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IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

CLERK OF DISTRICT COURT - PLYMOUTH

PLYMOUTH COUNTY, IOWA,  
by and through DARIN J. RAYMOND,  
PLYMOUTH COUNTY ATTORNEY,

Plaintiff,

v.

MERSCORP, INC.,  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.,  
BANK OF AMERICA, N.A., BAC HOME  
LOANS SERVICING,  
CITIMORTGAGE, INC.,  
CORINTHIAN MORTGAGE CORPORATION,  
EVERHOME MORTGAGE COMPANY,  
GMAC RESIDENTIAL FUNDING  
CORPORATION,  
HSBC BANK, U.S.A., N.A.,  
JPMORGAN CHASE BANK, N.A., CHASE  
HOME FINANCE LLC, EMC MORTGAGE  
CORPORATION,  
SUNTRUST MORTGAGE, INC.,  
WELLS FARGO BANK, N.A., WELLS FARGO  
HOME MORTGAGE, INC.,  
WMC MORTGAGE CORPORATION, and  
JOHN DOE DEFENDANTS 1-100,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION PETITION**

Plaintiff Plymouth County, Iowa, by its undersigned counsel and through its designated representative, Darin J. Raymond as Plymouth County Attorney, on behalf of Plymouth County, Iowa and all other similarly situated counties of the State of Iowa, for its petition against Defendants MERSCORP, Inc. ("MERSCORP"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Bank of America, N.A., BAC Home Loans Servicing, CitiMortgage, Inc., Corinthian Mortgage Corporation, GMAC Residential Funding Corporation, HSBC Bank, U.S.A., N.A.,

**Exhibit 1**

JPMorgan Chase Bank, N.A., Chase Home Finance LLC, EMC Mortgage Corporation, SunTrust Mortgage, Inc., Everhome Mortgage Company, Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Inc., WMC Mortgage Corporation, and John Doe Defendants 1 through 100, alleges and states upon information and belief as follows:

**I. NATURE OF THE ACTION**

1. This class action seeks to redress the economic and public harm to Plaintiff Plymouth County, Iowa, and all other counties in Iowa, caused by Defendants' intentional failure to record all mortgage assignments and instruments that affect real estate in county recording offices and pay the attendant recording fees, as required by Iowa law.

2. In the late 1990s, securitizations of mortgage loans exponentially expanded because of the outsize profits they generated. Banks and other financial organizations securitized residential mortgage loans by selling mortgage loans to intermediaries – usually investment banks – which, through yet other intermediaries, pooled the mortgages into trusts that issued and sold mortgage-backed securities (“MBS”) to investors. Each of the intermediaries along the way profited handsomely by collecting fees and other charges.

3. Each link in the chain of sale from the originating lender to the issuer of the MBS, however, required a valid assignment of the mortgage, which, under state law, mandated that the assignment be recorded in the county where the real property is located.

4. To create even greater profits through the securitization process, Defendants and other leaders in the mortgage industry conspired to develop a confidential, electronic registry that would track ownership and servicing rights for residential mortgage loans outside and to the manifest detriment of the traditional state recording regimes. MERSCORP, MERS, and the MERS<sup>®</sup> System were created as a result.

5. Members of MERS, such as Defendant Bank of America, N.A., name MERS as mortgagee of record when recording land instruments and use MERS, which has no meaningful interest in the mortgage, as their proxy in county land records until a mortgage-terminating event such as a release or foreclosure occurs.

6. By using MERS as a placeholder in county land records, Defendants were and are able to leverage the initial recording of the land instrument in MERS' name to evade county recording fees and avoid publicly recording assignments of mortgages and deeds of trust to other MERS Members (defined below).

7. Defendants' scheme, perpetrated through the creation, implementation, and use of MERS and the MERS® System, to evade payment of recording fees and recording assignments of mortgages and deeds of trust, has wrongfully deprived Plaintiff and the other members of the below-defined Class of millions of dollars in recording fees. Equally important, Defendants' intentional conduct has broken once transparent chains of title in Iowa counties' public land records by creating gaps through the assignment of mortgages and deeds of trust that were required to be but were not recorded.

8. As a remedy for Defendants' wrongful conduct, Plaintiff, individually and on behalf of the other Class members, asserts claims for unjust enrichment, civil conspiracy, piercing the corporate veil, declaratory judgment, and injunctive relief.

## **II. JURISDICTION AND VENUE**

9. Defendants have assigned and/or transferred mortgages and deeds of trust in all 99 counties in the State of Iowa without recordation in the county office of the recorder where such real estate is located, contrary to the requirements of Iowa Code § 558.11, *et seq.*

10. This Court has jurisdiction pursuant to Iowa Code § 617.3 because each Defendant conducts business within the State of Iowa, has engaged in conduct in and affecting

the State of Iowa and has sufficient minimum contacts so as to render the exercise of jurisdiction by Iowa courts permissible under traditional notions of fair play and substantial justice.

11. Venue is proper in this county, pursuant to sections 616.18 and 617.3 of the Iowa Code, because the acts upon which this action is based occurred, in part, in this county and Plaintiff was injured in this county.

### **III. PARTIES**

#### ***Plaintiff***

12. Plymouth County, Iowa (“Plaintiff” or “Plymouth County”), is a body corporate and politic with powers and immunities. Iowa Code § 331.301. Darin J. Raymond, in his representative capacity as the Plymouth County Attorney, brings this action on behalf of Plymouth County, pursuant to section 331.756 of the Iowa Code.

#### ***Defendants***

13. MERSCORP, Inc. (“MERSCORP”) is a Delaware corporation with a principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. MERSCORP is a foreign corporation that engages in business in the State of Iowa. MERSCORP owns and operates the MERS<sup>®</sup> System, a national registry whose stated purpose is to track the ownership interests and servicing rights associated with residential mortgage loans and any changes in those interests or rights of its members. There are approximately five thousand (5,000) members that use the MERS<sup>®</sup> System, three thousand (3,000) of which are residential mortgage servicers.

14. Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware corporation and a wholly-owned subsidiary of Defendant MERSCORP, with whom it shares a principal place of business in Reston, Virginia. MERS engages in business in the State of Iowa insofar as it serves as mortgagee of record and nominee for participating MERS Members in

local land records filed with the County Recorder in Plymouth County and other counties throughout the State of Iowa.

15. Bank of America, N.A. ("Bank of America") is a national banking association with a principal place of business in Charlotte, North Carolina. Bank of America directly and indirectly, through its agents, employees, subsidiaries, and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. In 2008, Bank of America Corporation, the parent of Bank of America, purchased Countrywide Financial Corporation. Bank of America is a MERS Member and a shareholder of MERSCORP.

16. BAC Home Loans Servicing ("BAC") was formerly BAC Home Loan Servicing, LP ("BAC LP"), a Texas limited partnership, and was a subsidiary of Bank of America until it merged with it in 2011. BAC LP formerly did business as Countrywide Home Loan Servicing, LP. BAC directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located.

17. CitiMortgage, Inc. ("CitiMortgage") is a New York corporation with its principal place of business in O'Fallon, Missouri. CitiMortgage directly and indirectly, through its agents, employees, subsidiaries and/or related companies, including, without limitation, Citi Residential Lending, Inc., which has its principal place of business in O'Fallon, Missouri, CitiFinancial

Mortgage Company, Inc., which has its principal place of business in Baltimore, Maryland, and Principal Residential Mortgage, Inc., which had its principal place of business in Des Moines, Iowa, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. CitiMortgage is a MERS Member and a shareholder of MERSCORP.

18. Corinthian Mortgage Corporation (“Corinthian”) is a Missouri corporation with its principal place of business in Huntsville, Alabama. Corinthian directly and/or indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. Corinthian is a MERS Member and a shareholder of MERSCORP.

19. GMAC Residential Funding Corporation (“GMAC”) is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. GMAC directly and indirectly, through its agents, employees, subsidiaries and/or related companies, including, without limitation, GMAC Bank, which had its principal place of business in Midvale, Utah, and GMAC Mortgage Corporation, which has its principal place of business in Horsham, Pennsylvania, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. GMAC is a MERS Member and a shareholder of MERSCORP.

20. HSBC Bank, U.S.A., N.A. ("HSBC") is a national banking association with its principal place of business in McLean, Virginia. HSBC directly and indirectly, through its agents, employees, subsidiaries and/or related companies, including, without limitation, HSBC Mortgage Corp., which has its principal place of business in Depew, New York, and HSBC Mortgage Services, Inc., which has its principal place of business in Mettawa, Illinois, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. HSBC is a MERS Member. HSBC Finance Corporation, a subsidiary of HSBC, is a shareholder of MERSCORP.

21. JPMorgan Chase Bank, N.A. ("JPMorgan") is a national banking association with its principal place of business in Columbus, Ohio. JPMorgan directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. In 2008, JPMorgan purchased the assets and liabilities of Washington Mutual Bank, F.S.B. JPMorgan is a MERS Member. Chase Home Mortgage Corporation is a shareholder of MERSCORP.

22. Chase Home Finance LLC ("Chase Home Finance") is a Delaware limited liability company with a principal place of business in New Jersey and is a subsidiary of JPMorgan. Chase Home Finance, directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other

counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located.

23. EMC Mortgage Corporation (“EMC”) is a Delaware corporation with its principal place of location in Lewisville, Texas. EMC is a subsidiary of JPMorgan. EMC, directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. JPMorgan, Chase Home Finance and EMC are sometimes collectively referenced as the “Chase Defendants.”

24. SunTrust Mortgage, Inc. (“SunTrust”) is a Virginia corporation with its principal place of business in Richmond, Virginia. SunTrust directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. SunTrust is a MERS Member and a shareholder of MERSCORP.

25. Everhome Mortgage Company (“Everhome”) is a Florida corporation with its principal place of business in Jacksonville, Florida. Everhome directly and/or indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or



deeds of trust in the county offices of the recorder where such real estate is located. Everhome is a MERS Member and a shareholder of MERSCORP.

26. Wells Fargo Bank, N.A. (“Wells Fargo”) is a national banking association with its principal place of business in Sioux Falls, South Dakota. Wells Fargo, directly and indirectly through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. In 2008, Wells Fargo & Company, the parent of Wells Fargo, purchased Wachovia Corporation. Wells Fargo is a MERS Member and a shareholder of MERSCORP.

27. Wells Fargo Home Mortgage, Inc. (“Wells Fargo Home Mortgage”), has a principal place of business in Des Moines, Iowa, and is a division of Wells Fargo. Wells Fargo directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of trust in the county offices of the recorder where such real estate is located. Wells Fargo Home Mortgage is a MERS Member. Wells Fargo and Wells Fargo Home Mortgage are sometimes collectively referenced as the “Wells Fargo Defendants.”

28. WMC Mortgage Corporation (“WMC”) is a California corporation with its principal place of business in Burbank, California. WMC directly and indirectly, through its agents, employees, subsidiaries and/or related companies, engaged in transactions related to the origination and/or securitization of mortgage loans secured by real property located in Plymouth County and other counties in Iowa without recording assignments of mortgages and/or deeds of

trust in the county offices of the recorder where such real estate is located. WMC is a MERS Member and a shareholder of MERSCORP.

29. John Doe Defendants 1 through 100 are unknown parties who Plaintiff believes will be identified through discovery. The true names and capacities of John Doe Defendants 1 through 100 are currently unknown to Plaintiff.

30. Defendants Bank of America, BAC, CitiMortgage, Corinthian, GMAC, HSBC, JPMorgan, Chase Home Finance, EMC, SunTrust, Everhome, Wells Fargo, Wells Fargo Home Finance, WMC and John Doe Defendants 1 through 100 are collectively referenced as the “Member Defendants.”

31. MERSCORP, MERS, and the Member Defendants are collectively referenced as the “Defendants,” unless otherwise identified.

#### **IV. FACTS RELEVANT TO ALL CLAIMS**

##### ***Iowa’s Public Recording System***

32. The statutory scheme in Iowa for the recording of land instruments in public land records, as in other states, is founded on principles that date back to the origins of this country. As one commentator explained:

Since the founding of the American republic, each county in the United States has maintained records of who owns the land within that county. Most track changes in ownership of land, including mortgages and deeds of trust, by maintaining records indexed through the names of grantors and grantees. These grantor-grantee indexes allow individuals and businesses contemplating the purchase or financing of land to investigate – or hire a title insurer to investigate – whether a seller or mortgagor actually owns the land being offered for sale or mortgage. Communities traditionally have elected their county recorders or registers of deed; these elections provide an important democratic check and balance in the preservation of property rights. A public, enduring, authoritative, and transparent record of all land ownership provides a vital information infrastructure that has proven indispensable in facilitating not only mortgage finance, but virtually all forms of commerce. County real property records are the oldest and most stable metric tracking the “American dream” of family homeownership.

To facilitate their service, county recorders charge modest fees on documents they record. Although the amount and the method of calculating these fees varies considerably, a charge of about thirty-five dollars for a mortgage is typical. County recorders use these fees to fund their offices and contribute to county and state revenue. Some counties use real property recording fees to fund other county departments such as courts, legal aid offices, schools, and police.

For centuries, American mortgage lenders eagerly recorded their mortgages with county recorders because state land title laws created incentives for recording and disincentives for not recording. For example, if a mortgagee fails to record its mortgage properly and then someone subsequently buys or lends against the home and records its interest, the subsequent purchaser or lender often can take priority over the first mortgagee. Similarly, if a mortgagee assigns a mortgage to an investor, that investor eagerly would record documentation reflecting the assignment to protect against the possibility that the original mortgagee would assign the same mortgage to a different investor.

Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 WM. & MARY L. REV. 111, 114-15 (2011).

33. In keeping with this centuries-old scheme, Iowa has a mandatory recording statute, which provides as follows:

The evidence of title *shall* be filed with the recorder of deeds of the county in which the real estate is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in the cases of entries upon said index, and the recorder shall receive the same fees therefore as for recording other instruments.

Iowa Code § 558.11 (emphasis added).

34. Pursuant to section 558.41, “[a]n instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice, ... unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter.” *Id.* § 558.41.

35. The Iowa Code also provides that “[w]here any mortgage, contract, or other instrument constituting an encumbrance upon real estate shall be assigned or released by a separate instrument, it shall be the duty of the recorder to make a notation where the instrument

was originally indexed, indicating the nature of such assignment or release and a document reference number of the record where the same is recorded.” *Id.* § 558.45.

36. Further, under the Iowa Code, “[a]fter the recorder has accepted for recording and indexed any deed ... or other instrument unconditionally conveying real estate ... the auditor shall make the proper entries upon the transfer books in the auditor’s office.” *Id.* § 558.57. “At the time of filing a deed ... or other instrument mentioned in section 558.57, the recorder shall collect, and note payment of the recording fee and the auditor’s transfer fee, as provided by law .... After the recorder has accepted the instrument for recording, the instrument shall be indexed and then delivered to the auditor to be placed on the auditor’s transfer books.” *Id.* § 558.58(1).

37. Pursuant to section 558.59, “[e]very instrument shall be recorded as soon as practicable, after which the recorder shall complete the entries to show the document reference number where the record is to be found.” *Id.* § 558.59.

38. In addition, the Iowa Code establishes that the recorder in each county of the State, shall, among other things, “[r]ecord all documents or instruments presented to the recorder’s office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law,” and “[c]ollect the recording fee and the auditor’s transfer fee for real property being conveyed as provided in section 558.58.” Iowa Code § 331.602(1) & (32).

39. As of July 1, 2011, the recording fee in Iowa for all documents is \$7.00 for the first page and \$5.00 for each additional page. (The first page recording fee for a deed is \$12.00, however, that amount includes the county auditor’s \$5.00 transfer fee for the first parcel included). The first page fee is comprised of an initial fee of \$5.00, plus a \$1.00 record management fee and a \$1.00 e-commerce fee.

40. With respect to the record management fee, “[t]he recorder shall use the moneys deposited in the fund to produce and maintain public records that meet archival standards, and to enhance the technological storage, retrieval, and transmission capabilities related to archival quality records.” Iowa Code § 331.604(2)(a). The fee shall be used to “preserve and maintain public records,” “assist counties in reducing record preservation costs,” “encourage and foster maximum access to public records maintained by county recorders at locations throughout the state,” and “establish plans for anticipated and possible future needs ....” *Id.* §331.604(2)(b)(1)-(4).

41. The \$1.00 e-commerce fee became effective on July 1, 2011 and is used for the purpose of “establishing and implementing standards for recording, processing, and archiving electronic documents and records,” and “expanding access to records by encouraging electronic indexing and scanning of documents and instruments recorded in prior years.” Iowa Code § 331.604(3)(b)(3)(a)-(b).

42. For the period from July 1, 2004 through June 30, 2009, the recorder for each county was empowered to collect a fee of \$1.00 for each transaction recorded, which was to be used for the purpose of a local government electronic transaction fund. Iowa Code § 331.604(3)(b)(1).

43. For the period from July 1, 2009 through June 30, 2011, the recorder for each county was empowered to collect a fee of \$3.00 for each recorded transaction, which was to be used for the purposes of “maintaining the statewide internet website and county land record information system,” “integrating information contained in documents and records maintained by the recorder and other land record information from other sources with the county land record information system” and “implementing and maintaining a process for redacting personally

identifiable information contained in electronic documents that are displayed for public access through an internet website or that are transferred to another person.” Iowa Code § 331.604(3)(b)(2)(a)-(c).

*Securitization of Residential Mortgage Loans*

44. The securitization of residential mortgage loans involves a number of players in the primary and secondary mortgage market industry, including lender banks, which originate residential mortgage loans, and financial institutions, such as private investments banks, which buy the loans and sell them, and/or pool them into trusts to be issued to investors as MBS. Each sale requires an assignment of the mortgage loan.

45. Residential mortgage loans are typically securitized as follows:

(a) Mortgage originators sell mortgage loans to warehouse lenders called “Sellers” which bundle the mortgage loans.

(b) The Sellers then sell the bundled mortgage loans to large financial institutions, such as investment banks, called “Sponsors.”

(c) The Sponsors then initiate the securitization process by selling the portfolio of mortgage loans to a “Depositor” pursuant to purchase and sale agreements.

(d) The Depositors, in turn, transfer the portfolio of mortgage loans to trusts, which are typically special purpose vehicles, pursuant to pooling and servicing agreements. Each trust holds a number of mortgage loan portfolios and is the legal owner of the trust’s assets. The trustee of the trust issues MBS for eventual sale to investors.

(e) MBS, which represent partial beneficial interests in the trust assets, are then sold to investors, who have the right to receive the principal and interest payments from borrowers on the mortgage loans in the mortgage loan portfolio that is held in the trust.

46. Thus, the securitization of a single mortgage loan – from loan origination to being “bundled” with other mortgages and placed in a trust that issues MBS to investors who have rights to the principal and interest on the mortgage – entails at least *three* assignments of the mortgage or deed of trust, all of which, under Iowa law, are required to be recorded with the county office of the recorder where the real property is located.

***MERSCORP and MERS***

47. MERSCORP is a privately held stock company formed in 1995 by several of the most powerful constituents in the U.S. mortgage lending industry, including Fannie Mae and Freddie Mac.

48. According to its corporate website, MERSCORP’s current shareholders are the American Land Title Association, CCO Mortgage Corporation, Chase Home Mortgage Corporation, Commercial Mortgage Securities Association, CoreLogic, Everhome Mortgage Company, Fannie Mae, First American Title Insurance Corporation, Freddie Mac, Guaranty Bank, HSBC Finance Corporation, MGIC Investor Services Corporation, Mortgage Bankers Association, PMI Mortgage Insurance Company, Stewart Title Guaranty Company, United Guaranty Corporation, and Defendants Bank of America, CitiMortgage, Corinthian, GMAC, SunTrust, Wells Fargo, and WMC. MERS Shareholders, *available at* <http://www.mersinc.org/about/shareholders.aspx>.

49. MERSCORP incorporated MERS in 1998. MERS was formed as a bankruptcy-remote, single purpose subsidiary of MERSCORP, that serves as nominee for beneficial owners of mortgage loans. MERS was formed as a bankruptcy-remote single purpose entity at the insistence of the credit ratings agencies which required that there be a bankruptcy-remote conduit

for pools containing MERS mortgages in order for the pools to be eligible to receive a credit rating.

50. Pursuant to MERSCORP's Rules of Membership, a "MERS Member" is "an organization or natural person who has signed a Membership Agreement and is not more than 60 days past due as to the payment of any fees due and owing to MERS." All Defendants other than MERSCORP and MERS are MERS Members.

51. Access to the MERS<sup>®</sup> System is restricted to MERS Members and MERS shareholders, such as the Member Defendants.

52. MERS Members pay annual membership fees for the right to register mortgage loans on the MERS<sup>®</sup> System, a registration fee to register a mortgage loan on the MERS<sup>®</sup> System, and transaction fees for other services performed on the MERS<sup>®</sup> System. Among its various transaction fees, MERS charges \$11.95 to register each mortgage loan on the MERS<sup>®</sup> System, and \$2.50 for each transfer of a mortgage loan between MERS Members.

53. According to a complaint filed by the Attorney General of the State of New York on February 3, 2012 in *People v. JPMorgan Chase Bank, N.A.*, Index No. 2768/2012 (N.Y. Sup. Ct., Kings Co. Feb. 3, 2012), since 1997, more than 70 million mortgage loans have been registered on the MERS<sup>®</sup> System, including 30 million currently active loans. Approximately 60 percent of all residential mortgages in the U.S. are recorded in MERS' name rather than in the name of the lender, trust, or company that actually possesses a meaningful economic interest in the repayment of the mortgage on the underlying property.

54. In September 2009, R.K. Arnold, the former President and CEO of MERSCORP and MERS, testified in a deposition that there were 62 million mortgage loans on the MERS<sup>®</sup> System. Based on the assumption that the mortgage on each loan was assigned only once at an



average filing fee of \$40, he estimated that as of that date, the mortgage lending industry saved **\$2.4 billion** by using the MERS<sup>®</sup> System:

Q. Your associate, Mr. Hultman, testified that as of 2-7 of 2008 there were 53 million mortgage loans on the MERS system, and you said earlier today that it's now 62 million. And he also testified that the average cost of filing an assignment is \$40; right?

A. At least.

Q. Right. And so some states may be higher. Some states may be lower. But let's take that number.

If your system saves the industry one mortgage assignment on 62 million loans, the industry saved approximately \$2.4 billion in recording costs, hasn't it?

A. Yes.

Deposition of R. K. Arnold, dated Sept. 25, 2009, at 137:15 – 138:8 (*Henderson v. MERSCORP*, No. CV-08-900805.00 (Ala. Cir. Ct., Montgomery Co.)).

55. Based on the updated figure of 70 million MERS mortgages from the New York Attorney General's complaint filed on February 3, 2012 and using the \$40 average filing fee in the above example, and assuming that each mortgage was assigned three times, which is the minimum number of times a mortgage is assigned during the securitization process, a reasonable estimate of the amount in recording fees saved by the mortgage industry from using the MERS<sup>®</sup> System is **\$8.4 billion**, if not more.

56. Notwithstanding these significant savings, upon information and belief, as of 2010, MERSCORP had an annual income of \$11 million. Moreover, as Arnold conceded in his November 2010 testimony before the Subcommittee on Housing and Community Opportunity, "MERS is a relatively small organization ... [with] [a]bout 50 working for MERSCORP [] in [the] Reston, Va. office." Remarks and Testimony of R. K. Arnold, Subcommittee on Housing and Community Opportunity, House Financial Services Committee, Nov. 18, 2010, at 11.

57. Thus, at all relevant times, MERSCORP and MERS were ill equipped to manage the millions of mortgages in the MERS<sup>®</sup> System.

***Defendants' Scheme***

58. As set forth above, MERS was established by the agreement of leading players in the U.S. mortgage lending industry for the express purpose of evading compliance with state laws requiring that written instruments that convey or affect interests in real estate, including assignments of mortgages or deeds of trust, be recorded in the office of the recorder of the county where such real estate is located. Indeed, MERS' corporate slogan is "Process Loans, Not Paperwork."

59. As MERS itself describes on its corporate website:

MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. Beneficiaries of MERS include mortgage originators, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers.

MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS<sup>®</sup> System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded...

"About MERS," *available at* <http://www.mersinc.org/about/index.aspx>.

60. Indeed, MERS was established for one true purpose: to save the mortgage industry money that would otherwise be paid in fees to county recorders. A 1994 Ernst & Young report indicated that "MERS could save the [mortgage] industry about \$77.9 million annually." Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 IDAHO L. REV. 805, 811-12 (1995), citing Ernst & Young LLP, *MERS Cost Benefit Analysis*, (Dec. 1994).

61. While MERS' website claims that county recorders are alleged "beneficiaries" of MERS, the "streamlin[ing of] the mortgage process by using electronic commerce to eliminate

paper, ” *i.e.*, not recording written assignments of mortgages and deeds of trust with the county recorder’s office, actually harms public land records by intentionally creating gaps in the chain of title and depriving county recorders of the requisite funds, in the form of recording fees, to protect the integrity of the public resource.

62. A MERS 2005 PowerPoint slide describes Defendants’ scheme in four short points:

The security instrument names MERS as mortgagee and nominee for the lender.

MERS serves a mortgagee in the county land records for MERS members

When servicing transfers from one MERS member to another, no assignment is needed because MERS remains the constant mortgagee lien holder over the life of the loan.

*Chain of title is simplified because it begins and ends with MERS.*

MERS Overview: Enabling eCommerce for the Mortgage Industry, dated Dec. 2, 2005 (emphasis added). Indeed, the public is no longer able to trust the land recording system as a reliable resource to track chain of title insofar as it “begins and ends with MERS.”

63. While MERS recently implemented a feature on its website that permits borrowers to seek information relating to their mortgages’ current investors, MERS does not disclose information about the chain of ownership from the original lender to the current investors, nor does it provide documents that purport to memorialize the intermediate transfers. Further, MERS only identifies the securitization trustee, rather than the trust – the entity that owns interests in the mortgage – making it difficult to determine the legal owner of a mortgage. These meager efforts by MERS, no doubt adopted as a result of widespread criticism, do nothing to cure the lack of the transparency that is the hallmark of the MERS<sup>®</sup> System.

64. For mortgages that are assigned or transferred using the MERS<sup>®</sup> System, MERS must be named mortgagee of record as nominee for the MERS Member at either the origination

of the mortgage, or by assignment of the mortgage to MERS. Under the terms and conditions of the MERS Membership Agreement, MERS Members agree that:

The Member, at its own expense, shall promptly, or as soon as practicable, cause 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<sup>®</sup> System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have 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. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.

65. Once MERS is denominated as the mortgagee of record in the official county records, the Member Defendants use that official designation to avoid recording any subsequent transfer of interest in the mortgage loan within the MERS<sup>®</sup> System.

66. As explained by MERS' former Corporate Secretary Treasurer:

Once MERS becomes the beneficiary of record as nominee, it remains such when beneficial ownership interest in the promissory note or servicing rights are transferred by one MERS Member to another, and it tracks such transfers electronically on the MERS<sup>®</sup> System. As long as the sale of the note involves a member of MERS, MERS remains the beneficiary of record on the deed of trust and continues to act as nominee for the new beneficial owner. If a member is no longer involved with the loan after it is sold, an assignment of the lien from MERS to the non-MERS member is recorded in the county where the real property is located, and the mortgage loan is deactivated from the MERS<sup>®</sup> System.

Declaration of William C. Hulton, dated Aug. 5, 2008, *In re Mitchell*, No. 07-16226 (Bankr. D. Nev.), Dkt. No. 74 (Hulton Decl.), ¶ 4.

67. Given MERSCORP's inadequate capitalization and MERS' lack of employees, it is no surprise that MERS neither drafts nor executes land instruments on behalf of itself or its

Members. Rather, under the terms and conditions of the Membership Agreement, MERS Members are permitted to act in MERS' corporate capacity.

68. The MERS Membership Agreement, for example, provides MERS Members with "a corporate resolution designating one or more employees of the Member a MERS Certifying Officer," or, as set for in the corporate resolution, "appoint[ing] [them] as assistant secretaries and vice presidents of MERS." Hulton Decl., ¶ 6.

69. Indeed, MERS has designated over 20,000 MERS Member employees as MERS "Certifying Officers" who are authorized to act on MERS' behalf. As a MERS Certifying Officer, the Member's employee may, among other things:

(1) release the lien of any mortgage loan registered on the MERS<sup>®</sup> System to such Member; (2) assign the lien of any mortgage naming MERS as the mortgagee when the Member is also the current promissory note holder, or is shown to be registered to the Member; (3) foreclose upon the property securing any mortgage loan registered on the MERS<sup>®</sup> System to such Member; and (4) take any action necessary to protect the interest of the Member or the beneficial owner of the mortgage loan in a bankruptcy proceeding concerning a loan registered on the MERS<sup>®</sup> System shown to be registered to the Member.

Hulton Decl., ¶ 6. *See id.*, Ex. C (MERS Corporate Resolution) (resolving that listed employees of a MERS Member are appointed assistant secretaries and vice presidents of MERS and are authorized to, among other things, "take any and all actions and execute all documents necessary to refinance, subordinate, amend or modify any mortgage loan registered on the MERS System that is shown to be registered to the Member," and "endorse checks made payable to [MERS] to the Member that are received by the Member for payment on any mortgage loan registered on the MERS System that is shown to be registered to the Member.").

70. At all relevant times, neither MERSCORP nor MERS managed or exercised any control over MERS Certifying Officers, despite their purported authority to act in MERS' name. More importantly, neither MERSCORP nor MERS has ever had the financial resources to

manage all the ownership interests and rights it purported to handle on behalf of MERS

Members or to supervise MERS Certifying Officers. As explained by one commentator:

Because MERSCORP is a company of relatively modest size, it does not have the personnel to deal with legal problems its purported ownership of millions of homes creates. To accommodate the massive amount of paperwork and litigation involved with its business model, MERSCORP simply farms out the MERS Inc. identity to employees of mortgage servicers, originators, debt collectors, and foreclosure law firms. MERS invites financial companies to enter names of their own employees into a MERS webpage that then automatically regurgitates boilerplate corporate resolutions that purport to name the employees of other companies as certifying officers of MERS. These certifying officers also take job titles from MERS and stylize themselves as either assistant secretaries or vice presidents of MERS, rather than taking titles from the company that actually employs them. These employees of servicers, debt collectors, and law firms sign documents pretending to be vice presidents or assistant secretaries of MERS Inc. even though neither MERSCORP Inc. nor MERS Inc. pays compensation or provides benefits to them. Astonishingly, MERS “vice presidents” are simply paralegals, customer service representatives, and foreclosure attorneys employed by other companies. MERS even sells its corporate seal on its Internet site for twenty-five dollars each. Ironically, MERS Inc. – a company that nominally owns 50 percent of the nation’s residential mortgages – does not have any of its own employees, but still purports to have over twenty thousand assistant secretaries and vice presidents. This corporate structure leads to inconsistent positions, conflicts of interest, and confusion.

Peterson, *supra*, at 120-21.

71. By recording land instruments in which MERS is designated as “mortgagee of record,” “assignee,” or “nominee” for the MERS Member and its successors and assigns, the Member Defendants intentionally evade paying recording fees for subsequent assignments that they otherwise would have to record, and previously did record, in order to inoculate the mortgages against subsequent purchasers and mortgagees.

72. Further, these initial recordations in MERS’ name enable MERS Members to represent that they have all rights, titles and interests to the mortgage loans in the various contracts required to be executed during the securitization process, including purchase and sale agreements and pooling and servicing agreements.

73. Pooling and servicing agreements involving both MERS and non-MERS mortgage loans perhaps best demonstrate how Member Defendants use MERS to avoid recording intermediate mortgage assignments and evade paying the requisite fees throughout the securitization process. A 2005 Pooling and Servicing Agreement between Chase Mortgage Finance Corporation, as depositor, JPMorgan Chase Bank, as servicer, and Wachovia Bank, as trustee, is typical. *See Chase Mortgage Finance Trust Series 2005-A1, Form 8-K, Ex. 4.1 (Nov. 1, 2005) (“2005 PSA”).*

74. As described by a commentator, the 2005 PSA provides that certified copies of recorded mortgage assignments are necessary for non-MERS mortgages in the pool, while there is no such requirement for MERS mortgages:

J.P. Morgan Chase’s subprime subsidiary [(the Depositor)] promised to turn over to the securitization trustee “[o]riginals of all recorded intervening Assignments of Mortgage, or copies thereof, certified by the public recording office in which such Assignments or [sic] Mortgage have been recorded *showing a complete chain of title from the originator to the Depositor*, with evidence of recording.” Conversely, in the case of MERS-recorded loans, the same agreement does not require recording of intermediate assignments. Instead, it only requires the depositor to take “such action actions as are necessary to cause the Trustee to be clearly identified as the owner of each such Mortgage Loan on the records of MERS.” In this typical securitization deal, J.P. Morgan used the MERS system to duck a contractual obligation it otherwise would have incurred to produce recorded assignments for every non-MERS loan included in the pool ....

Peterson, *supra* at 148 (emphasis in original).

75. Egregiously, MERS itself does not automatically track the transfers of all beneficial ownership rights of the mortgages registered on the MERS® System. Information on the system is updated only if MERS members choose to do so. As explained by one commentator:

In the words of MERS’ CEO, the system “is capable of being used to track [beneficial ownership interests] if the members utilize for that reason.” But if the MERS members choose not to use the database to reveal themselves, MERS does not investigate further or otherwise insist that members actually use this feature of

the database. Instead, MERS leaves this decision to the business model of the financial institution. When asked whether MERS expects financial institutions to update the MERS database regarding changes in loan ownership, the company's CEO replied, "not so much."

Peterson, *supra*, at 127.

76. Unsurprisingly, MERS disclaims the accuracy of any information that is recorded on the MERS<sup>®</sup> System:

DISCLAIMER: MERS makes no representations or warranties regarding the accuracy or reliability of the information provided. MERS disclaims responsibility or liability for errors, omissions, and the accuracy or any information provided. MERS does not input any of the information found on the MERS<sup>®</sup> System, but rather the MERS Members have that responsibility regarding mortgage loans in which they hold an interest. Users of this information have the responsibility to verify the accuracy, currency and completeness of the information. The information does not constitute the official legal record and is for information purposes only. The servicer listed should be contacted for further information.

<http://www.mersinc.org/MersProducts/index.aspx?mpid=7> (last visited February 20, 2012).

77. The unreliability of the information recorded on the MERS<sup>®</sup> System, and the absence of complete documentation of transfers of beneficial interests, have resulted in severe criticism of MERS by courts throughout the country.

#### ***The OCC Enforcement Action***

78. On April 13, 2011, the Comptroller of the Currency ("OCC") announced a formal enforcement action against eight MERS members (the "Examined Members"), including Member Defendants Bank of America, HSBC, JPMorgan and Wells Fargo,<sup>1</sup> contending that that MERS Members abused MERS' corporate form (in concert with MERS) by using the MERS<sup>®</sup> System, resulting in unsafe and unsound practices related to residential mortgage loan servicing

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<sup>1</sup> In addition to these Member Defendants, the OCC enforcement action involved Citibank, N.A., MetLife Bank, N.A., PNC Bank, N.A., and U.S. Bank, N.A.



and foreclosure proceedings. Consent orders were entered into by the Examined Members to address these issues and requiring that they develop and implement plans to reform their mortgage servicing operations and submit an action plan “to ensure appropriate controls and oversight of the Bank[s’] activities” with respect to MERS.

79. A consent order was also executed by MERSCORP and MERS. That consent order set forth that the OCC, as well as the Board of Governors of the Federal Reserve System, Washington, D.C., Federal Deposit Insurance Corporation, Office of Thrift Supervision and Federal Housing Finance Agency (collectively, the “Agencies”), “identified certain deficiencies and unsafe or unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal, and reputational risks to MERSCORP and MERS, and to the participating Members.” MERS Consent Order at 2, *available at* <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf>.

80. The consent order provides that “MERS and MERSCORP are each an ‘institution-affiliated party’ within the meaning of 12 U.S.C. § 1813(u), by virtue of MERS acting as agent for lenders (including Examined Members) with respect to serving as mortgagee in a nominee capacity for the lender, and are each an ‘entity-affiliated party’ within the meaning of 12 U.S.C. § 4502(11) by virtue of MERS acting as agent for Fannie Mae and Freddie Mac with respect to serving as mortgagee in a nominee capacity for the owner of residential mortgage loans.” *Id.* at 3.

81. The Agencies made fact findings in the consent order with respect to MERS and MERSCORP, including, the following:

- a. MERS serves as mortgagee of record and nominee for the participating Members in local land records. MERS takes action as mortgagee through documents executed by ‘certifying officers’ of MERS. MERS has designated these individuals, who are officers or employees of Members or

certain third-parties who have contractual relationships with Members, as officers of MERS. By virtue of these designations, the certifying officers execute legal documents in the name of MERS, such as mortgage assignments and lien releases.

b. In connection with services provided to Examined Members relating to tracking, and registering residential mortgage loans and initiating foreclosures ('residential mortgage and foreclosure-related services') MERS and MERSCORP: ([i]) have failed to exercise proper 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; and ([ii]) 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.

c. By reason of [such] conduct ... MERS and MERSCORP engaged in unsafe or unsound practices that expose them and Examined Members to unacceptable operational, compliance, legal and reputational risks.

*Id.* at 4-5.

82. The consent order requires MERS and MERSCORP, within 90 days of the effective date, to develop and submit an acceptable plan containing a complete description of the actions necessary and appropriate to achieve compliance with the terms and conditions of the consent order ("Action Plan"), as well as resources to be devoted to the planned actions, with respect to services provided to Examined Members.

83. Among other things, the Action Plan is required to address, at a minimum:

The capability of the Boards and senior management to ensure that MERS and MERSCORP are operated in a safe and sound manner in accordance with applicable laws, regulations and requirements of this [consent] [o]rder;

Development and implementation of a strategic plan to include a comprehensive review of business operations, including the risks associated with each business line, and recommendations to implement the strategic plan;

Consistent with the strategic plan, development and implementation of a financial plan to ensure that MERSCORP and MERS have adequate financial strength to support business operations related to Examined Members. The financial plan, at a minimum, shall address: (i) any need for additional capital, including the amount and source of capital; [and] (ii) the identification, measurement, monitoring and control of funding and liquidity risk ...;

Development and implementation of a comprehensive litigation strategy to effectively manage lawsuits and legal challenges involving MERS and MERSCORP, regardless of whether MERSCORP or MERS is a named party ... ; and

Development and implementation of appropriate standards to maintain separation of corporate functions between MERS and MERSCORP.

*Id.* at 7-8.

84. The consent order requires MERSCORP and MERS to engage an independent third party to analyze these issues and to produce a written report to the Boards of MERS and MERSCORP that, among others things, will:

Identify the type and number of positions needed to appropriately manage and supervise all services provided to Examined Members ...;

Identify the type and number of officer and staff positions needed to ensure compliance with all applicable federal and state laws, regulations and material contractual requirements, as well as to implement any newly established or revised plans, policies, procedures, processes and systems required by th[is] [consent] [o]rder ...;

Recommend a plan to recruit and retain directors, officers, management and staff consistent with the independent third party's analysis and assessment; [and]

Recommend any reorganization or realignment of directors, officers, management and staff consistent with the independent third party's analysis and assessment.

*Id.* at 10-11.

85. The consent order was executed by members of the board of directors of both MERSCORP and MERS.

86. The board members who stipulated and consented to the issuance of the consent order on behalf of MERSCORP include senior executives of certain Member Defendants, as follows: Joe Jackson, Senior Vice President of Member Defendant Wells Fargo; Brian McCrackin, Director of Finance of Member Defendant CitiMortgage; Robert Reynolds, Executive Vice President, SunTrust Banks, Inc. (Member Defendant SunTrust is a consolidated

subsidiary of SunTrust Banks, Inc.); Steven Stein, Senior Vice President, Homeownership Preservation and Partnerships, of Member Defendant JPMorgan; and Lawrence P. Washington, Managing Director and Servicing Portfolio Strategy Executive of Member Defendant Bank of America.

***November 2011 Senate Bill***

87. In November 2011, a bill was introduced in the United States Senate to federalize MERS by establishing “MERS2,” based on the existing MERS, to be operated by the Federal Housing Finance Agency (“FHFA”).

88. The bill, the Residential Mortgage Market Privatization and Standardization Act of 2011, S. 1834, 112th Cong., 1st Sess. (2011), specifically provides that the FHFA “shall ensure that property title is transferred in accordance with all applicable provisions of law,” which would include state recording laws. This bill is an acknowledgement of the public harm caused by the creation of MERS whose only purpose was to avoid recording land instruments and paying attendant recording fees, which deprived counties of billions in recording fees and caused incalculable public harm by creating gaps in county land records.

***Nationwide Foreclosure Settlement***

89. On February 9, 2012, the United States Department of Justice announced that the federal government and 49 state attorneys general had reached a landmark \$25 billion settlement agreement with five of the nation’s largest mortgage servicers to address mortgage loan servicing and foreclosure abuses (the “Agreement”). According to the press release, the Agreement is “the largest federal-state civil settlement ever obtained and is the result of extensive investigations by federal agencies, including the Department of Justice, HUD and the HUD Office of the Inspector General (HUD-OIG), and state attorneys general and state banking regulators across the country.” DOJ Press Release, *Federal Government and State Attorneys General Reach \$25*

*Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses*, at 1 (Feb. 9, 2012) (“Press Release”), available at <http://www.justice.gov/opa/pr/2012/February/12-ag-186.html>. The mortgage servicers who are parties to the Agreement are Member Defendants Bank of America, JPMorgan, Wells Fargo, and Member Defendant affiliates Citigroup Inc. and Ally Financial Inc. (formerly GMAC).

90. According to U.S. Attorney General Eric Holder, the Agreement “holds mortgage servicers accountable for abusive loan servicing and foreclosure practices and requires them to commit more than \$20 billion toward financial relief for consumers.” In addition to the \$20 billion in financial relief for borrowers, the Agreement requires the servicers to pay \$5 billion in cash to the federal and state governments. Of that \$5 billion, \$1.5 billion is to be used to establish a Borrower Payment Fund to provide cash payments to borrowers whose homes were sold or taken in foreclosure between January 1, 2008 and December 31, 2011. The remaining \$3.5 billion is to go to state and federal governments to repay public funds lost as a result of servicer misconduct and to fund housing counselors, legal aid and other similar public programs as determined by the state attorneys general.

91. The Press Release asserts that the Agreement “resolves certain violations of civil law based on mortgage loan servicing activities.” Press Release at 2. The Agreement, however, does not prevent state and federal authorities from pursuing criminal enforcement actions related to this or other conduct by the servicers. For example, it does not prevent the government from punishing wrongful securitization conduct that will be the focus of the Financial Fraud Enforcement Task Force’s newly-created Residential Mortgage-Backed Securities Working Group. Nor does it prevent any action by individual borrowers who wish to bring their own lawsuits. With respect to this action, the Agreement does not prevent, but rather, preserves, all

claims against MERS and institutions that used the MERS System<sup>®</sup> to evade paying recording fees and corrupt the public land recording systems in counties around the country.

92. According to the Press Release, the Agreement will be filed as a consent judgment in the U.S. District Court for the District of Columbia. *Id.*

## **V. CLASS ACTION ALLEGATIONS**

93. Plymouth County brings this action on behalf of itself and, pursuant to Rule 1.261 of the Iowa Rules of Civil Procedure, on behalf of all other counties of the State of Iowa, which, from January 1, 1998 to the present, inclusive, were harmed by Defendants' wrongful and improper conduct alleged above (collectively referenced as the "Class").

94. The Class is comprised of each of the 99 counties in the State of Iowa and joinder of each member as a party to this action is impracticable.

95. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of its claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

96. The Class claims present common questions of law or fact that predominate over any questions affecting only individual members of the proposed Class, including:

(a) Whether MERS and the Member Defendants intended to injure Class members by their intentional failure to record each and every transfer of interest in real estate located in the State of Iowa with the appropriate county recording office, in accordance with Iowa Code § 558.11;

(b) Whether MERS and the Member Defendants conspired to achieve an unlawful objective through the violation of Iowa Code § 558.11;

(c) Whether Class members were injured by MERS' and the Member Defendants' scheme to evade payment of the requisite recording fees in connection with each and every transfer of interest in real estate located in the State of Iowa; and

(d) Whether MERS and the Member Defendants should be ordered to comply with Iowa law, record each and every prior and future transfer of interest in real estate located in the State of Iowa with the appropriate county recording office and pay all required recording fees.

97. The claims Plymouth County asserts herein are typical of the claims of each of the other Class members because, among other things, all Class members were comparably injured through the substantially uniform misconduct described above. Plymouth County is advancing the same claims and legal theories on behalf of itself and the other Class members and there are no defenses available to Defendants that are unique to Plaintiff.

98. Iowa law is applicable to all claims asserted by the Class.

99. Iowa law establishes identical requirements for the recording of instruments conveying or affecting real estate with the county recorder where the subject real estate is located in each of the 99 counties in the State.

100. Iowa law requires that the recorder for each county in the State collect in all cases fees due for the recording of instruments conveying or affecting real estate.

101. Plymouth County is an adequate representative of the proposed Class because its interests do not conflict with the interests of the other Class members it seeks to represent; it has retained counsel competent and experienced in complex class action litigation; and Plymouth County and its counsel will prosecute this action vigorously. The Class' interests will be fairly and adequately protected by Plymouth County and its counsel.

102. This action is maintainable as a class action because MERS and the Member Defendants have acted on grounds generally applicable to the Class, thereby making final monetary, equitable and declaratory relief appropriate to the Class as a whole.

103. Class action treatment here is superior to other available methods for the fair and efficient resolution of this controversy because:

(a) Separate adjudication of claims by individual Class members could lead to inconsistent results, which would establish incompatible standards of conduct for MERS and the Member Defendants;

(b) Separate actions by individual Class members could injure other Class members' ability to adequately protect their interests;

(c) The financial burden on individual Class members would make it impracticable for them to pursue their claims against MERS and the Member Defendants individually; and

(d) Judicial economy would be served by maintenance of this action as a class action to avoid numerous individual lawsuits filed by Class members.

104. No unusual difficulties are anticipated in the management of this case as a class action.

## **VI. CLAIMS ALLEGED**

### **COUNT I**

#### **UNJUST ENRICHMENT (Against all Defendants)**

105. Plymouth County repeats, realleges, and incorporates by reference the allegations contained in Paragraphs 1- 102, above, as though fully stated herein.



106. In order to avoid the payment of recording fees to Plymouth County and the other Class members, MERS Members caused MERS to appear in the public land records of Plymouth County and the Class as mortgagee of record on mortgage loans that MERS Members registered on the MERS<sup>®</sup> System. MERS serves as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof, and their successors and assigns.

107. By naming MERS as the mortgagee of record, MERS and the MERS Members, through the MERS<sup>®</sup> System, intended to and did transfer mortgages among MERS Members without recording such transfers in the public land records of Plymouth County and the Class, and without paying the attendant recording fees.

108. But-for the existence of the MERS<sup>®</sup> System, such transfers would have been recorded and the required recording fees would have been paid by MERS and/or the MERS Members in order to properly transfer mortgages for purposes of mortgage securitizations and otherwise.

109. Defendants received a benefit by naming MERS as mortgagee of record on mortgages recorded in Plymouth County and in the other Iowa counties comprising the Class, and exploiting MERS' status to transfer mortgages among MERS Members without recordation and payment of recording fees.

110. The MERS Members benefited from the priority conferred by sections 558.11 and 558.41 of the Iowa Code, which enabled them to represent in agreements executed as part of the securitization process that they were transferring valid mortgages.

111. MERSCORP and MERS also benefited by receiving membership fees, transaction fees, and other monetary benefits by allowing MERS Members to use MERS as mortgagee of record, and tracking and transferring mortgages among MERS Members on the MERS® System.

112. Under the circumstances, it is against equity and good conscience to permit Defendants to retain the benefits arising out of or resulting from naming MERS as mortgagee of record on land instruments recorded in Iowa County and the other Class members.

113. If Defendants are permitted to retain the benefits of naming MERS as mortgagee of record on land instruments in Plymouth County and in the other Iowa counties comprising the Class, and using the MERS® System to transfer mortgages without paying recording fees, Defendants will be unjustly enriched, to the detriment of Plymouth County and the other Class members.

114. As a direct and proximate result of Defendants' unjust enrichment, Plymouth County and the other members of the Class have been injured and are entitled to restitution from Defendants. Plymouth County, individually and on behalf of the members of the Class, requests that this Court order Defendants to disgorge all profits, benefits, and other compensation Defendants obtained by their wrongful and improper conduct.

## **COUNT II**

### **CIVIL CONSPIRACY**

#### **(Against the Member Defendants and John Doe Defendants 1-100)**

115. Plymouth County repeats, realleges, and incorporates by reference the allegations contained in Paragraphs 1-102, above, as though fully stated herein.

116. At all relevant times, the Member Defendants and John Doe Defendants 1-100 ("Count II Defendants") conspired with each other to violate Iowa Code § 558.11 and unlawfully withhold recording fees due to each Class member.

117. The Count II Defendants agreed and did, in fact, create MERSCORP and MERS to achieve an unlawful objective.

118. In furtherance of their conspiracy, the Count II Defendants utilized MERS and the MERS® System to avoid recording each and every prior and future mortgage, deed of trust and assignment of mortgage or deed of trust on real estate located in the State of Iowa in the appropriate county office of the recorder.

119. Plymouth County and each of the other Class members were damaged by the Count II Defendants' conspiracy to violate Iowa Code § 558.11, unlawfully withhold recording fees due and acts in furtherance thereof.

120. Plymouth County, individually and on behalf of the other Class members, seeks an award of damages against the Count II Defendants in an amount to be determined at trial.

### **COUNT III**

#### **AGENCY AND CORPORATE VEIL PIERCING (Against the Member Defendants and John Doe Defendants 1-100)**

121. Plymouth County repeats, realleges, and incorporates by reference the allegations contained in Paragraphs 1-102, above, as though fully stated herein.

122. Plymouth County, individually and on behalf of the other Class members, seeks to pierce the corporate veils of MERS and MERSCORP and impose liability upon the Member Defendants and John Doe Defendants 1-100 (the "Count III Defendants") for the actionable conduct of MERSCORP and MERS alleged herein.

123. At all relevant times, the Count III Defendants were acting by and through their actual, apparent, or by estoppel, agents and/or employees.

124. MERSCORP and MERS operate as mere instrumentalities of the Count III Defendants and are undercapitalized in light of the nature of the business risks undertaken.

125. At all relevant times, MERS, while acting in the capacity as Count III Defendants' agent, lacked the requisite resources to manage all the ownership interests and rights it purported to handle on behalf of the Count III Defendants. In reality, those ownership interests and rights are managed by the Count III Defendants, albeit in MERS' corporate name. The Count III Defendants controlled and dominated MERSCORP and MERS, its policies and business practices.

126. Under the terms and conditions of the MERS Membership Agreement, MERS Members are permitted to use, at their discretion, the corporate form of MERS to act on their own behalf. The Membership Agreement provides MERS Members a corporate resolution designating one or more employees of the Member as a MERS Certifying Officer and permits their appointment as MERS employees although they are employed by MERS Members. It also permits MERS Members to use MERS' corporate seal for a nominal sum.

127. The use and usurpation of MERS' corporate form by the Count III Defendants is, therefore, institutionally pervasive.

128. The use of the corporate fiction of MERSCORP and MERS should not be available as a mere business conduit of the Count III Defendants to shield their wrongdoing, and to evade existing legal obligations in the State of Iowa.

129. Based on the conduct described herein, recognizing the corporate existence of MERSCORP and MERS separate from their shareholders, including MERSCORP as the sole shareholder of MERS, and the Count III Defendants, would cause an inequitable result or injustice.

130. Plymouth County, individually and on behalf of the other Class members, seeks an award of damages against the Count III Defendants in an amount to be determined at trial.

**COUNT IV**

**DECLARATORY JUDGMENT  
(Against all Defendants)**

131. Plymouth County repeats, realleges, and incorporates by reference the allegations contained in Paragraphs 1-102, above, as though fully stated herein.

132. MERS and the Member Defendants have conveyed and assigned mortgages and deeds of trust on real estate located in the State of Iowa without recording any of the instruments associated with such conveyances or assignments in the office of the recorder of the county where such real estate is situated.

133. Plymouth County, individually and on behalf of the other Class members, seeks a declaration, pursuant to Rule 1.1101 of the Iowa Rules of Civil Procedure, that Iowa Code § 558.11 requires the recording of written instruments that convey or assign mortgages and deeds of trust on real estate located in Iowa be recorded in the county office of the recorder in which such real estate is situated.

**COUNT V**

**REQUEST FOR INJUNCTIVE RELIEF  
(Against all Defendants)**

134. Plymouth County repeats, realleges, and incorporates by reference the allegations contained in Paragraphs 1-102, above, as though fully stated herein.

135. Plymouth County, individually and on behalf of the other Class members, seeks a Court Order, pursuant to Rule 1.1501 of the Iowa Rules of Civil Procedure, permanently enjoining Defendants from failing to record mortgages, deeds of trust and assignment of mortgages and deeds of trust on real estate located in the State of Iowa with the county office of the recorder where such real estate is situated.

136. Plymouth County, individually and on behalf of the other Class members, further seeks a Court Order requiring Defendants, jointly and severally, to correct all recordings filed in the State of Iowa in which MERS is identified as a “mortgagee,” “beneficiary” or “nominee” on any mortgages, deeds of trust and assignment of mortgages and deeds of trust, by causing, at their own cost, the recordation of corrective instruments that set forth the entire chain of title for each aforementioned instrument.

#### **VII. REQUEST FOR RELIEF**

WHEREFORE, Plymouth County, individually and on behalf of the other Class members, respectfully request that this Court enter an Order:

A. Certifying the Class under Rule 1.264 of the Iowa Rules of Civil Procedure, appointing Plymouth County as Class Representative, and appointing its undersigned counsel as Class Counsel;

B. Finding that Defendants’ conduct was unlawful and injured Plymouth County and each member of the Class, as alleged above;

C. Declaring that Iowa Code § 558.11 requires the recording of written instruments that convey or assign mortgages and deeds of trust on real estate located in Iowa be recorded in the county office of the recorder in which such real estate is situated.

D. Enjoining Defendants, their officers, agents, and assigns from failing to record mortgages, deeds of trust and assignment of mortgages and deeds of trust on real estate located in the State of Iowa with the county recorder’s office county where such real estate is situated;

E. Requiring Defendants to record with the county office of the recorder where such real estate is situated, each and every prior and future mortgage, deed of trust and assignment of mortgage or deed of trust on real estate located in the State of Iowa, at their own cost

F. Requiring Defendants to disgorge to Plymouth County and the other Class members Defendants' profits, benefits and other compensation obtained by their wrongful conduct;

G. Awarding Plymouth County and the other Class members their actual, compensatory, and consequential damages;

H. Awarding Plymouth County and the other Class members statutory damages;

I. Awarding Plymouth County and the other Class members exemplary damages should it be determined that Defendants acted in willful or reckless disregard of the law;

J. Awarding Plymouth County and the other Class members pre-judgment and post-judgment interest;

K. Awarding Plymouth County and the other Class members reasonable attorneys' fees and costs, including expert witness fees; and

L. Granting such other relief as the Court deems just and proper.

#### **VIII. JURY DEMAND**

Plymouth County demands a trial by jury on all claims so triable.

Dated: February 23, 2012

Respectfully submitted,

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