in his or her official capacity.

50. The class meets the prerequisites for the maintenance of a class action in that:

- (a) The class is so numerous that joinder of all class members is impracticable. The identities of the class members are easily ascertainable from Defendants' records and from the MERS System database, or both;
- (b) The claims of Plaintiff involve issues of law and fact common to the claims of the class, including whether Defendants' failures to properly and timely record mortgage assignments in connections with transfers of promissory notes violate Pennsylvania recording laws;
- (c) The claims of Plaintiff are typical of the claims of the class. Plaintiff and each class member claim that Defendants violated the Pennsylvania Recording Statutes by failing to properly and timely record mortgage assignments in connection with transfers of promissory notes, and Plaintiff and the members of the class all seek to recover for the same type of injury, namely, the loss of recording fees due to Defendants' circumvention of Pennsylvania Recording Statutes, and the damage to the completeness and integrity to the public land records system;

- (d) Plaintiff will fairly and adequately assert and protect the interests of the class under the criteria set forth in Fed. R. Civ. P. 23. The attorneys for the representative party are skilled in class action matters and complex commercial litigation. There is no conflict of interest between the parties who are uniform in their pursuit of damages for Defendants alleged violations of Pennsylvania law. Through the course of this action, Plaintiff has adequate financial resources to ensure that the interests of the class will not be harmed.
- (e) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Fed. R. Civ. P. 23. The class consists of common questions of law or fact which predominate over any questions affecting only individual members: (1) whether Defendants violated 21 P.S. §§ 351, 444, and 623-1; (2) whether Defendants were unjustly enriched by their conduct; (3) whether the Plaintiff is entitled to an order declaring that these practices, as described above, are in violation of 21 P.S. § 351, 444 and 623-1; (4) whether Plaintiff is entitled to quiet title relief; and (5) the appropriate amount of damages and other relief to be granted to Plaintiffs and the class. Due to the size of the class, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CAUSES OF ACTION

COUNT I - VIOLATIONS OF 21 P.S. § 351

51. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-50 above as if fully set forth herein.

52. Each of the Defendants failed to properly document and timely record mortgage assignments and to pay the associated recording fees in connection with its transfers of promissory notes secured by mortgages on real property in Pennsylvania, causing Plaintiff and the Class a loss of millions of dollars in recording fees and rendering the public recording system inaccurate and incomplete.

53. To the extent that Defendants' violations of 21 P.S. § 351 were caused through their participation in the MERS System, or through the conduct of the MERS signing officers employed by Defendants, MERS and/or MERSCORP was acting as an agent for Defendants pursuant to an express written agreement.

54. As a proximate result of the Defendants' negligent and willful violations of 21 P.S. § 351, Plaintiff and the Class were damaged in an amount to be ascertained at trial.

COUNT II - QUIET TITLE

55. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-54 above as if fully set forth herein.

56. Plaintiff, as Recorder of Deeds for Montgomery County, has an interest in the recordation of mortgage assignments on properties located within Montgomery County, including those where the MERS System is used.

57. Each Defendant has engaged in transfers of promissory notes secured by mortgages on real property in Pennsylvania, including under the MERS System, but have not

properly and timely documented and recorded these assignments with the County Recorder, as required by law.

58. Defendants have documents and other data in their possession or control reflecting the assignments of each such mortgage that should have been recorded, including data in the MERS System.

59. Plaintiff seeks an order compelling Defendants to account for the missing mortgage assignments in which they were the transferor or transferee and record those assignments with the Recorders of Deeds in the counties where the properties are situated, and to create documents suitable for recordation if necessary to facilitate that recordation.

COUNT III - UNJUST ENRICHMENT

60. The Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-59 as if fully set forth herein.

61. Based upon Defendants' wrongful conduct, Plaintiff and the Class seek to recover in equity monies held by Defendants that belong to Plaintiff and the Class.

62. Plaintiff and the members of the Class each conferred benefits on the Defendants by maintaining the public recording system in Pennsylvania. Defendants enjoyed and appreciated those benefits without paying the required recording fees. Defendants' retention of those benefits without payment will produce an inequitable result. These benefits amounted to millions of dollars in money due to Plaintiff and the other Class Members. Plaintiff, under Pennsylvania law, has the authority to collect these overdue fees.

63. In addition, when Defendants circumvented the county recording system they were able to benefit from the appearance of holding good title on thousands of properties, which was essential to the formation and operation of the MBS trusts. Without recording of these

assignments, Plaintiff and the class are denied an accurate accounting of property transfers in Montgomery County and throughout Pennsylvania. Defendants' acceptance of these benefits and failure to compensate Plaintiff and the class members resulted in an unconscionable bargain.

64. Prior to Defendants' actions, the recording indexes of the counties provided a transparent public record that promoted open and vibrant commercial activity by enabling potential mortgage purchasers to know with certainty whether they could obtain clear title to land. Recording the assignments will assist in clearing title to the relevant properties. The Plaintiff and the class are entitled to all such monies based on the general principles of equity and good conscience.

65. Plaintiff and the class seek equitable remedies to prevent the unjust enrichment of Defendants by causing payment to Plaintiff and the class of all mortgage assignment fees wrongfully avoided by the Defendants in addition to interest, attorneys' costs and fees, and, exemplary damages as allowed by law and equity.

**COUNT IV- DECLARATORY JUDGMENT AND PERMANENT
INJUNCTION FOR DEFENDANTS' FAILURE TO RECORD
MORTGAGE ASSIGNMENT IN VIOLATION OF 21 P.S. § 351**

66. The Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-65 as if fully set forth herein.

67. This is an action against Defendants for a declaratory judgment pursuant to 28 U.S.C. § 2201 and for a permanent injunction.

68. As a result of Defendants' actions, the Plaintiff and the class are uncertain about the true owners of title to property because of unrecorded mortgage assignments.

69. Plaintiff seeks clarification about the assignment of mortgages to restore order to the property records in recorders' offices throughout the Commonwealth.

70. The Plaintiff and the class have a bona fide, actual, imminent, present and practical need for a declaration that: (1) transfers of promissory notes secured by mortgages on real property in Pennsylvania mortgages operate to assign the related mortgage as a matter of law, and (2) the failure to prepare and timely record a mortgage assignment evincing the transfers of such promissory notes and the consequent assignment of the related mortgage is a violation of 21 P.S. §§ 351, 444 and 623-1.

71. Defendants inequitable actions have undermined, and continue to undermine, the accuracy and integrity of the Pennsylvania public land records that Plaintiff and the other Class Members are responsible for maintaining. An award of damages is inadequate to remedy Defendants' violations of law.

72. The Plaintiff and the class seek a declaratory judgment and a permanent injunction requiring Defendants to properly record in the public record, any and all assignments of mortgages where they were transferors or transferees.

JURY DEMAND

73. Plaintiff hereby demands, on behalf of herself and the class, a trial by jury on all issues so triable in this case.

PRAYER FOR RELIEF

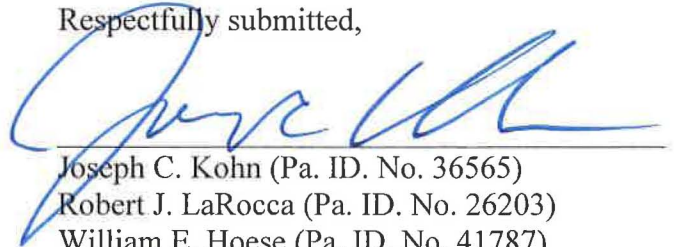
WHEREFORE, Plaintiff prays for the following on behalf of itself and the class:

- (a) For certification of the class pursuant to Fed. R. Civ. P. 23;
- (b) For judgment against Defendants and in favor of Plaintiff and the class on all causes of action asserted in this Complaint;
- (c) Compensatory damages;

- (d) Restitution and disgorgement of all monies due and owing to the Plaintiff and class;
- (e) A declaration and determination by the Court of the rights, duties and remedies for the failure to record mortgage assignments and pay the accompanying fees;
- (f) A judgment against Defendants quieting title to the mortgages;
- (g) A mandatory injunction requiring Defendants to record all prior assignments that Defendants failed to record in county recorder offices throughout Pennsylvania;
- (h) For costs of suit incurred herein;
- (i) For pre-judgment interest to the extent allowed by law;
- (j) For penalties as alleged in this Complaint;
- (k) For reasonable and necessary attorneys' fees; and,
- (l) For such other and further relief as this Court may deem just and proper.

Dated: September 24, 2014

Respectfully submitted,



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