

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

NUECES COUNTY, TEXAS,

Plaintiff,

vs.

CIVIL ACTION No.

**MERSCORP HOLDINGS, INC.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.;
AND BANK OF AMERICA, NATIONAL
ASSOCIATION,**

2:12-CV-00131

Defendants.

RULE 24 MOTION FOR LEAVE TO INTERVENE

COMES NOW Travis County, Texas (“Travis County”) and files this Rule 24 Motion for Leave to Intervene and would show the Court as follows:

**I.
BACKGROUND**

This action was commenced by Plaintiff Nueces County (“Plaintiff”) on April 30, 2012. Plaintiff alleges, *inter alia*, that MERSCORP Holdings, Inc. f/k/a MERSCORP, Inc. (“MERSCORP”) and its wholly-owned subsidiary, Mortgage Electronic Registration Systems, Inc. (“MERS”), were created by Defendant Bank of America, National Association (“BOA”), together with other members of the mortgage banking industry, to facilitate the rapid transfer of mortgage loans amongst members of the industry through the unlawful use of Plaintiff’s real property records, and to avoid recording mortgage assignments and paying the associated fees.

Defendant BOA filed its Motion to Dismiss on July 27, 2012 (“the Motion to Dismiss”) (D.E. 26.). On January 25, 2013, the Court stayed all deadlines in this action pending the Court’s determination of the Motion to Dismiss (D.E. 66). On July 3, 2013, the Court granted in part and

denied in part BOA's motion to dismiss (D.E. 70). On July 18, 2013, the Court entered an Amended Scheduling Order setting this matter for trial on September 15, 2014 (D.E. 75).

II. THE COUNTIES¹

Section 11.004 of the Texas Property Code requires that every county clerk in the State of Texas "correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law." Section 193.003 of the Texas Local Government Code requires that a county clerk maintain "a well-bound alphabetical index to all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property" with "a cross-index that contains the names of the grantors and grantees in alphabetical order." Travis County records and maintains real property records and indexes as required by statute.

Deeds of trust falsely identifying MERS as "a" or "the" beneficiary of such deeds of trust have been recorded in Travis County.² Releases or assignments of lien falsely identifying MERS as having an interest in real property have also been recorded in Travis County.³ Travis County seeks leave to intervene in this action pursuant to Rule 24 of the Federal Rules of Civil Procedure.

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¹ Travis County has a population of approximately 1,024,266. *See* U.S. Department of Commerce, United State Census Bureau, *American FactFinder* at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

² *See, e.g.*, Exhibit 1 at 1, February 21, 2013 MERS Deed of Trust recorded in Travis County.

³ *See, e.g.*, Exhibit 2 May 28, 2009, MERS Release of Lien recorded in Travis County.

III. ARGUMENT AND AUTHORITIES

Rule 24 of the Federal Rules of Civil Procedure provides a non-party with two available avenues for intervention: intervention as of right under subsection (a) and permissive intervention under subsection (b). A non-party seeking leave to intervene under Rule 24(b) must:

- (1) timely move for intervention; and
- (2) demonstrate that:
 - (a) it “has a claim or defense that shares with the main action a common question of law or fact;” and
 - (b) it will not “unduly delay or prejudice the adjudication of the original parties’ rights.”⁴

Permissive intervention is wholly discretionary with the district court, even where “there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.”⁵

A. This Motion is Timely

There is no bright-line rule about how quickly an applicant must move to intervene; rather, the inquiry focuses on how diligently the applicant acted once he or she received actual or constructive notice of the impending threat.⁶ There are “four factors by which to evaluate the timeliness of a motion for leave to intervene:

- (1) the length of time applicants knew or should have known of their interest in the case;
- (2) prejudice to existing parties caused by applicants’ delay;
- (3) prejudice to applicants if their motion is denied; and
- (4) any unusual circumstances.”⁷

⁴ Fed. R. Civ. P. 24(b).

⁵ Fed. R. Civ. P. 24(b)(1)(B); *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 806 F.2d 1285, 1289 (5th Cir. 1987) (quotation marks, alterations, ellipses, and citations omitted).

⁶ *R&G Mortg. Corp. v. Federal Home Loan Mortg. Corp.*, 584 F.3d 1, 7-8 (1st Cir. 2009).

⁷ *Ruiz v. Estelle*, 161 F.3d 814, 827 (5th Cir. 1998).

As stated by the Supreme Court:

Although the point to which the suit has progressed is one factor in the determination of timeliness, it is not solely dispositive. Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review.⁸

Further, the Fifth Circuit has stated, "The criteria are mandatory, but Fed. R. Civ. P. 24 is to be construed liberally, and doubts resolved in favor of a proposed intervenor."⁹

The following circumstances support a finding of timeliness:

On October 30, 2012, the judge in the Dallas federal MERS litigation (Dallas County, Texas et al. v. MERSCORP, Inc. et al, case No. 3: 11-cv-02733-O, hereinafter referred to as "The Dallas case") set a hearing for argument on the issue of class certification for December 19, 2012, (Dallas case Dkt. No. 169). On November 8, 2012, the Travis County Clerk, Dana DeBeauvoir, provided deposition testimony and documents. At that time, the parties in the Dallas case were involved in discovery disputes and litigating the issue of class certification. Thus, the possibility still existed that the Travis County Clerk could be included in the requested plaintiff class of Texas County Clerks. However, on December 13, 2012, before the date set for hearing on the matter, the judge in the Dallas case, Judge Reed C. O'Conner, issued a memorandum opinion and order striking the class allegations and denying Plaintiff's Motion for Class Certification (Dallas case Dkt. No. 212).

After having the Travis County Clerk deposed, after being notified that the plaintiff class certification had been denied in the Dallas case, and after the MERS's "Open letter" to Williamson County in which MERSCORP and MERS deny that any of their conduct is unlawful

⁸ *NAACP v. New York*, 413 U.S. 345, 365-66 (1973); see *Jones v. Caddo Parish School Board*, 735 F.2d 923, 927 (5th Cir. 1984).

⁹ *Poynor v. Chesapeake Energy Ltd. P'ship (In re Lease Oil Antitrust Litig.)*, 570 F.3d 244 (5th Cir. Tex. 2009).

or contrary to Texas law,¹⁰ it became clear that Travis County needed to take legal action to protect its citizens and any remaining integrity of its public records as well as to seek restoration of those records already effected by the illegal and fraudulent acts of the defendants.

In exploring its options, Travis County learned that: 1) Nueces County had commenced this action against MERSCORP, MERS, and BOA; 2) on January 25, 2013, this Court stayed all deadlines in this action pending the Court's determination of the Motion to Dismiss (D.E. 66); and 3) Brazoria County, Dallas County, and Harris County were engaged in settlement discussions with MERSCORP, MERS, and BOA in an action filed by those counties against Defendants in the United States District Court of the Northern District of Texas ("the Dallas case"). As of the date of this motion, the partial settlement of the Dallas case remains pending.

Travis County has not delayed in filing this motion in that when the Court lifted the stay in the instant action, Travis County concluded that its citizens would best be served by seeking leave of this Honorable Court to intervene in this action.

B. The Claims Asserted by Travis County Share Questions of Law and Fact With This Action

The proposed Complaint in Intervention mirrors the allegations and causes of action set out in Plaintiffs' Second Amended Complaint (D.E. 39).¹¹ Travis County seeks to intervene against the same parties, for the same fraudulent acts perpetrated by the defendants using the same mechanisms, for the same purposes, with the same intent. Defendants' acts in Travis County are unlawful and should be analyzed through the application of the same laws. Furthermore, these unlawful acts have resulted in the same type of injury to the Travis County Clerk as those inflicted upon the Nueces County Clerk, both of whom are bound by the same statutory duties. While the number of subject instruments will be different from county to

¹⁰ See Exhibit 3 - MERS Open Letter to Williamson County Commissioners Court.

¹¹ See Exhibit 4, [proposed] Complaint in Intervention.

county, there will be no dispute that the types of instruments of which complaint is made have been recorded in Travis County, just as they have been in the other counties seeking to intervene in this lawsuit.

C. Intervention Will Not Unduly Delay or Prejudice the Adjudication of the Original Parties' Rights

This motion for leave to intervene is being filed within thirty-seven (37) days of the Court's Order lifting the stay (D.E. 71) and within twenty-nine (29) days of the Court's Amended Scheduling Order (D.E. 75). Thus, Travis County has not delayed in filing this motion. When considering prejudice to original parties, the court must not look to prejudice caused by the intervention itself but must determine that prejudice to the original parties is *caused by delay*; that is to say some prejudice to the existing parties at the time of this motion that would not have existed at some prior time at which Travis County could or should have intervened.¹² Given this case is still in the relatively early stages of litigation, any delay on the part of Travis County has not prejudiced the existing parties and this motion is timely.¹³

Furthermore, the unusual circumstances of this case are such that if counties are not allowed to intervene in current on-going litigation, it is conceivable that essentially the same case could be litigated and re-litigated in numerous District Courts throughout the state. Specifically, permissive intervention in this action would avoid the need for Travis County to commence a new action which would itself require significant expenditures by the parties and unnecessary consumption of judicial resources.

¹² Any potential prejudice caused by the intervention itself is irrelevant, because it would have occurred regardless of whether the intervention was timely. *Peynor* at 248.

¹³ The timeliness inquiry is inherently fact-sensitive and depends on the totality of the circumstances. In evaluating that mosaic, the status of the litigation at the time of a motion to intervene is "highly relevant." *R&G Mortgage Corp. v. Federal Home Mortgage Corp.*, 584 F.3d 1, 7 (1st Cir. 2009)(citing *Greenblatt*, 964 F.2d at 1230-31)(internal citations omitted).

Subject to the Court's granting Travis County's leave to intervene, Travis County will: 1) move forward without delay; 2) comply with the deadlines contained in the Court's Amended Scheduling Order; and 3) stipulate that it will be bound by the Court's disposition of the Motion to Dismiss (D.E. 26) and the recently-filed Defendants' Motion for Reconsideration (D.E. 76).

**III.
PRAYER**

Wherefore, premises considered, Travis County, Texas, respectfully requests leave to intervene in the instant action. Travis County, Texas, requests such other and further relief, in law and in equity, to which it may be justly entitled.

Respectfully submitted,

DAVID ESCAMILLA
County Attorney, Travis County
P.O. Box 1748
Austin, Texas 78767
Telephone: (512) 854-9513
Facsimile: (512) 854-4808

By: /s/ Sherine E. Thomas with permission J. Collins

James W. Collins¹⁴
State Bar No. 04611500

Sherine E. Thomas
State Bar No. 00794734

Sharon Talley
State Bar No. 19627575

Elaine A. Casas
State Bar No. 00785750

Attorneys for Intervenor Travis County, Texas

¹⁴ Admission to U.S. District Court, Southern District of Texas accepted pending Oath.
295920_1 THOMAS 64.596

CERTIFICATE OF SERVICE

I hereby certify on August 16, 2013, this *Rule 24 Motion for Leave to Intervene* was served on all counsel of record through electronic notification pursuant to Local Rule 5.1 of the United States District Court for the Southern District of Texas.

/s/ Sherine E. Thomas with permission J. Collins
Sherine E. Thomas

ELECTRONICALLY RECORDED

2013033534

TRV

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PGS

AUS 1986

WHEN RECORDED, MAIL TO:

ARK-LA-TEX FINANCIAL SERVICES, LLC DBA BENCHMARK MORTGAGE

5160 TENNYSON PARKWAY, SUITE 2000W

PLANO, TEXAS 75024

This instrument was prepared by:

MCGLINCHEY STAFFORD AND YOUNGBLOOD & ASSOCIATES, LLP

2711 N. HASKELL, SUITE 2700 LB 25

DALLAS, TEXAS 75204

214-257-1700

Loan Number: 141464

[Space Above This Line For Recording Data]

State of Texas

DEED OF TRUST

FHA Case Number:
4959691909734

MIN: 100245900000278857
SIS Telephone #: (888) 679-MERS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS DEED OF TRUST ("Security Instrument") is made on February 21, 2013.

The Grantor is STEVANUS RONALD RANTONO AND FEBE SURYANTI, HUSBAND AND WIFE, ("Borrower").

The trustee is MICHAEL BURNS, ATTORNEY AT LAW, ANDERSON, BURNS AND VELA, LLP, 8111 LBJ FREEWAY, SUITE 480, DALLAS, TX 75251, ("Trustee").

The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.



EXHIBIT

1

ARK-LA-TEX FINANCIAL SERVICES, LLC DBA BENCHMARK MORTGAGE, A LIMITED LIABILITY COMPANY,
 ("Lender")

is organized and existing under the laws of TEXAS.

and has an address of **5160 TENNYSON PARKWAY, SUITE 2000W, PLANO, TEXAS 75024.**

Borrower owes Lender the principal sum of **TWO HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED SEVENTY-SEVEN AND NO/100, Dollars (U.S. \$272,277.00).** This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **March 1, 2043.** This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in **TRAVIS County, Texas:**

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: **04-0638-0827-0000**

which has the address of **7317 HIGHLAND BLUFF COVE**
AUSTIN, TEXAS 78735, ("Property Address");

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." Borrower 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 custom, 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 or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.*

and implementing regulations, 12 CFR Part 1024, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has

actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and recording the notice at least 21 days prior to sale as provided by applicable law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by applicable law. Sale shall be made at public venue between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this paragraph 18, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option and with or without cause, may from time to time remove Trustee and appoint, by power of attorney or otherwise, a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Subrogation. Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

22. Partial Invalidity. In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

23. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es).]

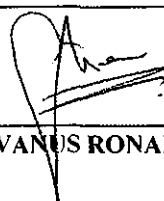
☒ Condominium Rider ☐ Graduated Payment Rider ☐ Adjustable Rate Rider
☐ Planned Unit Development Rider ☐ Growing Equity Rider ☐ Other:

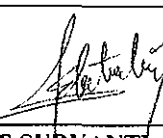
24. Purchase Money; Vendor's Lien; Renewal and Extension. [Complete as appropriate]

Purchase Money. The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:


 _____ -Witness
 _____ (Seal)
 STEVANUS RONALD RIANTONO -Borrower


 _____ -Witness
 _____ (Seal)
 FEBE SURYANTI -Borrower

STATE OF TEXAS

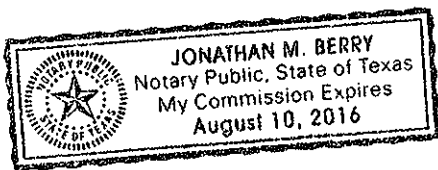
County of Travis ss:

Before me Jonathan Berry on this day personally appeared STEVANUS RONALD Riantono and FEBE SURYANTI, known to me (or proven to me on the oath of _____ or through Texas DL) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 21st day of February, 2013.

My Commission Expires: 08/10/16

(Seal)



[Signature]
Notary Public

EXHIBIT "A "

Unit C-2, AVIARA CONDOMINIUMS, a Condominium Project in Travis County, Texas, together with the limited common elements, and an undivided interest in and to the general common elements, as same are defined in the Condominium Declaration thereof, in Document No. 2008057604, restated and amended in Document No. 2009071585 corrected in Document No. 2009138427, and amended by Document No(s) 2009142835, 2010051936, 2010073309, 2010087345, 2010106978, 2010115972, 2010128041, 2010129787, 2010175181, 2010192022, 2010192027, 2011006771, 2011017814, 2011025875, 2011032633, 2011042921, 2011057839, 2011070276, 2011085290, 2011095360, 2011118246, 2011125524, 2011134072, 2011160094, 2011166650, 2011174501, 2012018147, 2012040581, 2012069708, 2012099961, 2012145002, and 2012210554, of the Official Public Records of Travis County, Texas.

Loan Number: **141464**
MIN: **100245900000278857**
FHA Case Number: **4959691909734**

FHA CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this **21st day of February, 2013**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to **ARK-LA-TEX FINANCIAL SERVICES, LLC DBA BENCHMARK MORTGAGE, A LIMITED LIABILITY COMPANY** ("Lender") of the same date and covering the Property described in the Security Instrument and located at:

7317 HIGHLAND BLUFF COVE
AUSTIN, TEXAS 78735
(Property Address)

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

AVIARA CONDOMINIUMS
(Name of Condominium Project)

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

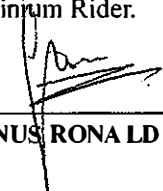
CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard


insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.
- C. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

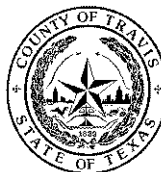
BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.




STEVANUS RONALD RIANTONO (Seal)
-Borrower



FEBE SURYANTI (Seal)
-Borrower



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS


DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

February 25 2013 01:33 PM

FEE: \$ 52.00 2013033534

ELECTRONICALLY RECORDED

2009086662

TRV

1

PGS

This space for Recorder's use



Case Nbr: 7486751 7/17/2009

Ref Number: 0596497466

Property Address:

3011 Fruth St Unit 102

Austin, TX 78705-2836

TX0-RDT

5/28/2009

Recording Requested By:
**Centex Home Equity
 Company, LLC**
 Prepared By:
Debora C. Cox
888-603-9011
450 E. Boundary St.
Chapin, SC 29036

When recorded mail to:
FA Document Solutions
450 E. Boundary St
Attn: Release Dept.
Chapin, SC 29036

MIN #: 100356107020147899

MERS Phone #: 888-679-6377

RELEASE OF LIEN

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., the present holder of the Deed of Trust described below, in consideration of full payment and satisfaction of the debt secured thereunder, does hereby reconvey, without warranty, to the person(s) legally entitled thereto all of the estate, title and interest under the Deed of Trust described below:

Original Lender: **BANK OF SAN ANGELO, N.A.**Borrower(s): **JAMES C. WRIGHT AND WIFE, REBECCA E. WRIGHT**Original Trustee: **DENNIS P. SCHWARTZ**Date of Deed of Trust: **2/9/2007**Loan Amount: **\$161,600.00**Recorded in **Travis County, TX** on: **2/14/2007**, book N/A, page N/A and instrument number **2007026894**IN WITNESS THEREOF, the undersigned has caused this Release of Lien to be executed on **5/28/2009**

**MORTGAGE ELECTRONIC REGISTRATION
 SYSTEMS, INC.**

By: Debra Shealy *Electronic Signature*
Debra Shealy, Asst. Vice President

State of SC, County of Lexington

The foregoing instrument was acknowledged before me **5/28/2009** by **Debra Shealy, Asst. Vice President** of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.** on behalf of the corporation.

Peggy D. Williams *Electronic Notarization*
 Notary Public: **Peggy D. Williams**

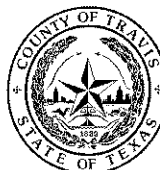
My Commission Expires: **2/17/2015**

PEGGY D. WILLIAMS

Notary Public

State of South Carolina

My Commission Expires February 17, 2015

EXHIBIT**2**

**FILED AND RECORDED
 OFFICIAL PUBLIC RECORDS**

Dana Debeauvoir

**DANA DEBEAUVOIR, COUNTY CLERK
 TRAVIS COUNTY, TEXAS**

May 28 2009 08:57 AM

FEE: \$ 16.00 2009086662



Process loans, not paperwork.™

An Open Letter to Williamson County Commissioners Court on the "Williamson County Real Property Records Report"

February 5, 2013

To the Members of the Williamson County Commissioners Court:

At your January 22, 2013 meeting, you heard testimony concerning a report about the county's real property records. Much of this testimony, and the report that was submitted, presented a misleading and inaccurate description of Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a utility for the lending community that plays a narrow – but important – role in the mortgage transfer process. We are contacting you because we would like **to set the record straight.**

In more than half of all mortgage transactions, the borrower names MERS as the beneficiary of the deed of trust (as an agent for the lender). By doing so, the need for certain assignments is eliminated, thereby reducing paperwork and errors and lowering the overall cost of home financing. This role is disclosed and explained to the borrower on the first pages of the deed of trust, which they have signed.

Key facts about MERS that were misrepresented and require clarification:

- **Every MERS deed of trust is recorded in the county land record and the appropriate fees are paid.** MERS does not replace the county land records; we rely on them to disclose to the public that a lien exists on a property within that county.
- **MERS has operated continuously in Texas for 15 years and is recognized in the land statutes.** MERS has consistently prevailed in legal challenges; of note, the legal cases cited in the "audit" were out of state court opinions dealing narrowly with the non-judicial foreclosure process in those states, which are not relevant to MERS authority to operate in Texas. More importantly, the "audit" ignores relevant Texas case law such as: *Huml v. Mortg. Elec. Reg. Sys., Inc.*, 3:12-cv-001460-DCG, slip op. at 8-9 (W.D. Tex. Oct. 25, 2012), ECF No. 70 (dismissing fraudulent misrepresentation claim alleging "MERS's designation as the 'beneficiary' in the deeds is fraudulent,"); *Malikyar v. BAC Home Loans Serv'g, LP* 2011 WL 5837262, at *4 (E.D. Tex. Oct. 28, 2011) (dismissing misrepresentation claim alleging the statement that "MERS is the beneficiary" is false, holding, "[t]hese attacks have been repeatedly rejected by this Court as well as others). These cases, and numerous others, have consistently upheld the validity of deeds of trust having MERS as the named beneficiary and affirm MERS' authority to make assignments. We are not aware of any court that has invalidated a MERS assignment in Texas.

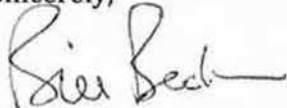


- **MERS does not foreclose.** Currently, prior to commencing foreclosure, the deed is assigned from MERS to the foreclosing party, and this assignment is recorded in the county land records.
- **No one has ever wrongfully lost his or her home due to MERS being named as beneficiary (or mortgagee) in a deed of trust (or mortgage).** While some foreclosures were conducted in the name of MERS (before July, 2011), there was not a single instance of which we are aware when a borrower who had not defaulted on their loan lost their home.
- **There is no "cloud on title" by using MERS; title companies accept and support MERS.** We have not heard of any title company in Texas that refused to issue insurance due to MERS being named as beneficiary or assignor of a deed of trust; in fact the American Land Title Association and other title companies helped found MERS and remain shareholders and users today.
- **MERS provides transparency.** All MERS mortgages and deeds of trust are tracked on an electronic registry and servicer information can be accessed conveniently and free via telephone or internet. Borrowers and their authorized agents can also confirm their investor 24 hours a day.

It is true that MERS reduces fees paid to county recorders; MERS also reduces the work that county recorders must do after a deed of trust is recorded. This results in fewer errors in the chain of title and lower costs for all. It is also true that the foreclosure crisis exposed some challenges for the industry and MERS; we met those challenges head on in partnering with the industry and cooperating with regulators to improve governance, oversight and quality assurance.

One closing thought. MERS is mortgagee or beneficiary on over half the mortgages in the U.S. and operates in all 50 states. Over the past three years, the majority of those mortgages have been refinanced at least once if not more, resulting in material savings to borrowers. This would not be possible if MERS created title issues, recklessly foreclosed or put a borrower's home ownership at risk. These unfounded allegations are disproven by the facts and they have caused unnecessary confusion and distress to homeowners. The key fact is, MERS Works.

Sincerely,



Bill Beckmann

President & CEO

Mortgage Electronic Registration Systems, Inc.

MERSCORP Holdings, Inc.

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

NUECES COUNTY, TEXAS,

Plaintiff,

CIVIL ACTION No.

2:12-CV-00131

vs.

**MERSCORP HOLDINGS, INC.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.;
AND BANK OF AMERICA, NATIONAL
ASSOCIATION**

Defendants.

**COMPLAINT IN INTERVENTION OF
TRAVIS COUNTY, TEXAS**

COMES NOW Travis County, Texas (“Intervenor”) complaining of MERSCORP, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and BANK OF AMERICA, NATIONAL ASSOCIATION (“Defendants”), and would show the Court as follows:

**I.
STATEMENT OF THE CLAIMS**

1. Defendants are members of the mortgage finance industry. This lawsuit seeks to have Defendants clean up the mess they have created in Intervenor’s real property records and to hold Defendants accountable for their violations of Texas law.

2. Defendants MERSCORP Holdings, Inc. f/k/a MERSCORP, Inc. and its wholly-owned subsidiary, Mortgage Electronic Registration Systems, Inc. (“MERS”), were created by Defendant Bank of America, National Association, together with other members of the mortgage banking industry, to facilitate the rapid transfer of mortgage loans amongst members of the industry and to avoid recording mortgage assignments and paying the associated fees.

3. MERS allows the mortgage industry to “register” property transfers on its website. Members, who are part of the mortgage industry, pay membership dues and per-transaction fees to MERS. In exchange, MERS members are allowed to “record” property transfers and avoid the county recording system in Texas and throughout the country. Through the Defendants’ electronic recording system, MERS engaged and continues to engage in deceptive practices that create confusion amongst property owners, damage the integrity of Texas’ real property records, and deny Intervenor millions of dollars in recording fees.

4. By creating and maintaining a system that lacks corporate controls, oversight, and reliability, Defendants systematically circumvented Texas recording law for which Intervenor seeks damages and injunctive relief.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

6. Venue is proper pursuant to 28 U.S.C. § 1391(b). For venue purposes, each Defendant is a resident of the Southern District of Texas and Nueces County for purposes of this Court’s exercise of *in personam* jurisdiction over each Defendant with respect to this action.

III. PARTIES

7. Intervenor is a political subdivision of the State of Texas.

8. Defendant MERSCORP Holdings, Inc. (“MERSCORP”) is a Delaware corporation that maintains its principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. MERSCORP engages in business in Nueces County, Texas, but does not maintain a regular place of business in this state or a designated agent for service of process for proceedings that arise out of MERSCORP’s business done in this state. At all times material

hereto Defendant MERSCORP has engaged in business in Texas or committed a tort, in whole or in part, in Texas, and the claims made herein arise out of such activities. MERSCORP will be served with this Complaint in Intervention by serving its attorney of record in this action.

9. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware corporation and wholly-owned subsidiary of Defendant MERSCORP. MERS engages in business in Nueces County, Texas, but does not maintain a regular place of business in this state or a designated agent for service of process for proceedings that arise out of MERS’s business done in this state. At all times material hereto Defendant MERS has engaged in business in Texas or committed a tort, in whole or in part, in Texas, and the claims made herein arise out of such activities. MERS will be served with this Complaint in Intervention by serving its attorney of record in this action.

10. Defendant Bank of America, National Association (“BOA”) is a Delaware corporation and wholly-owned subsidiary of Bank of America Corporation (“BOAC”). BOA engages in business in Nueces County, Texas. Upon information and belief, BOA was at all times material hereto and currently is a shareholder in MERSCORP. At all times material hereto Defendant BOA has engaged in business in Texas or committed a tort, in whole or in part, in Texas, and the claims made herein arise out of such activities. BOA will be served with this Complaint in Intervention by serving its attorney of record in this action.

IV. FACTUAL BACKGROUND

A. Mortgages

11. As early as the 17th Century, American Colonies passed property recordation statutes, requiring a mortgagee (the party granting the loan) to record mortgages or assignments to preserve its ability to enforce the contract against a subsequent purchaser for value.

12. The purpose of these recording statutes are, in the words of one commentator, “to prevent disputes over property rights and to facilitate the use of land as collateral by creating a transparent public record that provides certainty in private bargains.”¹ Specifically, mortgage lenders, when contemplating offering a loan secured by land, use the Texas statutory Grantor/Grantee indexes compiled by each county clerk to ensure that debtors have not already sold the land, granted a mortgage to someone else, and that there are no liens on the property. All fifty states and the District of Columbia retain recording statutes similar to their colonial predecessors. Texas adopted its first recording statute well over a century ago.

B. Mortgage Recordation in Texas

13. Mortgage recordation in Texas is governed by Chapter 12 of the Texas Property Code. Section 12.001(a) of the Property Code provides that, “An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.” Although recordation of a security instrument in real property is not mandatory, once a security interest is recorded, “[t]o release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.”²

14. Once properly filed, a mortgage or deed of trust 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 or deed of trust is recorded, the “mortgage

¹ Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L. Rev. 1359, 1364-65 (2010).

² TEX. LOC. GOV’T CODE § 192.007.

or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice.”³

15. Section 11.004 of the Texas Property Code requires that county clerks in the State of Texas:

(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk’s office that is proved, acknowledged, or sworn to according to law; (2) give a receipt, as required by law, for an instrument delivered for recording; (3) record instruments relating to the same property in the order the instruments are filed; and (4) provide and keep in the clerk’s office the indexes required by law.

16. Section 193.003 of the Texas Local Government Code requires that a county clerk maintain “a well-bound alphabetical index to all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property” with “a cross-index that contains the names of the grantors and grantees in alphabetical order.” A “Grantee” is the person to whom an interest in real property, including a security interest, is granted pursuant to the instrument being recorded. For well over 150 years, deeds of trust tendered for filing in Texas identified such person as the “lender,” “beneficiary,” or “grantee.”

C. The MERS System

17. The MERS business plan, as envisioned and implemented by Wall Street,⁴ is based in large part on bypassing the traditional model of recording security interests in real property and changes thereto and introducing a third party into the equation—MERS. The motivation for creating MERS was Wall Street’s desire to alleviate the “inconvenience” of the public recording system and create its own privately owned shadow electronic recording system - the MERS System – to increase the speed and ease with which mortgages can be bought and

³ TEX. PROP. CODE § 13.001(a).

⁴ As used herein, “Wall Street” includes BOA.

sold. In the words of one court, the MERS System was designed “as a replacement for our traditional system of public recordation of mortgages.”⁵ The MERS System fails to comply with Texas law.

18. Mortgage-backed securities (“MBS”) are securities that give the holders the right to receive the principal and interest payments from borrowers on a particular pool of mortgage loans. Before the advent of MERS, government sponsored enterprises such as Federal National Mortgage Association and The Federal Home Loan Mortgage Corporation were the largest issuers of MBS. Wall Street decided that it wanted to get more involved in the business of selling MBS. To facilitate the issuance of MBS, and increase the speed with which mortgages could be bought and sold, Wall Street needed to create a mechanism that would enable it to buy and sell mortgages and mortgage servicing rights multiple times, packaged with tens of thousands of other mortgages, without the “inconvenience,” expense, or time associated with recording each transfer. In order to issue an MBS, however, the issuer was and is required by law and industry standards to record (and pay recording fees on) every assignment of a mortgage loan from origination through deposit in a securitization trust. Faced with this dilemma, Wall Street, including Defendant BOA, simply wrote its own rules and created MERSCORP and MERS, ignoring property laws throughout the United States, including in Texas.

1. How MERS Works

19. MERS is a subsidiary of MERSCORP. MERSCORP is owned by various mortgage banks, title companies, and title insurance companies, including Defendant BOA. When a lender who is a “member” of MERS grants a mortgage loan, the lender instructs the title

⁵ *In Re Agard*, 444 BR 231, 247 (E.D.N.Y. 2011).

company to show not only the lender but also MERS, as “mortgagee” under a mortgage and “beneficiary” under a deed of trust. MERS then shows up in the deed records as a “grantee.”

20. MERS and its members, including BOA, agree amongst themselves that: 1) sales or transfers of mortgage loans amongst MERS members will not thereafter be recorded in the real property records; 2) MERS will remain as the “grantee” of the security interest created by the original deed of trust; and 3) subsequent sales or transfers amongst MERS members will be tracked electronically in the MERS System. The purchaser of the note, or successor servicer, agrees at the time of acquisition of its rights to notify MERS when the note is paid so that the loan can be released. MERS has described its role 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 [including BOA] 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.

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.⁶

2. The MERS Fiction

21. According to MERS, it is the "mortgagee" or "beneficiary," of record in more than 70 million mortgages filed in the deed records of counties throughout the United States, including millions that BOA recorded or caused to be recorded. MERS, however, does not actually have a security interest in the real property that is the subject of such mortgages or deeds of trust. In MERS's own words:

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**

⁶ *Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Bnknng and Fin.*, 704 N.W.2d 784 (Neb. 2005), Brief of Appellant at 11-12 (citations omitted).

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).⁷

22. MERS has also admitted that under its agreement with its mortgagee-lender 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.”**⁸

23. At this point one might ask how MERS can be the “mortgagee” in a mortgage or “beneficiary” of a deed of trust as to which the beneficial interest actually “runs to the owner and holder of the promissory note,” instead of MERS.⁹ 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 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.

⁷ *Mortgage Electronic Registration Systems, Inc. Nebraska Dept. of Bnknng and Fin.*, 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 has no rights to the payments made by the debtor on such promissory note” and “is not the owner of the servicing rights relating to the mortgage loan.”

Also at issue in cases pending in other jurisdictions is MERS’s assertion that it has the authority to assign the note and mortgage to subsequent purchasers and the authority to appoint substitute trustees under the deeds of trust in which MERS appears as the “beneficiary” or “mortgagee.”

⁸ *Id.* at 10 (emphasis added).

⁹ *Id.* at 11-12.

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

This Court finds that MERS’s 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).¹⁰

24. Deed records in Texas were created to provide public notice of the identity of the person whose interest is protected by a deed of trust. Once properly filed, a deed of trust is “notice to all persons of the existence of the instrument,” protects the lender’s security interest against creditors of the grantor, and places subsequent purchasers on notice that the property is encumbered by a security interest.

25. In order to be shown as a “grantee,” in a county’s index to its real property records, and therefore a party whose interest is protected by recording, one must ordinarily be identified in a deed of trust as a “lender,” “mortgagee,” “grantee,” or “beneficiary” of the deed of trust, i.e., the person or entity for whose benefit the security interest was created. As noted above, however, MERS has admitted that it is none of these.

26. Here is MERS’s conundrum: if MERS acts only as a “nominee” or “agent” of the lender, MERS itself has no security interest in the real property that is the subject of the deed of trust and therefore MERS has no rights which qualify it to assert that it is a beneficiary of the deed of trust. However, unless MERS identifies itself as a “beneficiary,” MERS will not ordinarily be denominated as a “grantee” in the index to the county’s real property records and

¹⁰ *In Re Agard*, 444 BR 231 (E.D.N.Y. 2011).

all transfers of the beneficial ownership of the note and security interest created by the deed of trust would have to be recorded. Furthermore, unless MERS is identified as a “grantee” in the index to the county’s real property records, the MERS System does not work insofar as persons undertaking a search of a county’s real property records uses the index to the real property records to locate instruments creating a lien upon a property. For Wall Street, the solution was simple — ignore the law and identify MERS as the “beneficiary” of an instrument in which MERS holds no beneficial interest. In that way, county clerks, including the Intervenor’s county clerk, would index MERS as a “grantee” in the county’s real property records, and MERS, BOA, and other members of the mortgage banking industry could take advantage of the recording system, notwithstanding MERS’s lack of beneficial interest in either the note or the lien created by the deed of trust.

27. Here’s how it works: The deeds of trust at issue typically state that “MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns” (hereinafter referred to as “MERS Deeds of Trust”). Of course, a lender is free to appoint an agent. As noted above, however, if this was MERS’s only status as denominated in the MERS Deeds of Trust, it would ordinarily not be indexed as a “grantee” in its own right. Wall Street fixed this problem by adding an untruth to each such deed of trust – that “MERS is the beneficiary under this Security Instrument.” The denomination of MERS as a “beneficiary” is also intended by the Defendants to serve another purpose – when a mortgage loan is paid or assigned out of the MERS System, the then-current true owner and holder of the note and real beneficiary of the security interest is able to record a release or assignment, identifying itself as MERS, and purporting as MERS to release or assign the mortgage loan.

28. The MERS Deeds of Trust contain other untruths. For example, each recites that

the “[b]orrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument”¹¹ Texas, however, has been a lien theory state for well over 150 years - a deed of trust does not transfer legal title to anything, rather, it creates a lien.¹² Moreover, any assertion by Defendants that MERS is the beneficiary of the lien created by the MERS Deeds of Trust is clearly a transparent fiction – the subject deeds of trust expressly provide that:

“[t]his Security Instrument secures **to Lender**: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note.”¹³

29. That MERS is not the beneficiary of MERS Deeds of Trust is further underscored by MERS own admissions that it “has no interest at all in the promissory note evidencing the mortgage loan;” “has no financial or other interest in whether or not a mortgage loan is repaid;” “is not the owner of the promissory note secured by the mortgage;” “has no rights to the payments made by the debtor on such promissory note;” “is not the owner of the servicing rights relating to the mortgage loan;” “does not service loans;” and that “[t]he beneficial interest in the

¹¹ See Exhibit 1 TEXAS--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS) Form 3044 at 3 www.freddiemac.com/uniform/mers/doc/MERS3044TX.doc; see also, Exhibit 1 Travis County Deed of Trust instrument number 2013033534 at 2.

¹² See *Flag-Redfern*, 744 S.W.2d at 8 (Tex. 1987) (A deed of trust does not convey legal title - the legal title remains in the mortgagor as long as the debt is outstanding.); *Rudolph v. Hively*, 188 S.W. 721, 722-23 (Tex.Civ.App. — Amarillo 1916, writ ref.) (“The well-established rule in this state is that a deed of trust is simply a security for the debt, and before foreclosure vests no title in the beneficiary.”).

¹³ See Exhibit 1 Travis County Deed of Trust at 2.

mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note.”¹⁴

30. Defendants’ misconduct also extends to the recording of hundreds of thousands of instruments falsely denominating MERS in a capacity such as, “Grantor,” “Lender,” “holder of Note and Lien,” “the legal and equitable owner and holder” of promissory notes, and so forth, which results in MERS being indexed incorrectly as a “Grantor” in the statutory Grantor/Grantee indexes of Texas counties, including Travis County.

31. When a mortgage that is being tracked on the MERS System is sold or transferred to a non-MERSCORP Member, or paid by the borrower, the mortgage is “deactivated” on the MERS System, and further tracking of the mortgage on the MERS System is terminated. In these instances, the **reporting member** also prepares and files a release or assignment in the deed records stating that **MERS** is releasing or assigning the subject interest.¹⁵ The reason that the reporting member states in the release that it is **MERS** that is releasing or assigning the interest in simple – if the reporting member has acquired the mortgage from the original lender, or another MERSCORP member, the reporting member’s interest is not of record in the county’s real property records. It could not, therefore, release or assign the mortgage in its own name.

32. Based on a sampling of over 300,000 releases or assignments recorded in the deed records of several Texas counties, well over fifty percent of these releases and assignments falsely identify MERS as the “Lender,” “Payee” of the promissory note, “owner and holder” of the promissory note, or in some other capacity which indicates that MERS has an interest in or lien upon real property that it does not have. Multiply the confusion created by the MERS

¹⁴ *Mortgage Electronic Registration Systems, Inc. Nebraska Dept. of Bkng and Fin.*, 704 N.W.2d 784 (Neb. 2005), Brief of Appellant at 11-12 (emphasis added).

¹⁵ See Exhibit 2 Travis County Release of Lien.

System by an estimated seventy million-plus mortgages and forty million-plus assignments, transfers, and releases of lien and one gets an idea of why it can be said without fear of contradiction that the MERS System has collapsed the real property recording system in the United States, in Texas, and in Travis County.

33. As demonstrated by the criminal and civil penalties for filing false or deceptive real estate liens, Texas public policy favors a reliable, functioning public recordation system to avoid destructive breaks in title, confusion as to the true identity of the holder of a note, 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 in Texas.¹⁶

¹⁶ To understand the scale and seriousness of the institutional failures of MERS and MERSCORP and the role of these entities in creating a morass of the U.S. recordation systems, one need look no further than the disaster MERS has made of the foreclosure process. On April 12, 2011, MERSCORP and MERS entered into a *Consent Order* with several federal agencies. According to the findings contained in the *Consent Order*, MERS and MERSCORP “(a) have failed to exercise appropriate oversight, management supervision and corporate governance, and have failed to devote adequate financial, staffing, training, and legal resources to ensure proper administration and delivery of services to Examined Members; (b) have failed to establish and maintain adequate internal controls, policies, and procedures, compliance risk management, and internal audit and reporting requirements with respect to the administration and delivery of services to Examined Members” and, that “MERS and MERSCORP engaged in unsafe or unsound practices that expose[d] them and Examined Members to unacceptable operational, compliance, legal, and reputational risks.” *Consent Order*, April 12, 2011, OCC No. AA-EC-11-20; Board of Governors Docket Nos. 11-051-B-SC-1 and 11-051-B-SC-2; FDIC-11-194b; OTS No. 11-040; FHFA No. EAP-11-01 at 4-5.

Members of the mortgage banking industry also recently agreed to a \$25 billion settlement with the attorneys general of 49 states for claims arising out of unlawful foreclosure practices. See <http://www.justice.gov/opa/pr/2012/February/12-ag-186.html>

In response to the hundreds of cases filed nationwide against MERSCORP and MERS for wrongful foreclosure, MERSCORP and MERS recently promulgated new policies that include the mandate that “[n]o foreclosure proceeding may be initiated, and no Proof of Claim or Motion for Relief from Stay (Legal Proceedings) in a bankruptcy may be filed, in the name of Mortgage Electronic Registration Systems, Inc. (MERS).” See Exhibit 4 MERS Policy Bulletin 2011-5.

**V.
CAUSES OF ACTION**

34. Defendants filed or caused to be filed in Intervenor's real property record MERS Deeds of Trust, releases, assignments, transfers, and other instruments containing legally and factually false statements as set out herein in violation of Texas law.

35. Defendants released, transferred, assigned or took other actions relating to such recorded instruments without ensuring that such action or actions were filed, registered, or recorded in Intervenor's real property records using another instrument relating to the action "in the same manner as the original instrument was required to be filed, registered, or recorded."¹⁷ Such conduct caused a reduction in the revenue that Intervenor would have collected had Defendants complied with Texas law and recorded all subsequent transfers, assignments, transfers, and other activities related to the original recorded instruments.

A. All Defendants Committed Fraudulent Misrepresentation.

36. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

37. Defendants engaged in fraudulent misrepresentation by:

- a. 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, in part, of avoiding recording subsequent transfers; paying filing fees for the recording of subsequent transfers; and to cause MERS to be indexed as a "Grantee" in the Statutory Grantor/Grantee Indexes maintained by Intervenor; and
- b. 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, in part, of avoiding recording subsequent transfers; paying filing fees for the recording of subsequent transfers; and to cause

¹⁷ TEX. LOC. GOV'T CODE § 192.007.

MERS to be indexed as a “Grantor” in the Statutory Grantor/Grantee Indexes maintained by Intervenor.

38. Defendants intended that Intervenor’s county clerk detrimentally rely upon the false statements described above, and Intervenor’s county clerk did so rely, by accepting such instruments for recording and, in most instances, by indexing MERS as a “Grantee” or “Grantor” in its Statutory Grantor/Grantee Indexes.

39. Defendants undertook such conduct for the purpose of avoiding the recordation of subsequent transfers and payment of attendant filing fees.

40. Defendants’ fraudulent misrepresentations were and continue to be a proximate cause of damages to Intervenor for which it seeks judgment of the Court. These damages include, but are not limited to, direct and consequential damages in the form of: (a) loss of revenues that would have been received in recording subsequent assignments, transfers, and other activities related to recorded instruments, had Defendants not undertaken to avoid such recordation; (b) damages to and corruption of the Statutory Grantor/Grantee Indexes maintained by Intervenor in the form of rendering such records opaque and inaccurate; and (c) the cost of remediating the Statutory Grantor/Grantee Indexes maintained by Intervenor so that such records accurately reflect collateral pledges of, liens upon, and interests in real property located in Travis County.

41. The conduct of each Defendant as set forth herein constituted a violation of Chapter 41 of the Texas Civil Practice & Remedies Code so as to make each Defendant liable for exemplary damages for which Intervenor seeks judgment of the Court.

B. All Defendants Violated Section 12.002 of the Texas Civil Practice & Remedies Code.

42. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

43. Section 12.002 of Chapter 12 of the Texas Civil Practice & Remedies Code (“CPRC”) provides:

- (a) A person may not make, present, or use a document or other record with:
 - (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien¹⁸ or claim against real or personal property or an interest in real or personal property;
 - (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
 - (3) intent to cause another person to suffer:
 - (B) financial injury . . .
- (b) A person who violates Subsection (a) or (a-1) is liable to each injured person for:
 - (1) the greater of:
 - (A) \$10,000; or
 - (B) the actual damages caused by the violation;
 - (2) court costs;

¹⁸ Section 12.001 of the CPRC provides that “‘Lien’ means a claim in property for the payment of a debt and includes a security interest.” The subject instruments do not create a “lien” in favor of MERS.

- (3) reasonable attorney's fees; and
- (4) exemplary damages in an amount determined by the court.

44. Section 12.003 of the CPRC provides that a district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney “may bring an action to enjoin violation of this chapter or to recover damages under” this chapter. . . .¹⁹ A federal court sitting in diversity applies the substantive law of the forum state. *Holt v. State Farm Fire & Cas. Co.*, 627 F.3d 188, 191 (5th Cir. 2010). Under Texas law, where a statute provides for a right to an injunction for a violation, a party does not have to establish the general equitable principles for a temporary injunction. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 2002); *Republic Ins. Co. v. O'Donnell Motor Co.*, 289 S.W. 1064, 1066 (Tex.Civ.App.-Dallas 1926, no writ). When an applicant relies upon a statutory source for injunctive relief, the statute's express language supersedes the common law injunctive relief elements such as imminent harm or irreparable injury and lack of an adequate remedy at law. *West v. State*, 212 S.W.3d 513, 519 (Tex.App.-Austin 2006, no pet.).

45. As set forth hereinabove, Defendants filed or caused to be filed the instruments as described herein which falsely represent that MERS has an interest in real property. Those instruments that describe MERS as the “Grantee,” “Beneficiary,” “Grantor,” “Lender,” “holder of Note and Lien,” “legal and equitable owner and holder” of promissory notes,” “owner and holder” of a deed of trust, or that falsely represent MERS's role or status in the transactions evidenced by such instruments. This results in MERS being indexed incorrectly as a “Grantee” or “Grantor” in the real property records of Intervenor; Defendants knew at the time of filing that

¹⁹ TEX. CIV. PRAC. & REM. CODE § 12.003(a)(1)-(5).

such instruments falsely represented MERS's interest in the real property that is the subject of such instruments, or that such instruments falsely represented the role or status in the transactions evidenced by such instruments; Defendants filed, or caused to be filed, the instruments with the intent that they be given the same legal effect as an instrument evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and intended by such conduct to financially injure Intervenor by avoiding the costs and filing fees associated with filing, registering, or recording subsequent releases, transfers, assignments, or other action relating to such instrument as required by Texas law.

46. Defendants' conduct described herein violated Section 12.002 of the CPRC for which Intervenor seeks judgment against Defendants, jointly and severally, in the amount of \$10,000 per violation, together with attorney's fees, court costs, and exemplary damages in an amount determined by the jury.

C. All Defendants Violated Texas Local Government Code § 192.007.

47. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

48. For almost 300 years, common law and statute have required or permitted the recording of instruments affecting title to real property for the primary purpose of giving notice of their contents to the public. One of the primary purposes of recording documents affecting the title to real property is to make information pertaining to that property available to the general public and thus to protect persons from fraud. Because real estate is so tightly interwoven with the fabric of the U.S. financial system, stability and certainty regarding titles to real property is essential to the efficient functioning of the markets.

49. In order to perfect a security interest in real property in Texas, the instrument

creating the security interest must be filed of record. While filing, is not mandatory, once a record of a security interest is filed of record, it must by statute be kept current in order to ensure continued accuracy of the real property records.

50. Section 192.007 of the Texas Local Government Code Records of Releases and other Actions provides:

- (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.
- (b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.

51. Defendants violated section 192.007 of Texas Local Government Code by failing to record all releases, transfers, assignments, and other actions relating to the instruments Defendants recorded or caused or allowed to be recorded in the real property records of Intervenor in which: 1) MERS is identified as having an interest in real property that it does not have; or 2) which falsely represent MERS's role or status in the transactions evidenced by such instruments.

52. Damages to Intervenor has been proximately caused by the conduct of Defendants as described herein, for which Intervenor sues, measured by the filing fees that would have been received by Intervenor had all of the releases, transfers, assignments and other actions relating to the deeds of trust and other instruments described herein been filed, registered, or recorded in the real property records of Intervenor in the same manner as the original instrument was required to be filed, registered, or recorded.

53. Pursuant to Rule 65 of the FRCP, Intervenor also seeks a permanent injunction

enjoining Defendants and those acting in concert and participation with them from failing to record all releases, transfers, assignments, and other actions relating to the instruments Defendants recorded or caused or allowed to be recorded in the real property records of Intervenor in which MERS is identified as having an interest in or lien upon real property in any capacity.

D. All Defendants Benefitted from Unjust Enrichment.

54. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

55. Intervenor seeks damages measured by the extent to which the Defendants have been unjustly enriched.

56. Defendants MERS and MERSCORP have been unjustly enriched by their conduct described above by their receipt of fees charged to MERSCORP's Members to join MERSCORP and to activate and deactivate mortgage loans on the MERS System.

57. Defendant BOA has been unjustly enriched by its conduct setout herein, measured by the expenses saved in not preparing and recording written instruments transferring mortgage loans.

E. Travis County Seeks Declaratory Judgment.

58. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

59. Intervenor seeks a judicial declaration that the filing of deeds of trust identifying MERS as a "mortgagee" or "beneficiary" under the deed of trust, when in fact MERS has no beneficial interest in the note secured by such deed of trust, constitutes a violation of section 51.901 of the Texas Government Code.

60. Intervenor also seeks a judicial declaration that the filing of instruments which identify MERS as a “Grantor,” “Lender,” “holder of Note and Lien,” “the legal and equitable owner and holder” of promissory notes, and so forth, which results in MERS being indexed incorrectly as a “Grantor” in the statutory Grantor/Grantee index of Texas counties, including Intervenor, constitutes a violation of section 51.901 of the Texas Government Code.

61. Intervenor also seek a judicial declaration that the each Defendant is liable for having failed to properly record all releases, transfers, assignments, or other actions relating to instruments Defendants filed or caused to be filed, registered, or recorded in the deed records of Intervenor in the same manner as the original instrument was required to be filed, registered, or recorded.

F. **Travis County Requests Injunctive Relief.**

62. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

63. Pursuant to Rule 65 of the FRCP, Intervenor seeks a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants and those in active concert or participation with them from:

- a. filing or causing to be filed, any instrument in the deed records of Travis County identifying MERS or any other person or entity as a “beneficiary” of any deed of trust when MERS or such person does not have a beneficial interest or other legally sufficient interest in the property made the subject of the deed of trust;
- b. filing or causing to be filed, any instrument in the deed records of Travis County identifying MERS or any other person or entity as a “Grantor,” “Lender,” “holder of Note and Lien,” “the legal and equitable owner and holder” of promissory notes, “beneficiary” of a deed of trust, or in any other capacity which results in MERS or any other person being indexed incorrectly as a “Grantor” when MERS or such person does not actually have the interest it purports in such instrument to have; and

c. releasing, transferring, assigning, or taking other action relating to an instrument that is filed, registered, or recorded in the office of the county clerk without filing, registering, or recording another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

64. Intervenor further seeks an order of this Court requiring Defendants, jointly and severally, to correct the false and deceptive filings described herein by causing the recordation of corrective instruments setting forth the entire chain of title for each instrument described herein.

G. Travis County Seeks Exemplary Damages from All Defendants.

65. The conduct of each Defendant as set forth herein constituted fraud, malice, or gross negligence such that each Defendant is liable for exemplary damages for which Intervenor seeks judgment of the Court.

**VI.
CONSPIRACY**

66. Intervenor incorporates by reference all factual allegations made above as though set forth completely herein.

67. All of the named Defendants conspired together in the actionable conduct alleged, rendering MERSCORP, MERS, and BOA each liable for all damages suffered by Intervenor. The conspiracy included these Defendants establishing an object to be accomplished (increasing the speed at which mortgage loans could be traded and illegally avoiding filing fees); a meeting of minds on the object or course of action (establishment and operation of the MERS System); one or more unlawful, overt acts, including, but not limited to: 1) misrepresenting to Texas counties that the MERS System would operate in accordance with Texas law; 2) agreeing to record, and recording in Intervenor's real property records, instruments containing false statements regarding MERS's interest in the transactions evidenced by such instruments; and 3) failing to record the transfer of interests in mortgage loans, the deeds of trust for which were

recorded in Intervenor's real property records); and damages to Intervenor as set forth herein proximately caused by the Defendants' conduct as set forth herein. Facts supporting this allegation include:

A. Background to Defendant Bank of America, N.A. as a Party to Conspiracy.

68. Defendant BOA is a wholly-owned subsidiary of BOAC. In 1998, BOAC "became America's bank" through a series of transactions involving NationsBank Corporation. Here's how it happened.

69. On September 25, 1998, NationsBank Corporation, a North Carolina corporation ("NationsBank"), was reincorporated in Delaware by forming a new, wholly owned Delaware subsidiary named NationsBank (DE) Corporation ("NationsBank (DE)"), and merging NationsBank with and into NationsBank (DE). As the surviving corporation in this merger, NationsBank (DE) was renamed "NationsBank Corporation."²⁰

70. On September 30, 1998, the former BankAmerica Corporation, a Delaware corporation, merged with NationsBank Corporation, with NationsBank Corporation as the surviving corporation in this merger. In connection with this merger, NationsBank Corporation changed its name to "BankAmerica Corporation." Following these transactions, BOAC announced that it would operate under the "Bank of America" name.²¹

71. As of the end of 1998, BOAC (through its subsidiaries) ranked first in bank deposit market share in California, Florida, Georgia, Maryland, New Mexico, North Carolina, Texas and Washington; second in Arizona, Arkansas, Kansas, Missouri, Nevada, Oregon, South Carolina, Virginia and the District of Columbia; third in Oklahoma; fifth in Illinois and

²⁰ See Exhibit 5, Excerpt from BankAmerica Corporation's 1998 10-K at 3.

²¹ See *id.*

Tennessee; sixth in Alaska and Idaho; and eighth in Iowa.²² In 2000, BOAC consolidated its retail subsidiary banks, including NationsBank, N.A., into a single interstate bank, Defendant BOA.²³ In addition to being a mortgage lender, as of April 13, 2011, Defendant BOA was one of the largest servicers of residential mortgages in the United States, with a portfolio of 13,500,000 residential mortgage loans.²⁴

72. In 2008, BOAC acquired Countrywide Financial Corporation (“Countrywide”) through its merger with a subsidiary of BOAC.²⁵ BOA also became the successor-by-merger of BAC Home Loans Servicing, LP, f/k/a Countywide Home Loans Servicing, LP that same year.

73. In 2009, BOAC acquired Merrill Lynch, through its merger with a subsidiary of BOAC.²⁶ Defendant BOA (and several of its affiliates), Countrywide, and Merrill Lynch are members of MERSCORP.

B. The Conspiracy

74. Before the creation of Defendant MERSCORP and its subsidiary, Defendant MERS, tracking the transfer of mortgages was a daunting task – it required mortgage lenders wishing to track this information nationwide to monitor the deed records in every one of the 3,141 counties and county equivalents in the 50 States and the District of Columbia. The Mortgage Bankers Association, the American Land Title Association, Fannie Mae, Freddie Mac, Defendant BOA, Nationwide, HSBC, Wells Fargo, and others (“the Founders”) created

²² See *id.* at 3.

²³ See Exhibit 6, Excerpt from Bank of America Corporation’s 2000 10-K at 4. On April 8, 1999, BOAC merged Bank of America Texas, N.A. into NationsBank, N.A. On July 5, 1999, NationsBank, N.A. changed its name to Bank of America, N.A. *Id.* at 5. Accordingly, when used herein, the reference to “BOA” includes NationsBank, N.A.

²⁴ See Exhibit 7, Consent Order, In the Matter of Bank of America, N.A., File No. AA-EC-11-12, Department of the Treasury, Comptroller of the Currency at 2.

²⁵ See Exhibit 8, Excerpt from BankAmerica Corporation’s 2008 10-K at 4.

²⁶ See *id.*

MERSCORP in 1994 to “streamline” this process.²⁷ “Streamlining” the process did not, however, simply involve creating a centralized database containing information related to transfers of mortgage loans – it involved ignoring 200 years of real property law and the real property transfer and recording statutes of several states, including Texas.

75. The founders of MERSCORP, including Defendant BOA, agreed that the MERS System would be designed to “freeze” a mortgage loan as reflected in the public record by identifying MERS as the “mortgagee” (“beneficiary” in deed of trust state such as Texas) in mortgages and deeds of trust (“MERS Deeds of Trust”) to be recorded by MERSCORP Members in the real property records of county clerks and recorders nationwide, including Intervenor. As stated by MERSCORP:

[Identifying MERS as the original mortgagee] saves lenders time and money, and reduces paperwork, by eliminating the need to prepare and record assignments when trading loans. Borrowers name Mortgage Electronic Registration Systems, Inc. (MERS) as mortgagee and nominee for the lender [and the lender’s successors and assigns] on deeds of trust and mortgages that are recorded in the county land records. Lenders then register the loans on the MERS System and electronically track changes in servicing and beneficial ownership rights over the life of the loan.²⁸

Naming MERS as the “mortgagee” was intended to allow MERSCORP members to then trade the note and mortgage amongst themselves without recording those subsequent transactions - MERS would continue to be the “mortgagee” of record on behalf of the original lender and that lender’s successors and assigns who were MERSCORP Members.²⁹

76. In order to accomplish their goals, the founders of MERSCORP, including

²⁷ See Exhibit 9, MERS Quick Facts at 1, <http://www.mersinc.org/>. Note: This page was downloaded in 2011 and may have since been removed from the MERS Website.

²⁸ Exhibit 10, MERS Residential Marketing Kit 2012-07 at 2.

²⁹ In 1996, MERSCORP represented to a meeting of county clerks and recorders in Houston, Texas that “[d]ata will be recorded in the County as always and mortgage assignment will be recorded.”

Defendant BOA, agreed amongst themselves that:

- a. MERS would be identified (falsely) as “the beneficiary” in MERS Deeds of Trust recorded in Texas;
- b. notwithstanding the requirement in Texas that interim assignments of MERS Deeds of Trust be recorded, MERSCORP Member’s transfers of the beneficial interests in MERS Deeds of Trust to other MERSCORP Members would not be recorded in the real property records where the underlying MERS Deed of Trust was recorded; and
- c. notwithstanding the Texas Statute of Frauds, written assignments effectuating transfers of liens created by MERS Deeds of Trust would not need to be created.

77. At all times material hereto, Defendants were aware of Texas law governing the recordation of instruments in the real property records of Texas counties, including in Travis County. Nonetheless, Defendants acted with intent to circumvent those laws in the aforementioned particulars.

78. Defendant BOA’s involvement with the startup of MERSCORP and the MERS System did not, however, end there. In 1998, Defendant BOA provided financing to MERSCORP with an \$8 million line of credit, guaranteed by Fannie Mae, Freddie Mac, and the Mortgage Bankers Association of America. To secure this line of credit, MERS pledged to Defendant BOA the “MERS” trademark as well as:

- a. all receivables;
- b. all other intangibles;
- c. all equipment;
- d. all inventory;
- e. to the extent not included in the foregoing, all other personal property, whether tangible or intangible, and wherever located, including, but not limited to, the balance of every deposit account now or hereafter existing of

MERS with any bank and all monies of MERS and all rights to payment of money of the MERS;

- f. to the extent not included in the foregoing, all books, ledgers and records and all computer programs, tapes, discs, punch cards, data processing software, transaction files, master files and related property and rights (including computer and peripheral equipment) necessary or helpful in enforcing, identifying or establishing any item of collateral; and
- g. to the extent not otherwise included, all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter.³⁰

79. Simply stated, Defendant BOA was amongst the MERSCORP founders that “cleared the path for MERS as the best execution for all types of mortgage loans” and was one of the first two large companies to encourage their correspondents to deliver MERS loans. Moreover, Defendant BOA was one of the first major companies to have MERS-registered loans in their securitization. By utilizing MERS registered loans to securitize its mortgage backed securities, Defendant BOA was able to avoid preparation and recordation of assignments of mortgages to the trustee of MBS transactions.³¹

80. The MERS System went live in 1998 and by May 2000 over 1.5 million loans had been registered on the MERS System. As of today, that number is in excess of 75 million, with an estimated 4 million of those involving Texas property. It is also estimated that: 1) those 4 million mortgages were transferred amongst MERS Members 10 million times in unrecorded

³⁰ See Exhibit 11, August 6, 1998 U.S. Patent & Trademark Office Form PTO-1618B, transmitting June 30, 1998 Security Agreement executed by Mortgage Electronic Registration Systems, Inc. to NationsBank, N.A. at 5.

³¹ The MERS System facilitated exponential growth in Wall Street’s issuance of sub-prime and Alt-A MBS. Between 2000 and 2006, Wall Street went from issuing approximately \$60 billion in MBS backed by sub-prime and Alt-A mortgage to issuing over \$800 billion. When these mortgages began defaulting in late 2007, liquidity in the mortgage market evaporated, triggering the financial collapse of 2008.

transactions 2) 2.3 million of those mortgages have been released or assigned by MERSCORP Members in recorded releases or assignment; and 3) that in excess of 50% of those recorded releases and assignments contain false statements regarding MERS's relationship to the transaction, variously identifying MERS as the "lender," "payee" or "owner and holder" of the promissory note, etc.

81. To this day, MERSCORP Members, as a condition of membership, must agree that they will, *inter alia*: 1) falsely denominate MERS as "the beneficiary" of deeds of trust as to which MERS admittedly has no beneficial interest; and 2) violate Texas law by failing to record transfers of mortgage loans already recorded in Intervenor's real property records. These requirements are memorialized in the MERS System Rules of membership. They provide, *inter alia*, that each Member, including Defendant BOA agrees to:

- ensure that "either (i) an appropriate mortgage, or deed of trust, or other such instrument as may be required under applicable state law, naming Mortgage Electronic Registration Systems, Inc. as mortgagee, or (ii) an appropriate assignment of mortgage, or assignment of deed of trust, or other such instrument as may be required under applicable state law, naming Mortgage Electronic Registration Systems, Inc. as mortgagee, has been or as soon as practicable shall be, properly prepared and delivered to the appropriate recording office and promptly register on the MERS System the date on which such instrument was delivered;
- shall provide evidence reasonably satisfactory to MERSCORP Holdings demonstrating that "Mortgage Electronic Registration Systems, Inc." is, or as soon as practicable shall be, properly recorded as mortgagee of record in the appropriate public records with respect to such mortgage loan.;
- promptly correct the information on the MERS System upon becoming aware of any discrepancy between the information shown on the MERS System and the information in the public records;

- register on the MERS® System, in accordance with the MERS System 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:
 - the pledge of any mortgage loan or security interest therein and the corresponding release of such security interests;
 - the pledge of any servicing rights or security interest therein and the corresponding release of such servicing rights or security interests;
 - the transfer of beneficial ownership of a mortgage loan by a Member to a Member;
 - the transfer of beneficial ownership of a mortgage loan by a non-Member to a Member;
 - the transfer of beneficial ownership of a mortgage loan by a Member to a non-Member;
 - the transfer of servicing rights with respect to a mortgage loan by a Member to a Member;
 - the registration of servicing rights with respect to a mortgage loan from a non-Member to a Member;
 - the transfer of servicing rights with respect to a mortgage loan from a Member to a non-Member (requiring deactivation);
 - the initiation of foreclosure of any mortgage loan registered on the MERS® System;
 - the release of a lien with respect to a mortgage loan registered on the MERS® System;
 - the creation of a sub-servicing relationship with respect to a mortgage loan registered on the MERS® System; and

- 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.
- monitor the public records to verify that it has caused MERS 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; and
- maintain an adequate quality assurance program to ensure that its verification procedures are effective.³²

82. The Board of Directors of Defendant MERSCORP, which includes a representative from Defendant BOA, does not simply require that MERSCORP Members agree to abide by the MERS System Rules of Membership. The Board requires that each MERSCORP Member agree to submit itself to significant penalties for any violations of the MERS System Rules of Membership. Specifically, every MERSCORP Member, is required to agree that should it: 1) violate the MERS System Rules of Membership; 2) cause errors or delays in MERS's operations; 3) engage in other conduct detrimental to the operation of MERS or Mortgage Electronic Registration Systems, Inc., the MERS® System or other Members; or 4) fail to provide adequate training and supervision to its employees to enable proper use of the MERS® System," MERS, **in its sole discretion** may impose penalties upon that Member. Penalties may include removal of the Member; suspension, for a period and upon terms determined by MERS in its sole discretion; fines, in an amount determined by MERS in its sole discretion; censure; or any other "fitting requirements" that may be determined by MERS in its sole discretion.³³ The need for enforcing compliance is clear – in the absence of uniformity and concert of action

³² See Exhibit 9, MERS Residential Marketing Kit 2012-07, MERS System Rules of Membership, Rule 2, §§ 2-8 at 25-28.

³³ See *id* at Rule 7, § 1(a)-(e) at 40.

amongst the co-conspirators, the MERS System will not work.

83. Defendants MERSCORP, MERS, and BOA, acting in concert with one another and others as described herein, proximately caused injury and damages to Intervenor so as to make each Defendant liable for the actions of each other Defendant and each MERSCORP Member that has registered in the MERS System any mortgage loan on property located in whole or in part in Travis County. The injuries and damages for which Intervenor seeks judgment against each Defendant include, but are not limited to: 1) penalties of \$10,000 for every instrument recorded by a MERSCORP Member in Travis County in which MERS is falsely identified as a party to the transaction in violation of Section 12.002 of the Texas Civil Practice & Remedies Code; 2) damages for the diminution in the value of Intervenor's real property records and the index of Intervenor's real property records resulting from MERSCORP Member's recordation of false and/or fraudulent instruments and failure to record interim assignments; 3) damages as measured by the monies saved in filing fees, instrument preparation costs, and all other savings by every MERSCORP Member resulting from their use of the MERS System in Intervenor; and 4) damages equal to all funds received by Defendant MERSCORP or Defendant MERS for every MERSCORP Member in fees or otherwise for mortgage loans activated on the MERS System on property located in Intervenor.

VII. JURY DEMAND

84. Intervenor requests trial by jury.

X. PRAYER

85. Wherefore, premises considered, Intervenor requests that Defendants be cited to appear and, upon trial of this matter, Intervenor be awarded damages as set forth above, costs of

bringing this action, including all court costs, attorney's fees, and related expenses of bringing the action (including investigative expenses), pre- and post-judgment interest at the highest rate allowed by law, and for such other and further relief, in law and in equity, to which Intervenor may show itself justly entitled.

Respectfully submitted,

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