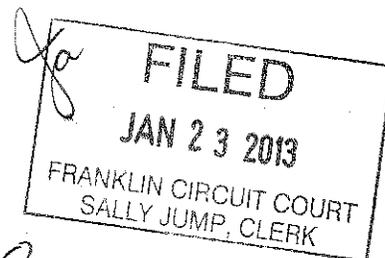


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. B-CI-00060



COMMONWEALTH OF KENTUCKY
ex rel. JACK CONWAY, Attorney General,

PLAINTIFF

v.

MERSCORP HOLDINGS, INC.
a Delaware Corporation
1818 Library Street, Suite 300
Reston, Virginia 20190

DEFENDANT

and

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
a wholly owned subsidiary of MERSCORP Holdings, Inc.
a Delaware Corporation
1818 Library Street, Suite 300
Reston, Virginia 20190

DEFENDANT

COMPLAINT

The People of the Commonwealth of Kentucky, by their attorney, Jack Conway, Attorney General of the Commonwealth of Kentucky, allege, upon information and belief:

I. JURISDICTION AND PARTIES

1. The Plaintiff, the Commonwealth of Kentucky, by and through its undersigned Attorney General, brings this action against Defendants, who created the mortgage registration and foreclosure enterprise known as the Mortgage Electronic Registration System ("MERS").

2. This Court has jurisdiction over the Commonwealth of Kentucky's claims, as the claims arise exclusively under Kentucky statutes, Kentucky common law, and the *parens patriae* authority of the Attorney General to act on behalf of the Commonwealth of Kentucky and its citizens.

3. Jurisdiction is proper in Franklin County, Kentucky, pursuant to KRS 367.190(1), as the unlawful methods, acts, and/or practices of the Defendants were committed in Franklin County, Kentucky, and other counties.

4. Venue is proper in Franklin County, Kentucky, pursuant to KRS 452.460, as injuries to Plaintiff occurred in Franklin County, Kentucky.

5. Plaintiff, the Commonwealth of Kentucky, *ex rel.*, Attorney General Jack Conway, brings this action pursuant to Kentucky common law, the Attorney General's authority under KRS 367 *et seq.*, "the Kentucky Consumer Protection Act," and KRS 382.360.

6. Defendant MERSCORP Holdings, Inc. ("MERSCORP") is a Delaware corporation with its principal place of business located at 1818 Library Street, Suite 300, Reston, Virginia 20190. MERSCORP is owned by many of the most significant stakeholders in the mortgage industry, including mortgage originating and servicing companies (*e.g.*, Bank of America, CitiMortgage, Inc., GMAC Residential Funding Corporation, and Well Fargo Bank, N.A.), government sponsored entities (*e.g.*, Fannie Mae and Freddie Mac), mortgage insurance and title companies (*e.g.*, First American Title Insurance Corporation and PMI Mortgage Insurance Company), and the Mortgage Bankers Association. MERSCORP owns and operates the MERS System, which is a national registry that tracks the ownership and servicing rights of its members in residential mortgage loans. There are over 6,500 members of MERSCORP. *See* MERS Member List, at <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp> (last accessed January 21, 2013). As a national organization, MERSCORP conducts business in the Commonwealth of Kentucky. Upon information and belief, MERSCORP is not registered to do business in the Commonwealth of Kentucky.

7. Defendant Mortgage Electronic Registration System, Inc. (“MERS, Inc.”) is a wholly-owned subsidiary of MERSCORP. MERS, Inc. is a Delaware corporation with its principal place of business located at 1818 Library Street, Suite 300, Reston Virginia 20190. MERS, Inc. is a national organization, which conducts business in the Commonwealth of Kentucky. Upon information and belief, MERS, Inc. is not registered to do business in the Commonwealth of Kentucky.

8. MERSCORP, the MERS System, and MERS, Inc. are referred to collectively herein as “MERS.”

II. PRELIMINARY STATEMENT

9. The mortgage industry created MERS to enable financial institutions to evade county recording fees, avoid publicly recording mortgage transfers, facilitate the rapid sale and securitization of mortgages *en masse*, and shorten foreclosure times. In the MERS System, MERS members purportedly log all of their mortgage transfers in a private electronic registry, instead of publicly recording the transfer in the local county clerk’s office. Financial institutions attempted to avoid having to record these transactions by designating MERS, Inc. – *a shell company with no economic interest in any mortgage loan* – as the nominal “mortgagee” of the loan in the public records. The basic theory behind MERS is that, because MERS, Inc. serves as a “nominee” (or agent) for most major lenders, it remains the “mortgagee” in the public records, regardless of how often the loan is sold or transferred among MERS members.

10. The MERS system effectively eliminated homeowners’ and the public’s ability to track the purchase and sale of properties through the traditional public records system.

Information that was once readily available in the public land records is now stored in a private database maintained by MERS. However, the MERS database is unreliable and inaccurate.

Upon information and belief, MERS members have failed to consistently register loan transactions in the MERS System, including transfers of ownership interests and servicing rights.

In addition, MERS failed to take basic steps to ensure the data's accuracy and integrity.

11. In light of the subprime mortgage crisis, characterized by an unprecedented number of mortgage defaults and foreclosures, the shortcomings of the MERS System and its impact on the public's ability to track a property's chain of title became readily apparent and sparked widespread litigation. Inaccuracies in, and the failure of, the MERS System have resulted in a range of deceptive practices.

12. Over 70 million mortgage loans, including millions of subprime loans, have been registered in the MERS System. Upon information and belief, the industry has avoided paying more than \$2 billion in recording fees, and, in the last several years, banks rapidly securitized and sold off millions of loans, often misrepresenting the quality and nature of the mortgages being transferred.

13. Use of the MERS System resulted in the failure to record mortgage assignments in violation of KRS 382.360(3) and deprived the Commonwealth of fees associated with the recording of such assignments, as mandated by KRS 64.012(1)(a).

14. Use of the MERS System has also resulted in foreclosures being filed against Kentucky homeowners where the foreclosing party lacked the authority or standing to sue. Information provided by MERS indicates that MERS members brought over 8,500 foreclosures against Kentucky homeowners naming MERS as the plaintiff/foreclosing party. Indeed, for years MERS affirmatively encouraged its members to file foreclosures in MERS' name, based on the idea that doing so would save banks time and money. However, MERS lacked standing to foreclose in the more than 8,500 cases in which MERS was named as the plaintiff/foreclosing

party. Representations in court submissions that MERS owned and/or held the promissory note in such proceedings were often false and deceptive.

15. MERS' conduct has misled and deceived homeowners and the courts. The MERS System has made it even more difficult to ascertain whether a foreclosing party actually owns or holds the note with proper endorsements. Without this knowledge, it is difficult, if not impossible, for a homeowner to determine whether the foreclosing party has standing to initiate the suit.

16. MERS' conduct has undermined the public records and court systems and has created confusion and uncertainty concerning property ownership interests, potentially creating clouds of title on properties throughout the Commonwealth.

III. BACKGROUND

A. Kentucky Mortgage Loans and Public Recording System

17. A home mortgage loan in Kentucky is accompanied by two crucial documents: a promissory note and the mortgage. In the promissory note, the borrower agrees to pay back the loan to the owner of the note. The mortgage permits the enforcement of the promissory note by establishing a security interest against the home that can be enforced through a foreclosure proceeding if the borrower defaults.

18. Pursuant to KRS 382.360(3), after the initial recording of a mortgage, all assignments of a mortgage must be recorded in the county clerk's office. *See* KRS 382.360(3), attached as Exhibit A. A fee must be paid for each assignment by the assignee. *See* KRS 64.012(1)(a), attached as Exhibit B.

19. Traditionally, the original lender for a mortgage loan retained both the promissory note and the mortgage. By doing so, the original lender benefited from the stream of income associated with the note, while at the same time protecting that income by retaining the option of foreclosing on the property under the mortgage in the event of default.

20. Beginning in the 1990s, however, mortgage loans began to be bought and sold with increasing frequency. In particular, major investment banks and other financial institutions began purchasing enormous numbers of mortgage loans and repackaging them into mortgage-backed securities that they then sold to investors. The securitization process typically required multiple, separate transfers or assignments of the notes and mortgages. At a minimum, this required transfers or assignments from the original lenders, to several intermediate special-purpose vehicles that pooled the mortgages, and, finally, to securitization trusts that were created specifically to hold mortgage documents.

21. In order to facilitate the assignments and transfers that were necessary to create these mortgage-backed securities, the mortgage finance industry sought to eliminate the cost and hassle of transferring mortgage interests under the well-established public recording system. To do so, the major stakeholders in the mortgage industry – *including lenders, servicers, investors, government-sponsored enterprises, insurance companies, and an industry association* – created MERS.

B. Creation of MERS

22. MERSCORP was created in 1995 as a privately held stock company. Its shareholders include some of the major players in the mortgage industry: Bank of America, Wells Fargo Bank, N.A., CitiMortgage, Inc., American Land Title Association, CCO Mortgage Corporation, CoreLogic, Corinthian Mortgage Corporation, CRE Finance Council, EverHome

Mortgage Company, First American Title Insurance Corporation, GMAC Residential Funding Corporation, Guaranty Bank, HSBC Finance Corporation, MGIC Investor Services Corporation, Morserv, Inc., Mortgage Bankers Association, PMI Mortgage Insurance Company, Stewart Title Guaranty Company, SunTrust Mortgage, Inc., United Guaranty Corporation, WMC Mortgage Corporation, Fannie Mae, and Freddie Mac. *See* MERS Shareholders, at <http://www.mersinc.org/about-us/shareholders> (last visited January 21, 2013).

23. MERS operates as a membership organization with over 6,500 members. Many of the companies that participate in the mortgage industry – by originating loans, buying or investing in loans, or servicing loans – are members of MERS.

24. The express purpose of MERS is to eliminate the necessity of preparing and recording assignments when trading mortgage loans. *See* MERS Training at p.6, attached as Exhibit C. In other words, MERS was created to allow members to bypass the long-established public recording system, replacing it with a private electronic registry of mortgage loans for MERS members that purports to track the transfer of the beneficial interest in home mortgages, as well as changes in loan servicers.

25. Avoiding recording in the county clerks' offices benefits MERS members in several ways. As MERS itself touts in its promotional and instructional materials, members can save fees of at least \$30 for each loan registered with MERS. *See, e.g.*, MERS 101 Training for Freddie Mac at p.13, attached as Exhibit D. This adds up hundreds of millions of dollars in fees each year that otherwise would be paid to the government for recording fees. Upon information and belief, since MERS' creation in 1995, MERS members have avoided paying over \$2 billion in recording fees.

26. In addition, MERS represented to its members in promotional materials that use of the MERS System would enable members to “[s]ell loans faster,” “[s]treamline bulk acquisitions and mergers,” and “[s]horten foreclosure times.”

27. These benefits have proven quite popular to the mortgage industry. Nearly every major bank and servicer is a member of MERS. Over 70 million mortgage loans have been registered in the MERS System, including approximately 30 million currently active loans. *See* Employee Handbook at p.1-2, attached as Exhibit E; Testimony of R.K. Arnold at p.1, attached as Exhibit F. MERS continues to be named as the mortgagee in approximately 60% of all mortgage loans in the United States. *See* MERS basics for FDIC at p.5, attached as Exhibit G. MERS has indicated that its goal is to increase this number to 100%, with all mortgage originators designating MERS, Inc. as mortgagee of record. *See* MERS 101 Training for Freddie Mac at p.6, attached as Exhibit H.

28. MERS members pay fees to MERS on both an annual and transactional basis in exchange for MERS’ maintenance of a national electronic database of members’ mortgage transactions. Depending on their size and level of membership, MERS members pay up to approximately \$7,500 per year as a membership fee. In addition, MERS charges modest fees to register a new mortgage in the MERS System and to register transactional charges associated with that mortgage. *See* MERS Fundamentals Workshop at p.36-37, attached as Exhibit I.

C. MERS’ Role and the MERS System

29. In a traditional mortgage, the original lender is designated as the mortgagee and, thus, the holder of the security interest in the home that serves as collateral for the loan. Upon executing the mortgage, the original lender records its identity and interest in the county clerk’s

office. If the original lender assigns the mortgage to another entity, then that entity would be responsible for recording the assignment and its own identity in the local records.

30. MERS becomes involved in a mortgage loan in one of two ways.

31. First, for the vast majority of loans registered in the MERS System, MERS, Inc. is designated in the original mortgage document as the mortgagee of record, creating a so-called MERS-as-Original-Mortgagee (or "MOM") mortgage. Typically, the mortgage will state that "MERS is the mortgagee under this Security Instrument" and that "MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." MOM mortgages also usually state, "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 and canceling this Security Instrument."

32. Second, in the absence of a MOM mortgage, MERS, Inc. may also become the mortgagee through an assignment after origination. These mortgages are referred to as a MERS-as-Assignee mortgage, or a "MA" mortgage.

33. MERS, Inc. is designated as the mortgagee for the subject property but only for the narrow purpose of being named in the public records as such. MERS has long disclaimed any other, more material interest in home loans. For instance, it does not own the underlying note or receive any payments from homeowners under the note. Additionally, despite being the technical "mortgagee," it does not directly benefit from any of the substantive provisions of the mortgage. Upon information and belief, MERS also generally does not maintain any of the

crucial loan records, such as the note, the mortgage, intermediate assignments, or payment records.

34. Designating MERS, Inc. as the mortgagee of record purportedly excuses MERS members from publicly recording mortgage assignments between themselves and, therefore, from paying recording fees. According to MERS, once MERS, Inc. is designated as the mortgagee of record with respect to any given mortgage, subsequent transfers between MERS members of the beneficial interest in the mortgage loan or servicing rights need not be separately recorded with the county clerks' offices, since MERS, Inc., for purposes of recorded title, remains the mortgagee of record. Through this device, MERS members have evaded publicly recording mortgage assignments between each other under the rationale that the recorded title holder of the mortgage (*i.e.*, MERS, Inc.) has not changed, even if the holder of the mortgage's beneficial interest has changed.

35. Rather than recording information in the county clerks' offices, MERS members are instead supposed to register transactional and other information about MERS mortgages in the MERS System itself. Under MERS' Rules of Membership, members shall promptly register on the MERS System the following transactions, among other things: the transfer of beneficial ownership of a mortgage loan; the transfer, registration, or creation of servicing or sub-servicing rights; the initiation of foreclosures on registered mortgage loans; the release of a lien on a registered loan; and any renewal, extension or modification of a mortgage loan that involves the recording of a new security instrument. *See* 2011 Rules of Membership at Rule 2 Section 3, attached as Exhibit J.

36. Upon information and belief, homeowners, as well as the general public and the courts, do not have access to the vast majority of information maintained on the MERS System, including records reflecting the sale of mortgage loans from one financial institution to another.

37. Transfers of beneficial interests and servicing rights among MERS members are not recorded in the public records. Thus, as a result of the creation of MERS, one can no longer look to the public recording system as a reliable source for tracking the chain of title for a loan or for identifying the current beneficial owner of the mortgage. Although financial institution members are supposed to update the MERS System to reflect this information, MERS relied on its members to voluntarily register transactions and did not take sufficient steps to ensure that its members did so or that MERS System data was current and accurate.

D. MERS Certifying Officers

38. Although MERS, Inc. is the mortgagee of record for tens of millions of mortgages in the United States, the company itself has few or no employees. Its parent, MERSCORP, historically employed approximately 50 people, with a recent increase to approximately 70 employees. Yet, MERS, Inc. appears in Kentucky foreclosure proceedings and mortgage documents as a result of its indiscriminate use of a certification procedure through which MERS freely delegates its authority to take action through over 20,000 "certifying officers" (also referred to as "signing officers" or "limited signing officers"). These certifying officers are not MERS employees, are not compensated by MERS, do not participate in the governance or the day-to-day operations of MERS, and do not have any of the duties generally associated with a corporate officer. Instead, they are employees of MERS members or third party vendors that contract with MERS members to perform loan servicing and foreclosure-related services.

39. MERS issues pro forma “corporate resolutions” designating these individuals as “certifying officers” of MERS. This designation occurs essentially upon the members’ demand. Upon information and belief, MERS historically performed no background or other checks on the identities or qualifications of “certifying officer” candidates and provided them with little to no formal training or oversight.

40. Nonetheless, MERS expressly authorizes its certifying officers to execute paperwork necessary to initiate foreclosure actions; to endorse checks made payable to MERS; and to execute mortgage assignments, lien releases, loan modification agreements, and proofs of claims or other bankruptcy-related documents.

41. MERS does not manage or supervise the conduct of its certifying officers, notwithstanding the fact that these officers act as MERS’ agents. Nor, upon information and belief, do the certifying officers ever seek to obtain permission or approval from MERS prior to executing or filing legal documents beyond the initial corporate resolution that allows them to act on MERS’ behalf. Despite having procedures to discipline certifying officers and members who fail to comply with MERS’ Rules of Membership or applicable law, upon information and belief, MERS has rarely, if ever, disciplined a certifying officer or member for abuses or violations of law involving a Kentucky loan.

42. The very structure of MERS gives it little incentive to be concerned about the actions of its certifying officers. MERS members agree to indemnify MERS for liability sustained as a result of actions taken by MERS certifying officers. *See* 2011 Rules of Membership at Rule 3 Section 3(a), attached as Exhibit J.

E. Federal Regulatory Action

43. In April 2011, MERS executed a Stipulation and Consent to the Issuance of a Consent Order with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Housing Finance Agency (collectively, "Federal Regulators"), through which MERS agreed to the terms of a comprehensive Consent Cease and Desist Order. *See* Consent Order, attached as Exhibit K; Stipulation and Consent to the Issuance of a Consent Order, attached as Exhibit L.

44. The Cease and Desist Order was based on the results of the Federal Regulators' examination of MERS, which "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." *See* Consent Order at p.2, attached as Exhibit K. With respect to tracking, registering, and foreclosing upon mortgages, the Federal Regulators specifically concluded that MERSCORP and MERS, Inc.:

(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; and

(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.

See Consent Order at p.5, attached as Exhibit K. The Federal Regulators directed MERS to develop and implement a series of reforms.

IV. FACTUAL ALLEGATIONS

- A. **Defendants violated Kentucky recording statutes by failing to record mortgage assignments and by creating an electronic registry for the purpose of providing its members with a system by which they were purportedly able to avoid recording mortgage assignments.**

45. The Commonwealth of Kentucky requires that all assignments of mortgages are filed with the County Clerk's office in the county where the real property is located. KRS 382.360(3), attached as Exhibit A. A fee must be paid for each assignment by the assignee. KRS 64.012(1)(a), attached as Exhibit B. For example, there is a \$12.00 fee in Franklin County for the recordation of such an assignment.

- a. **MERS' business model is predicated on the violation of the Commonwealth's recording statutes.**

46. Mortgage assignments among MERS members are not recorded in the public records. Rather, transfers of beneficial interests are tracked on MERS' electronic database, rendering the public records incomplete and inaccurate. The only time an assignment is recorded between MERS members is prior to the initiation of a foreclosure proceeding.

47. MERS describes its role as "nominee" in the county land records for the lender and servicer. According to MERS, any loan registered in the MERS System is inoculated against having to file future assignments because MERS remains the nominal mortgagee regardless of how many times servicing is traded. See OnLine User Guide at p.1, attached as Exhibit M. MERS further claims that, if MERS is recorded as the mortgagee in the public land records for a specific mortgage, then MERS members can sell that mortgage loan to one another without recording an assignment. See Quality Assurance Procedures Manual at p.3, attached as Exhibit N. Thus, the "inoculation" of loans registered in the MERS System is dependent upon

MERS' status as mortgagee. The implication is that, if the loan is not registered on MERS, those same transactions would have to be assigned and, therefore, recorded.

- b. **MERS deceptively holds itself out as a mortgagee even though it is not a mortgagee as it has no beneficial interest in the mortgage, is not a creditor entitled to payment, and is not a lender.**

48. Despite the statutory requirements of KRS 382.360(3) and KRS 64.012(1)(a), MERS represents to its members that recording mortgage assignments and transfers of beneficial interests is unnecessary within the MERS System. This is a false and deceptive representation. Because MERS purports to act as an agent for the banks and investors who registered their mortgage loans with MERS, lenders are able to sell the loans to investors or institutions without recording such transfer or assignment in the County Clerk's office. These banks and investors are the real economic parties in interest in the mortgage loans. Yet, MERS represents to the public that it is the legal title owner to the mortgage (but not of the associated notes). Thus, in Kentucky county land records, MERS is listed as the mortgagee for thousands of mortgage loans, even though it has no economic interest in these mortgage loans. In effect, MERS is mortgagee in name only. It, therefore, should not be surprising that MERS describes itself as "nominal mortgagee." *See* OnLine User Guide at p.1, attached as Exhibit M.

49. The concept of MERS as Original Mortgagee (MOM) was created in 1998. *See* Building Blocks of MERS at p.3, attached as Exhibit O. The MOM concept is an invention of MERS and its sole purpose is to allow its members to evade recording statutes.

50. While MERS defines itself as a "mortgagee" within the fictional universe it has created in order to evade mandatory recording statutes, MERS itself appears to understand that its definition of "mortgagee" is a departure from the traditional understanding of the term. In

fact, MERS acknowledges that it is listed as mortgagee in name only and that MERS is a nominee. See MERS Training at p.149, attached as Exhibit P.

51. Despite its protestations to the contrary, MERS is not a mortgagee. "Mortgagee" traditionally has been defined as "[o]ne to whom property is mortgaged; the mortgage creditor; or lender." BLACK'S LAW DICTIONARY 1104 (9th ed. 2009). MERS does not fit this definition. It has no beneficial interest in the mortgage, is not a creditor entitled to payment, and is not a lender.

52. The supposed "inoculation" of loans in the MERS System from recording requirements is contingent upon MERS' status as a mortgagee. Since MERS does not function as a mortgagee, the true mortgagees are those MERS members possessing the beneficial interests of the mortgages registered on the MERS System.

53. Referring to the transactions among MERS members as "transfers of beneficial interests" merely needing to be "tracked," as opposed to "mortgage assignments" requiring "recordation" is a fiction invented by MERS and does not capture the reality of these transactions.

54. Those transactions, which MERS called transfers of beneficial interests were events that, by law, had to be recorded in the public land records. Its failure to record mortgage assignments has resulted in violations of the Kentucky recording statutes.

B. Defendants commit unfair, misleading, or deceptive acts or practices in the conduct of trade or commerce by failing to record mortgage assignments and by creating an electronic registry for the purpose of providing its members with a system by which they were purportedly able to avoid recording mortgage assignments.

55. For the reasons set forth in paragraphs 48 through 54 above, the transfers of beneficial interests tracked on the MERS System were actually mortgage assignments that should have been recorded in the appropriate county clerks' offices.

56. By failing to record mortgage assignments and creating a system designed to evade the Commonwealth's mortgage recording statutes, MERS engaged in unfair, false, misleading, or deceptive acts in violation of KRS 367.170(1).

C. Defendants commit unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by bringing foreclosures against Kentucky homeowners.

57. MERS has represented to the Commonwealth that it has been the named Plaintiff in over 8,500 foreclosure actions against Kentucky homeowners since 2006. Each of these more than 8,500 foreclosure actions was improper, as MERS was never the real party in interest and, therefore, always lacked standing to foreclose. It should further be noted that MERS has represented to the Commonwealth that it does not have a record of the case numbers in which it appeared as the foreclosing party.

58. Prior to July 22, 2011, MERS' Rules provided for foreclosure upon a mortgage registered in the name of MERS in either of two ways: the foreclosure could be conducted either in MERS, Inc.'s name or it could be assigned out of MERS to the owner of the loan or its servicer acting as the owner's agent and then foreclosed upon by that entity. *See* 2008 Rules of Membership at Rule 8, attached as Exhibit Q; Integration Handbook at p.15-16, attached as Exhibit R. On July 22, 2011, this rule was changed, and foreclosures are no longer supposed to be conducted in the name of MERS, Inc. *See* 2011 Rules of Membership at Rule 8, attached as Exhibit J; MERS Foreclosure & Bankruptcy at p.3, attached as Exhibit S.

59. Before the July 22, 2011 rule change, MERS affirmatively encouraged its members to file foreclosures in MERS' name and claimed that it would reduce the time and cost of foreclosing. MERS advised its members that taking the effort to assign the mortgage to the

actual note owner prior to commencing a foreclosure was not recommended due to cost concerns. *See* Integration Handbook at p.15-16, attached as Exhibit R.

60. Foreclosures brought in MERS' own name in Kentucky are faulty and deceptive in several respects.

- a. **MERS lacked standing to foreclose on Kentucky homeowners because it was not the real party in interest.**

61. Pursuant to Kentucky Rule of Civil Procedure 17.01, all actions are required to be prosecuted in the name of the real party in interest. The Supreme Court of Kentucky has defined the real party in interest as "one who is entitled to the benefits of the action upon the successful termination thereof." *Harris v. Jackson*, 192 S.W.3d 297, 303 (Ky. 2006) (citing *Stuart v. Richardson*, 407 S.W.2d 716, 717 (Ky. 1996); *Brandon v. Combs*, 666 S.W.2d 755, 759 (Ky. App. 1983)). In other words, "the real party in interest is the person who is the beneficial owner of the cause of action sought to be prosecuted." *Louisville & N.R. Co. v. Mack Mfg. Corp.*, 269 S.W.2d 707, 709 (Ky. 1954). It is the owner of the note that has standing to foreclose.

62. While MERS is often designated as the lender's "nominee" to act in the place of the Lender with respect to the mortgage, MERS is not granted any rights with respect to the note. Absent an assignment of the note, MERS, as the "nominee," would purport to have a right to enforce a mortgage unrelated to a note or money amount.

63. In MERS' own training materials, "nominee" is defined as an entity in whose name a security is registered even though true ownership is held by another party. *See* MERS Training at p.148, attached as Exhibit T. MERS further states that it serves as the mortgagee in a nominee capacity for the Lender, who is the actual owner of the promissory note. *See* Building Blocks of MERS at p.3, attached as Exhibit O.

64. Upon information and belief, foreclosure filings naming MERS as Plaintiff asserted MERS to be not just the note holder but also the owner of the note.

65. However, MERS never owns the note and never has any beneficial interest in the mortgage that would afford it the right to collect payments from the borrower. Such representations to the court and the homeowner were false and misleading.

66. To the extent that foreclosure proceedings were filed in MERS' name and MERS lacked standing, the foreclosures and any resulting foreclosure judgments and sales may be invalid, creating a cloud of title for properties throughout the Commonwealth.

b. MERS frequently lacked standing to foreclose on Kentucky homeowners because it did not possess a note prior to the commencement of the foreclosure proceedings.

67. The note is a negotiable instrument, and, to obtain payment thereunder, a person must have the original negotiable instrument in its possession. *See* KRS 355.3-301, attached as Exhibit U. To meet the definition of a "holder" the person must possess the note and the note must be issued or endorsed to her to bearer or in blank. *See* KRS 355.1-201(u), attached as Exhibit V. A "holder" is one who "has legal possession of a negotiable instrument and is entitled to receive payment on it." BLACK'S LAW DICTIONARY 800 (9th ed. 2009).

68. Upon information and belief, in many instances, MERS did not follow its own procedures. For instance, when MERS foreclosed on a residential mortgage in its own name, MERS claimed standing because it purportedly was the holder of the note and the mortgage. MERS states that it will not foreclose unless the note is endorsed in blank and held by MERS. *See* Foreclosures & Bankruptcy, attached as Exhibit W. However, MERS routinely foreclosed upon Kentucky homeowners without possessing a note endorsed in blank at the time of foreclosure.

69. Upon information and belief, the pleadings in foreclosure cases brought in MERS' name often assert that MERS held the note at the time of the foreclosure filing. These material statements were false in each case in which the note was not properly endorsed to MERS, or endorsed in blank and held by MERS, prior to the commencement of the foreclosure. As a result, MERS did not hold the note prior to commencement of foreclosure proceedings and, thus, lacked standing. Each such foreclosure was fraudulent and an unfair, false, misleading, and deceptive practice within the meaning of KRS 367.170(1).

70. Even when members did follow MERS' rules and endorsed the note in blank before filing a foreclosure proceeding, MERS still lacked standing to foreclose in its own name. Upon information and belief, neither MERS nor its direct employees ever received or maintained the note. Instead, MERS claimed to hold the note only through its certifying officers, who were employees of member financial institutions or their third party vendors. That servicer employee was then purported to hold the note while donning the MERS hat. However, MERS' certifying officers are limited agents, and nothing in MERS' Rules of Membership, corporate resolutions, or membership agreements specifically authorized certifying officers to act on MERS' behalf as a custodian of legal documents, including promissory notes. Accordingly, while in certain cases MERS certifying officers may have physically possessed notes that had been endorsed in blank, they could not have held the note on behalf of MERS.

71. Defendants committed deceptive trade practices by initiating foreclosures in the name of MERS in contravention of MERS' rules and without appropriate controls to ensure the foreclosures were prosecuted by the actual note holder. In addition, by encouraging servicers to use MERS to initiate foreclosures and by purporting to hold the note as a condition to initiating

such foreclosures when, in fact, MERS had no control over the note, MERS committed an unfair, false, misleading, and deceptive practice within the meaning of KRS 367.170(1).

- c. **MERS failed to adequately oversee its members and certifying officers to ensure its rules were followed and that foreclosures were properly filed.**

72. In addition, no employees of MERSCORP or MERS, Inc. were charged with enforcing, checking compliance with, or otherwise auditing whether members' certifying officers possessed the relevant notes at the time foreclosure was initiated. MERS failed to adequately oversee its members and certifying officers to ensure that its rules were followed and that foreclosures were properly filed. Upon information and belief, MERS and its certifying officers routinely failed to retrieve and examine the underlying note to verify that it was properly endorsed prior to filing foreclosure proceedings in MERS' name. MERS rarely, if ever, took remedial actions against members that disregarded MERS' own rules or a state's standing requirements.

- d. **Foreclosures brought in MERS' own name in Kentucky were faulty and deceptive, as they concealed the actual owner of the note from homeowners and the courts.**

73. In cases in which MERS was the named Plaintiff, the identity of the actual owner of the note and details concerning MERS' role in the foreclosure process often were not disclosed to the homeowner or to the court. Upon information and belief, on many occasions, neither the caption nor the complaint itself identified the real party in interest, instead listing only MERS as the Plaintiff. This failure to disclose the real party in interest confused homeowners – *most of whom are not represented by counsel* – and impeded homeowners' ability to identify the actual party seeking to take their home. Concealment of the real party in interest also impeded homeowners' ability to raise possible legal defenses. This maneuver allowed servicers to hide behind the MERS façade to initiate foreclosures. As the current MERSCORP CEO recently

acknowledged, bringing foreclosures in the company's name has "been a lightning rod for people because it created consumer confusion. The consumer doesn't understand who MERS is, even though it's buried in their contract." See *Mortgage and Technology* Article on MERS CEO Bill Beckman, Sept. 2011, at p.16, attached as Exhibit X.

D. Defendants commit unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by assigning mortgages after the commencement of foreclosure proceedings.

74. Upon information and belief, MERS often assigns loans out of its name as a precursor to foreclosure or when one loan owner sells a mortgage loan to an entity that is not a MERS member.

75. MERS' internal policies mandated that if MERS is not the party to foreclosure, any mortgage assignment from MERS had to be executed *prior* to the commencement of foreclosure proceedings. See MERS Signing Officer Primer at p.15, attached as Exhibit Y. Upon information and belief, however, MERS routinely initiated assignment after foreclosure proceedings had already begun.

76. Review of a sample of fifty (50) foreclosure complaints filed in Franklin Circuit Court involving MOM mortgages and corresponding mortgage assignments revealed that with respect to twenty-four (24) of the fifty (50) mortgages, the final mortgage assignment prior to foreclosure was made after commencement of the foreclosure proceedings.

77. MERS also noted that a foreclosure may have to be re-started, if a mortgage is assigned after the commencement of foreclosure proceedings. See MERS Officer Primer at p.15, attached as Exhibit Y. This statement amounts to a tacit acknowledgement by MERS that, in such a case, the foreclosure proceeding would be improper. Upon information and belief,

however, it was the widespread practice of MERS to make assignments after the commencement of foreclosure proceedings and rarely, if ever, were these proceedings "re-started."

78. MERS has engaged in unfair, false, misleading, or deceptive acts in violation of KRS 367.170(1), in each case in which it assigned mortgages out of its name prior to the commencement of foreclosure proceedings.

E. Defendants commit unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by hiding the true mortgage owner from homeowners, other stakeholders, and the public.

79. Transfers of the beneficial interests and servicing rights of MERS mortgages are purportedly tracked electronically in the MERS System while MERS, Inc. remains the legal title holder of the mortgage in its role as nominee. The electronic records of such transfers in the MERS System are not generally accessible to non-MERS members, including members of the public.

a. The MERS System inhibits the ability of homeowners to negotiate a loan modification.

80. Upon information and belief, many lenders (*i.e.*, owners of the loan) of MERS mortgages have the ultimate authority to negotiate the full range of loss mitigation options that may be available to a homeowner. The MERS System prevents homeowners from identifying these lenders.

81. MERS maintains a website and a toll-free telephone number through which homeowners with MERS mortgages may find out the identity of their servicer. Upon information and belief, this telephone number does not typically enable residential mortgage holders to find out the identity of the owner of the loan. Instead, MERS tells homeowners: "If you are unable to make the payments on your mortgage and wish to negotiate the terms of your loan, you may only do so with your Servicer. Contrary to popular belief, it is your Servicer and not the lender that

can negotiate the terms of the loan with you.” *See* Information for Homeowners FAQ, at <http://www.mersinc.org/information-for-homeowners/faq-information-for-homeowners/> (last visited January 21, 2012). Yet, in reality, it is often the lender, not the servicer, who ultimately must agree to modifications and other crucial decisions with respect to the homeowner’s loan.

b. The MERS System inhibits the ability of homeowners to challenge the foreclosure.

82. A homeowner’s inability to ascertain the true owner of a MERS loan is problematic where the owner of the loan has ultimate authority with respect to making decisions, such as whether to pursue a foreclosure or permit a loan modification. It is also problematic because a borrower will be unable to challenge a purported note holder’s right to foreclose if he or she is precluded from identifying that entity. In cases where MERS is the foreclosing party, homeowners face significant hurdles in attempting to ascertain whether the real party in interest had standing to foreclose. By hiding the true mortgage owner and removing that information from the public land records, MERS creates substantial confusion through the services it provides. This is an unfair, false, misleading, and deceptive practice within the meaning of KRS 367.170(1).

83. An important aspect of the judicial foreclosure process is the homeowner’s ability to challenge a foreclosure by asserting that the foreclosing entity is not a proper party because it does not own the debt. A party that sets out to create a system of enforcing consumer debt contracts that has the intended effect of making it difficult or impossible to raise such defenses commits a deceptive practice within the meaning of KRS 367.170(1).

84. Moreover, without the ability to question standing and ensure that the foreclosing party has a proper claim to the proceeds of the debt, a homeowner may face multiple suits from different claimants on the debt.

F. Defendants commit unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by operating MERS through its members' employees.

85. Despite its status as purported mortgagee on millions of mortgages across the country, MERS traditionally employed only about 50 people at any given time, only recently increasing its number of employees to approximately 70. In order to allow MERS to perform its function as mortgagee on loans registered in the MERS System, MERS permits its members to cause MERS to act on their behalf.

86. MERS permits its members to designate their employees as corporate officers of MERS, Inc. through MERS corporate resolutions. As part of the process for becoming a MERS member, a member sends MERS a list of employees it wishes to have appointed as certifying officers. On information and belief, MERS did not perform background or other checks on the identities of these officer candidates but rather issued corporate resolutions pursuant to Rule 3 as a matter of course.

87. Member employees caused MERS to take various legally operative actions, such as assigning mortgages, signing checks, and foreclosing on homeowners. Because MERS has only 50-70 employees of its own, it relies on its members' employees to perform MERS' acts as MERS certifying officers. As of November 2010, there were over 20,000 such MERS certifying officers. MERS purports to act as agent for the holder or owner of a note, yet each act MERS performs on such entity's behalf is actually done by that entity's own employee acting as a MERS certifying officer.

88. MERS' certifying officers are not paid any compensation by MERS. MERS does not supervise or direct – *nor does it have the right to supervise or direct* – any of the work performed by its certifying officers. MERS certifying officers do not receive any instruction, permission, or approval from MERS to act on MERS' behalf, beyond the resolution appointing

the individual as a certifying officer. Other than the corporate resolution, there is no contract, agreement, or written undertaking of any sort between MERS and its certifying officers relating to any actions taken or permitted to be taken by a certifying officer on behalf of MERS. On information and belief, MERS' certifying officers are not covered by any insurance policy for officers of MERSCORP or MERS, Inc.

89. Upon information and belief, MERS certifying officers routinely executed and submitted to the court mortgage assignments and other legal documents on behalf of MERS without disclosing that they were not MERS employees. These certifying officers are, in fact, employed by other entities, such as the mortgage servicer that filed the case or its counsel.

90. MERS' use of certifying officers, over whom MERS exercised minimal to no oversight, to represent MERS in consumer real estate transactions and litigation constitutes unfair, false, misleading, and deceptive conduct within the meaning of KRS 367.170(1).

G. Defendants commit unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by creating and failing to ensure the integrity of the MERS System.

91. Because MERS, through its illegal conduct, purports to stand in the shoes of the traditional public records system for nearly half of all American mortgages, MERS has an obligation to ensure that the MERS System is accurate and reliable. The failure of MERS to ensure the integrity and accuracy of the MERS System is an unfair, false, misleading, and deceptive practice within the meaning of KRS 367.170(1).

92. MERS membership rules and other documents governing members' use of the MERS System are replete with representations of practices to ensure the integrity of data. On information and belief, these rules and procedures are ignored by MERS members and go unenforced by MERS. For example, the MERS Rules of Membership require that a member

registering a loan on the MERS System provide MERS with evidence that MERS, Inc. has been properly recorded in the public records as the mortgagee of record. *See* 2011 Rules of Membership at Rule 2 Section 5(b), attached as Exhibit J. On information and belief, such evidence is not provided as a matter of course to MERS.

93. MERS also requires its members to review all MERS System information concerning mortgage loans and related transactions for accuracy and completeness. Members are required to promptly update incorrect information. *See* 2011 Rules of Membership at Rule 2 Section 7, attached as Exhibit J. Upon information and belief, MERS is aware or should be aware that information on the MERS System is routinely inaccurate but does not take any meaningful actions to require members to comply with this rule. This is a deceptive practice within the meaning of KRS 367.170(1).

94. Upon information and belief, no MERS employees verify the facts underlying transactions on the MERS System. MERS employees do not obtain the loan transfer documents. MERS employees do not confirm that endorsements appear on either the notes or allonges. MERS employees do not review the requirements set forth in loan purchase contracts to confirm that the formalities required by those documents have been met. MERS claims that it provides its services promptly and diligently in accordance with high professional standards. *See* 2011 Rules of Membership at Rule 12 Section 1, attached as Exhibit J. MERS also asserts that it provides timely and accurate data related to mortgage rights online. *See* Integration Handbook at p.6, attached as Exhibit Z. These representations are unfair, false, misleading, and deceptive practices within the meaning of KRS 367.170(1).

95. MERS' own materials acknowledged that the accuracy of the information on the MERS System is dependent on its members. *See* Compliance Part 2: Reconciliations in the New Regulatory World at p.4, attached as Exhibit AA; OnLine Residential Training Seminar at p.3, attached as Exhibit BB.

96. Upon information and belief, however, MERS knew that its system was riddled with inaccuracies and incomplete information. Problematic member behavior, which undermined the integrity of the system, included, but was not limited to, incorrectly registered loans, failure to transfer servicing rights, and improper foreclosure processes. *See* 2007 Strategic Planning Conference at p.35, attached as Exhibit CC.

97. While MERS acknowledged that the accuracy of the system depended on the information supplied by its members, MERS knew that its members were not fulfilling their obligations. For example, upon information and belief, General Data Review Results for a host of individual MERS members revealed discrepancies between the MERS System and the Member Data File numbering in the hundreds of thousands. Still, MERS failed to take adequate steps to correct these known inconsistencies and inaccuracies.

98. Pursuant to a follow-up request to a Civil Investigative Demand issued by the Commonwealth of Kentucky, Office of Attorney General, MERS was asked to produce information concerning forty-nine (49) properties in Franklin County, Kentucky, involving MOM mortgages that were part of the fifty (50) complaint sample discussed in paragraph 76. MERS provided data on forty-three (43) of these properties. A review of this forty-three (43) property sample evidences the presence of significant inaccuracies within the MERS System. For instance, with respect to nineteen (19) of the forty-three (43) foreclosed upon properties, data in the MERS System was inconsistent with information found in the case file in Franklin Circuit

Court. With respect to eleven (11) of these properties, the MERS System has no record of foreclosure proceedings. With respect to the other eight (8) properties in which inconsistencies exist, the foreclosing party identified in the MERS System does not match up with the party that filed the foreclosure in Franklin Circuit Court.

99. The CEO of MERSCORP has confirmed the lack of data integrity in the MERS System. In a recent interview, he stated:

We did not have a robust process to make sure that all the data on our system was accurate, timely and reliable. Our view was that is the servicer's data and they're relying on it for their own transactions, they're using their own systems, so we don't have to double check.

See Mortgage and Technology Article on MERS CEO Bill Beckman, Sept. 2011, at p.15, attached as Exhibit X.

100. MERS also represents that it employs a system of penalties and sanctions that it can impose on members who fail to comply with its rules, including: (a) removal; (b) suspension; (c) fines; (d) censure; or (e) other sanctions determined by MERS. *See* 2011 Rules of Membership at Rule 7 Section 1, attached as Exhibit J.

101. Upon information and belief, outside of a handful of isolated instances relating to foreclosures in Florida, no sanctions were ever imposed and no membership was ever revoked for a member's failure to properly enter data in MERS System or otherwise cause MERS to act without authority. Upon information and belief, no sanctions have ever been imposed on members with respect to mortgages on properties in Kentucky, nor has MERS ever terminated the membership of any member for action taken with respect to mortgages on properties in Kentucky.

102. MERS should know that the MERS System is riddled with inaccuracies. With an average staff limited to approximately 70 employees, MERS does not enter mortgage data, does not update mortgage data, and is in no position to – and upon information and belief, prior to 2011 did not – perform audits of its data to test the accuracy of the transfer data entered by MERS members.

103. By creating the MERS System without proper safeguards, oversight, and support, and by inducing its members and the public to rely on that system to replace the traditional system for transferring and recording interests in mortgages, MERS destroyed the integrity of the real property recording system and allows improper mortgage transfers and foreclosures to proceed unchecked. At the same time, MERS' practice of hiding from public view the data in the MERS System compounds that irresponsibility by making it difficult or impossible for borrowers and other stakeholders to challenge the accuracy of the system. Through these practices, MERS commits unfair, false, misleading, and deceptive practices within the meaning of KRS 367.170(1).

104. MERS' failure to properly oversee the use of the MERS System while encouraging reliance on the data it contains creates confusion and constitutes a deceptive trade practice within the meaning of KRS 367.170(1). The confusion and deception that result from this misplaced reliance on data in the MERS System, particularly where the wrong entity caused MERS to initiate a foreclosure, has harmed homeowners, and clouded the records in the public recording systems in the Commonwealth.

V. CAUSES OF ACTION

A. First Cause of Action

Negligent and/or willful violation of KRS 382.360, KRS 446.070

105. The allegations set forth in the preceding paragraphs 1 – 104 are incorporated herein by reference.

106. By failing to record mortgage assignments and by creating an electronic registry for the purpose of providing its members with a system by which they were purportedly able to avoid recording assignments of mortgages with the County Clerks and evade the payments associated with those assignments, MERS violated KRS 382.360.

107. KRS 446.070 provides that “[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.”

B. Second Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Failing to record mortgage assignments and creating an electronic registry for the purpose of providing its members with a system by which they were purportedly able to avoid recording mortgage assignments)**

108. The allegations set forth in the preceding paragraphs 1 – 107 are incorporated herein by reference.

109. Defendants engaged in unfair, false, misleading, and deceptive acts and practices in conduct of trade or commerce in violation of KRS 367.170(1) by failing to record mortgage assignments and by creating an electronic registry for the purpose of providing its members with a system by which they were purportedly able to avoid recording mortgage assignments.

C. Third Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Foreclosing on Kentucky homeowners)**

110. The allegations set forth in the preceding paragraphs 1 – 109 are incorporated herein by reference.

111. Defendants engaged in unfair, false, misleading, and deceptive acts and practices in conduct of trade or commerce in violation of KRS 367.160(1) by foreclosing on Kentucky homeowners without standing to do so and in contravention of its own rules.

D. Fourth Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Assigning mortgages after the commencement of foreclosure proceedings)**

112. The allegations set forth in the preceding paragraphs 1 – 111 are incorporated herein by reference.

113. Defendants engaged in unfair, false, misleading, and deceptive acts and practices in conduct of trade or commerce in violation of KRS 367.170(1) by assigning mortgages after the commencement of foreclosure proceedings in contravention of standing laws and its own internal rules.

E. Fifth Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Hiding the true mortgage owner from homeowners, other stakeholders, and the public)**

114. The allegations set forth in the preceding paragraphs 1 – 113 are incorporated herein by reference.

115. Defendants engaged in unfair, false, misleading, and deceptive acts and practices in conduct of trade or commerce in violation of KRS 367.170(1) by hiding the true mortgage owner from homeowners, other stakeholders, and the public.

F. Sixth Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Operating MERS through its members' employees)**

116. The allegations set forth in the preceding paragraphs 1 – 115 are incorporated herein by reference.

117. Defendants engaged in unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of KRS 367.170(1) by operating MERS through its members' employees, who MERS appoints as its corporate officers so that such employees may act on MERS' behalf.

G. Seventh Cause of Action

**Violation of the Kentucky Consumer Protection Act KRS 367.170(1)
(Creating and failing to ensure the integrity of the MERS System)**

118. The allegations set forth in the preceding paragraphs 1 – 117 are incorporated herein by reference.

119. Defendants engaged in unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of KRS 367.170(1) by creating and failing to ensure the integrity of the MERS System.

H. Eighth Cause of Action

Unjust Enrichment

120. The allegations set forth in the preceding paragraphs 1 – 119 are incorporated herein by reference.

121. Defendants' conduct was undertaken with the specific purpose of avoiding the recording of mortgage assignments and evading payment thereon.

122. As a proximate result of Defendants' conduct, Defendants have been unjustly enriched by the willful violation of the Commonwealth's recording statutes.

123. Defendants' conduct conferred a benefit upon themselves at the expense of the Commonwealth. Defendants were aware of this benefit and the fact that this benefit came at the expense of the Commonwealth. Defendants have retained this benefit – the fees saved by circumventing the recording of mortgage assignments – without compensating the Commonwealth.

I. Ninth Cause of Action

Fraud

124. The allegations set forth in the preceding paragraphs 1 – 123 are incorporated herein by reference.

125. Defendants have knowingly developed and participated in a private mortgage registration scheme with the intention of avoiding the payment of fees associated with the statutorily mandated recording of mortgage assignments in the offices of the County Clerks.

126. The failure to record mortgage assignments resulted in a misrepresentation of the true holders of mortgage obligations to the public.

127. The Defendants have systematically and purposefully deprived the Commonwealth of recording fees for mortgages that they assigned to one another within the MERS System.

VI. DEMAND FOR JURY TRIAL AND RELIEF

WHEREFORE, the Commonwealth of Kentucky respectfully requests that the Court grant the following relief:

128. A jury trial on all issues so justiciable;

129. Enjoin Defendants from acting as the nominal mortgagee with respect to Kentucky mortgages in which Defendants have no beneficial interest and enjoin Defendants from recording mortgages naming MERS as mortgagee in the Commonwealth of Kentucky;

130. Enjoin Defendants from taking any action on behalf of a purported beneficial owner of a Kentucky mortgage loan with respect to such mortgage loan where such purported beneficial owner is not the actual owner of such mortgage loan;

131. Enjoin Defendants from assigning mortgages after the commencement of foreclosure proceedings;

132. Order Defendants to record appropriate documents with the appropriate county recorders of deeds offices in Kentucky in order to correct the chain of title with respect to MERS mortgages;

133. Order Defendants to pay the \$12.00 recordation fees required by KRS 64.012(1)(a) for each violation of KRS 382.360;

134. Order Defendants to pay damages for failure to record assignments pursuant to KRS 382.360(3) in an amount not to exceed three (3) times the actual damages, plus attorney's fees and court costs, but in no event less than five hundred dollars (\$500.00), pursuant to KRS 382.365(5) and KRS 446.070;

135. Order Defendants to pay a civil penalty in the amount of two thousand dollars (\$2,000.00) for each willful violation of KRS 367.170(1), pursuant to KRS 367.990(2);

136. Order Defendants to pay restitution, including any legal interest owed, to all affected borrowers for any willful violation of KRS 367.170(1), in an amount to be determined at trial;

137. Grant the Commonwealth its costs and attorney's fees;

138. Grant any and all such relief available under the law; and
139. Grant such other relief as the Court deems just and appropriate.

Respectfully Submitted,

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