

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION

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CLERK OF COURT

CHARLES E. DANIELS, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

U.S. BANK, N.A., on behalf of it itself and all  
other banks and entities similarly situated,  
GUARANTEED RATE, INC., a Delaware corporation  
MERSCORP. HOLDINGS, INC., a Delaware corporation,  
and MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, a Delaware corporation,

Defendants.

12CH43778

**CLASS ACTION COMPLAINT**

Now comes Plaintiff, CHARLES E. DANIELS, ("DANIELS"), on behalf of himself and all others similarly situated, by their attorneys, LARRY D. DRURY, LTD., and complains of the Defendants, U.S. BANK, N.A., ("U.S. BANK"), on behalf of itself and all other banks and entities similarly situated, (the "Defendant Class"), GUARANTEED RATE, INC., ("GUARANTEED"), MERSCORP. HOLDINGS, INC., ("MERSCORP") and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, ("MERS, Inc.") as follows:

**NATURE OF THE CASE**

1. This lawsuit seeks to have Defendants and the Defendant Class clean up the mess they created in Illinois' public property records and to hold Defendants and the Defendant Class

accountable for their unfair and deceptive trade practices.

2. With respect to Defendants' and the Defendant Class' creation and maintenance of "mortgage-backed securities" - the bundling and packaging of mortgage loans into investment vehicles – Defendants and the Defendant Class filed with Recorders of Deeds throughout Illinois: (1) mortgages and deeds of trust assigned to a private registry called MERS", that Defendants and the Defendant Class created for the express purposes of hastening their securitization deals and avoiding the costs of maintaining accurate and publicly recorded real estate documents regarding transfer and assignment of mortgages.

3. Defendants' and the Defendant Class' scheme, that failed to disclose and track ownership in mortgages accurately, was manifested in a private electronic registry the Defendants and the Defendant Class, created called the "Mortgage Electronic Registration System" (MERS). Through MERS, Defendants and the Defendant Class effectively privatized the public property recording system and disrupted the maintenance of a reliable public registry of land records, as well as citizens' fundamental rights to determine, through public searches, who holds interests in property.

4. Defendants' and the Defendant Class' systematic schemes have confused, misled and deceived Recorders of Deeds throughout Illinois, as well as borrowers, homeowners, taxpayers and other citizens who rely on the validity of publicly filed property records.

5. Plaintiff brings this lawsuit requesting that Defendants and the Defendant Class be required to file valid mortgage and property documents so that chains of title are not improperly broken or diluted and so the Recorders of Deeds throughout Illinois and the public can rely upon the land records maintained by the Recorders of Deeds. Plaintiff brings this class action lawsuit on behalf of a class of similarly situated citizens and taxpayers of Illinois who

from 2002 to the date of judgment herein, obtained a mortgage from the Defendants and/or the Defendant Class, which were subsequently transferred, conveyed or assigned to MERS as the mortgagee and/or nominee and thereafter the mortgage was again transferred, conveyed or assigned, without the recording of same with Recorders of Deeds throughout Illinois.

### **PARTIES**

6. Plaintiff, DANIELS, resides in Cook County, Illinois, and is a citizen and taxpayer of the State of Illinois and the County of Cook.

7. Defendant MERSCORP Holdings, Inc. is a Delaware corporation with its principal place of business at 1818 Library Street, Suite 300, Reston, VA 20190. MERSCORP is owned by many significant stakeholders in the mortgage industry, including loan originators and servicers. MERSCORP owns and operates an electronic registry system that purports to track its members' ownership and servicing rights in residential mortgage loans (called the "Mortgage Electronic Registration System" or "MERS"). On information and belief, MERSCORP has more than 3,000 members.

8. Defendant Mortgage Electronic Registration Systems, Inc. is a wholly-owned subsidiary of MERSCORP. MERS, Inc. is a Delaware corporation with its principal place of business at 1818 Library Street, Suite 300, Reston, VA 20190. MERS, Inc. often purports to serve as the mortgagee in the public land records for loans that are registered with MERS.

9. U.S. BANK, N.A. is a national bank with its principal place of business at 425 Walnut Street, Floor 1, Cincinnati, OH 45202-3923. The mortgage services provided to Plaintiff by the Defendants were for Plaintiff's home at 285 Nogale Street, which is located in Hoffman Estates, Illinois, Cook County, i.e., the Plaintiff executed a Mortgage and Note for the aforesaid property with GUARANTEED of Chicago, Illinois on October 3, 2007 and said

Mortgage was purportedly recorded with the Cook County Recorder of Deeds on November 18, 2007, Document No. 0732066024 for a fee of \$60.00. The last purported assignment of said Mortgage was to Defendant U.S. BANK recorded on June 16, 2012 as Document No. 1216742131.

10. U.S. BANK has served as a loan originator, servicer, master service, subservicer, trustee and/or custodian in transactions throughout the State of Illinois. U.S. BANK is required to be a party to this action in order to afford Plaintiff meaningful relief because, (a) on information and belief, U.S. BANK is a member and/or shareholder of MERS; and (b) U.S. BANK is a shareholder of MERSCORP.

11. GUARANTEED is a Delaware corporation with its principal place of business at 3940 North Ravenswood Chicago, Illinois. The mortgage services provided to Plaintiff by the Defendants were at 285 Nogale Street, which is located in Hoffman Estates, Illinois, Cook County, i.e., the Plaintiff executed a Mortgage and Note for the aforesaid property with GUARANTEED of Chicago, Illinois on October 3, 2007 and said Mortgage was purportedly recorded with the Cook County Recorder of Deed on November 18, 2007, Document No. 0732066024 for a fee of \$60.00. The last purported assignment of said Mortgage was to Defendant U.S. BANK recorded on June 16, 2012 as Document No. 1216742131.

12. GUARANTEED has served as a loan originator, servicer, master service, subservicer, trustee and/or custodian in transactions throughout the State of Illinois. GUARANTEED is required to be a party to this action in order to afford Plaintiff meaningful relief because, (a) on information and belief, GUARANTEED is a member and/or shareholder of MERS; and (b) GUARANTEED is a shareholder of MERSCORP.

13. This Court has jurisdiction over this matter pursuant to 735 ILCS 5/2-209, in that

the Defendants have transacted business and committed acts relating to the matters complained of herein in the State of Illinois. This Court also has jurisdiction to declare the rights and obligations of the parties under 735 ILCS 5/2-701. Finally, Plaintiff is a citizen of the State of Illinois and submits to the jurisdiction of this State.

14. Venue is proper in this Court pursuant to 735 ILCS 5/2-101, 735 ILCS 5/2-102 and 815 ILCS 505/10a(b), and the Defendants are doing business in Illinois.

### **GENERAL ALLEGATIONS**

15. Maintenance of a registry of documents that affect title to property is one of the oldest and most vital functions of government.

16. The right to own real property is one of the greatest freedoms Americans enjoy. Maintaining open, public records of interests in real estate was essential to maintaining this fundamental right. The certainty of title to and ease of transfer of real estate afforded by an open public records system is a significant basis of the United States' historic economic dominance and social mobility.

17. The Illinois General Assembly, as well as other state legislatures, enacted an array of statutes governing registries of deeds, which are to be maintained.

18. The proper maintenance of records by Recorders of Deeds throughout Illinois is a matter of overriding public concern.

19. The registry system provides landowners, mortgage holders, potential purchasers, and others with notice when an estate or interest in real property is created, transferred, mortgaged, assigned, or affected in any way. The registry system also provides interested parties with a reliable and accurate repository of valid instruments essential to establishing ownership and chain of title.

20. The registry system provides a central location where citizens can research who holds an interest in real property. Orderly and accurate records allow those who wish to invest in real estate, either for residential or commercial purchases, to satisfy themselves that their investment is sound.

21. The registry system and the associated legal certainty of title that the system promotes protects the value of peoples' homes, which are most families' largest investment, and supports economic and community development by allowing property to be put to its highest and best use.

22. Maintaining real property records is such an overriding public concern that a registry of deeds typically has the responsibility to keep those records forever. Thus, the chain of title for any piece of real property can, as a matter of course, be traced back to its origin.

23. Illinois law places primary responsibility for each county's registry system in the hands of a Recorder of Deeds. Among other things, the Recorders of Deeds are required to record, preserve, maintain and provide access to real estate and vital records. These include deeds, deeds of trust, mortgage assignments, cancellations, satisfactions and rescissions.

24. The budgets for the Recorders of Deeds in Illinois do not contemplate performing the function of remedying overwhelming numbers of inaccurate, false, or misleading filings or remedying extensive broken chains of title maintained in a private, inaccessible and inaccurate database. False filings and broken chains of title interfere, however, with the duty to record, preserve, maintain and provide access to real estate and vital records.

25. The citizens and taxpayers of Illinois and others, including landowners, mortgage holders, and potential purchasers, have a vital and particularized interest in the Recorders of Deeds in Illinois being maintained in a manner that is consistent with Illinois law and the

purposes of the Recorder.

- A. Without available, orderly and accurate records, landowners can lose their property as a result of illegal foreclosures.
- B. Without available, orderly and accurate records, landowners can be deprived of the ability to discover and remedy title defects.
- C. Without available, orderly and accurate records, landowners can be deprived of the ability to buy and sell property.
- D. Without available, orderly and accurate records, mortgage holders' interests in property can be jeopardized.
- E. Without available, orderly and accurate records, potential purchasers cannot obtaining financing to purchase property and/or risk loss of any property purchased.

26. Recorders of Deeds throughout Illinois have a vital and particularized interest in maintaining their offices in a manner that is consistent with Illinois law and the purposes of the Recorder.

- A. The Recorder must give bond with surety conditioned on the safekeeping of records and books and for the faithful discharge of the duties of his office and may be held liable to an injured party, up to the amount of the bond, for any failure to register a deed or other instrument within the time and in the manner required by law.
- B. Any Recorder who fails to perform any of the duties imposed or authorized by law shall be found guilty of a Class A misdemeanor and removed from office.
- C. Without available, orderly and accurate records, it becomes more difficult to

collect property taxes, and home ownership and commercial real estate

development decrease, resulting in additional losses of tax revenue.

- D. Without available, orderly and accurate records, Recordors of Deeds are less able to provide services for the public welfare.
- E. Without available, orderly and accurate records, property cannot be put to its highest and best use, real estate values decline, and investment in real estate is chilled.
- F. Without available, orderly and accurate records, employment, social stability and the quality of life of Illinois citizens and taxpayers suffer.

### **The Creation and Operation of MERS**

27. The major stakeholders in the mortgage industry created MERS in 1995 in order to accommodate the securitization of mortgage loans by allowing participants to transfer loans at a high rate of speed and also avoid the time and cost associated with the local county recording process.

28. According to its website, an express purpose of MERS is to “eliminate[] the need to prepare and record assignments when trading residential and commercial mortgage loans.” MERS also touted 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.”

29. MERSCORP maintains a national electronic database that purports to track the changes in ownership of home mortgages, as well as changes in loan servicers. MERS’ members pay an annual membership fee, as well as modest fees to register a home mortgage in MERS, and to register transactional changes associated with the mortgage.



30. MERS operates as a membership organization, with over 3,000 members. Nearly every major mortgage lender and servicer is a member of MERS. Nationally, more than 70 million mortgage loans have been registered in MERS, including approximately 30 million active loans.

31. Many lenders designate MERS, Inc. as the mortgagee and/or nominee of record. MERS, Inc. claims to be designated as the mortgagee and/or nominee only for the narrow purpose of being named in the public records as such. MERS, Inc. does not claim to own the underlying note or receive any payments from homeowners. MERS, Inc. does not claim to maintain any of the mortgage loan records.

32. Once MERS, Inc. is designated as the mortgagee and/or nominee with respect to a given mortgage, subsequent transfers between MERS members of the beneficial interest in the mortgage loan or the servicing rights are not recorded with the Recordors of Deeds because MERS, Inc. claims, for purposes of recorded title, to remain the mortgagee and/or nominee of record. Through this device, MERS members, including the Defendants in this action, have avoided publicly recording mortgage assignments between each other and have filed satisfactions in the name of MERS, even though MERS does not hold the underlying note or involve itself in collecting any payments from the borrower.

33. The practice of designating MERS, Inc. as the mortgagee and/or nominee and keeping that designation in place notwithstanding transfers of the mortgage between lenders is a marked departure from the traditional practice, whereby the initial lender was accurately designated as the mortgagee and/or nominee, and any assignees regularly filed assignments or other appropriate documentation with the Recordors of Deeds, which put the public on notice of the actual holder of the mortgage.

34. MERS is inherently unreliable as a source of record title. Reporting of transfers is voluntary among MERS members, MERS fails to maintain digital or hard copy records or transfers, MERS fails to check its members' filings for accuracy, and MERS itself claims the information it holds "does not constitute the official legal record." Further, homeowners and the public have little ability to check MERS' accuracy: they must work through the servicer or the trustee (assuming *that* information is accurate in MERS), who have no financial incentive to assist, without sufficient information to verify the accuracy of anyone's title claims.

35. The public does not have access to the vast majority of the information underlying and/or maintained within MERS, including records reflecting the sale of mortgage loans from one financial institution to another.

36. As a result of the creation and maintenance of MERS, the public recording system is no longer a reliable source for tracking the chain of title for property, identifying the current beneficial owner of a mortgage, or determining the validity of any satisfaction. Homeowners and others cannot search property records to find out who holds or satisfied the mortgage on property because the record only shows MERS as the mortgage holder.

37. Defendants and the Defendant Class invented and maintain MERS to serve their economic interests and endeavored to substitute MERS for the system of publicly recording property interests available for anyone to reference in determining property rights, which has been in existence since the founding of the American Colonies.

#### **MERS's "Certifying Officers"**

38. Notwithstanding that MERS, Inc. purports to be the mortgagee and/or nominee of record for tens of millions of mortgages, MERS, Inc. has no or very few employees. MERS, Inc. utilizes a procedure through which it freely issues pro form a "corporate resolutions" designating

its authority to take action to more than 20,000 “certifying officers”. These “certifying officers” are employees of MERS members and third-party vendors which contract with MERS members to perform loan servicing and other functions.

39. MERS, Inc. authorizes these certifying officers to execute mortgage assignments, lien releases, and loan modifications, among other documents. MERS, Inc. further authorizes these certifying officers to execute the paperwork necessary to initiate foreclosure proceedings.

40. MERS, Inc. does not manage or supervise the conduct of these “certifying officers” who purport to act as MERS, Inc.’s agents.

#### **Federal Regulatory and State Attorneys General Actions Against MERS**

41. MERS has been the subject of investigations and complaints by federal and certain state regulators.

42. In April, 2011, MERSCORP and MERS, Inc. 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 (the “Federal Regulators”), in which both entities agreed to the terms of a comprehensive Consent Cease and Desist Order.

43. The Consent Cease and Desist Order is based upon the results of the Federal Regulators’ examination of MERS, which “identified certain deficiencies and unsafe or unsound practices by MERS [Inc.] and MERSCORP that present financial, operation, compliance, legal and reputation risks to MERSCORP and MERS [Inc.] , and to participating Members.” In regard to tracking, registering and foreclosing upon mortgages, the Federal Regulators specifically found that MERSCORP and MERS, Inc.:

- A. 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. 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.

44. The Federal Regulators directed MERSCORP and MERS, Inc. to develop and implement a series of reforms. None of these reforms, however, involves repairing the damage Defendants caused to the accuracy, reliability, and availability of public property records in Illinois counties.

45. State Attorneys General, excluding Illinois but including the New York and Delaware Attorneys General, have filed civil complaints against MERSCORP and MERS, Inc. alleging that the conduct of MERSCORP and MERS, Inc. described in this Class Action Complaint violates numerous laws, including state unfair trade practices statutes. None of these actions, however, involve repairing the damage Defendants caused to the accuracy, reliability, and availability of public property records in Illinois counties.

#### **Federal Regulatory Action Against Defendant Mortgage Companies**

46. During the fourth quarter of 2010, the Officer of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation and the Federal Reserve Board undertook a coordinated horizontal examination of foreclosure processing at the nation's 24 largest federally regulated mortgage services. John Walsh, Acting Comptroller of the Currency testified before the Senate Committee on Banking, Housing and Urban Affairs on February 17, 2011:

In general, the examinations found critical deficiencies and shortcomings in foreclosure

governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors. These deficiencies have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets and the U.S. economy as a whole. By emphasizing timeliness and cost efficiency over quality and accuracy, examined institutions fostered an operational environment that is not consistent with conducting foreclosure processes in a safe and sound manner.

47. On April 13, 2011, the Federal Reserve Board “announced formal enforcement actions requiring 10 banking organizations to address a pattern of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing. These deficiencies represent significant and pervasive compliance failures and unsafe and unsound practices at these institutions.”

48. That same date, the Federal Reserve Board signed and published twelve consent orders (the “Federal Reserve Consent Orders”), which found that the named entities engaged in “unsafe or unsound practices”. In addition, the United States Comptroller of the Currency entered into consent orders with eight servicers<sup>1</sup> as well as MERS, Inc. (the “OCC Consent Orders”). In the OCC Consent Orders the government found, in part, that each of the servicers:

- A. Failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure process;
- B. Failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third-party management, and training; and
- C. Failed to sufficiently oversee outside counsel and other third-party providers

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<sup>1</sup>Bank of America, N.A., Citibank, N.A., HSBC Bank USA, N.A., JPMorgan Chase Bank, N.A., MetLife Bank, N.A., PNC Bank, N.A., U.S. Bank National Association, and Wells Fargo Bank, N.A.

handling foreclosure-related services.<sup>2</sup>

49. Reuters published a special report on July 19, 2011, stating that notwithstanding the requirements of the Federal Reserve and OCC Consent Orders, numerous loan servicers had filed foreclosure documents of questionable validity since agreeing to the reforms mandated by the government.

### **Injury**

50. As a direct and proximate cause of Defendants' and the Defendant Class' actions, Illinois citizens and taxpayers have suffered harm including, but not limited to the following:

- A. Legal uncertainty concerning title;
- B. Difficulty or inability to discover and remedy title defects;
- C. The loss of homes due to illegal foreclosures;
- D. Difficulty or inability to buy and sell property;
- E. Decreases in real estate values;
- F. Decreases in real estate investments;
- G. The inability to put property to its highest and best use;
- H. Reductions in services to support the public welfare;
- I. Decreases in employment, social stability, and quality of life; and
- J. The cost of identifying and repairing the issues identified in this Complaint

51. As a direct and proximate cause of Defendants' and the Defendant Class' actions, including but not limited to the closed nature of MERS, the Defendants' and the Defendant Class' willful scheme to file inaccurate title documentation, Illinois citizens and taxpayers face

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<sup>2</sup>From In the Matter of Bank of America, N.A., AA-EC-11-12, available at <http://bit.ly/xOXZGI>. All of the OCC Consent Orders against the eight mortgage servicers have

great difficulty in (a) identifying ownership and following chain of title through the Recorders of Deeds; and (b) providing public access to land records.

52. Illinois citizens and taxpayers are ill-equipped to address the systemic problems described in this Complaint, as shown by the following examples:

- A. A landowner suing individually may have standing to pursue a remedy for a defect in his own title, but not his neighbors' titles, even though the defects in his neighbors' titles harm the value of his property.
- B. Due to the complexity of the potential litigation, a person with an interest in acquiring property in Illinois would most likely forgo the transaction rather than file suit to identify and correct any title defects.
- C. A landowner or other interested person may be unaware of the defect in title and unable to discover the defect due to Defendants' and the Defendant Class' misrepresentations.
- D. A landowner or other interested person who is not a MERS member lacks full access to MERS's private registry and therefore cannot ascertain any defects in title as maintained in MERS.

Citizens and taxpayers as a whole are the only parties who can pursue a remedy for these systemic wrongs and address this issue of overriding public concern.

### **CLASS ACTION ALLEGATIONS**

53. Pursuant to 735 ILCS 5/2-801, Plaintiff brings this class action lawsuit:

- A. On behalf of a class of similarly situated citizens and taxpayers of Illinois who from 2002 to the date of judgment herein, obtained a mortgage from the

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similar language in this respect.

Defendants and/or the Defendant Class, which was subsequently transferred, conveyed or assigned to MERS as the mortgagee and/or nominee and thereafter again transferred, conveyed or assigned, the mortgage without recording the transfer, conveyance or assignment with Recorders of Deeds throughout Illinois, hereafter the “Class”; and

- B. Against a class of similarly situated banks, mortgage companies and/or servicers and financial entities doing business in Illinois that are or were members and/or shareholders of MERS from 2002 to the date of judgment herein (hereafter the “Defendant Class”).

54. The Class and the Defendant Class are comprised of hundreds and/or thousands of class members, making the joinder of such cases impracticable.

55. Disposition of the claims as a class action will provide substantial benefits to the parties and the class.

56. The rights of each member of the Class were violated in a similar fashion based upon the Defendants’ and the Defendant Class’ uniform actions.

57. Questions of law and fact common to the Class and the Defendant Class predominate over questions that may affect individual members, including:

- (A) Whether or not the Defendants and the Defendant Class violated the Illinois Consumer Fraud and Deceptive Business Practices Act by their conduct;
- (B) Whether or not the Defendants and the Defendant Class were unjustly enriched by their conduct;
- (C) Whether or not Defendants’ and the Defendant Class’ conduct is a public nuisance;



- (D) Whether Plaintiff and the Class are entitled to injunctive relief;
- (E) Whether Plaintiff and the Class' mortgages were transferred, conveyed or assigned to MERS as the mortgagee and/or nominee and thereafter again transferred, conveyed or assigned, without recording the transfer, conveyance or assignment with Recorders of Deeds throughout Illinois;
- (F) Whether Plaintiff and the Class are entitled to Declaratory Judgment;
- (G) Whether Plaintiff and the Class are entitled to an Accounting;
- (H) Whether or not Defendants' and the Defendant Class' conduct is fraudulent concealment; and
- (I) Whether or not the Defendants and the Defendant Class have breached their statutory and fiduciary duties.

58. Plaintiff will fairly and adequately represent and protect the interests of the Class in that he has no interest that is antagonistic to or that irreconcilably conflicts with those of other members of the Class.

59. Defendant, U.S. BANK will fairly and adequate represent and protect the interests of the Defendant Class in that it has no interest that is antagonistic to or that irreconcilably conflicts with those of other members of the Defendant Class.

60. Plaintiff has retained counsel competent and experienced in the prosecution of class action litigation.

61. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's and the other Class members' claims against the Defendants and the Defendant Class.

62. Certification of a class action to resolve this matter will reduce the possibility of

repetitious litigation involving, potentially, thousands of class members.

## **COUNT I**

### **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

1-62. Plaintiff realleges and incorporates paragraphs 1 through 62 above as if fully set forth in this Count I.

63. Defendants' and the Defendant Class' actions alleged above constitute unfair and/or deceptive acts or practices under Illinois 815 ILCS 505/1, et seq. Defendants and the Defendant Class unfairly and deceptively used MERS to avoid accurately recording property interests, assignments, transfers, and satisfactions and to prevent landowners and the public from accessing property records. Defendants and the Defendant Class also unfairly and deceptively created false and inaccurate mortgage documents and filed those documents with Records of Deeds throughout Illinois.

64. At all times relevant hereto, Defendants and the Defendant Class had knowledge of such material misrepresentations, concealments and/or omissions.

65. Such fraud was committed by Defendants and the Defendant Class in the course of trade and commerce, as Plaintiff and the Class were consumers of the Defendants' and the Defendant Class' mortgage services.

66. Defendants' and the Defendant Class' aforementioned conduct is unfair, immoral, unjust, oppressive and unscrupulous, in that Defendants and the Defendant Class unfairly and deceptively used MERS to avoid accurately recording property interests, assignments, transfers, and satisfactions and to prevent landowners and the public from accessing

property records and deceptively creating and filing false and inaccurate mortgage documents with Recorders of Deeds throughout Illinois and concealed from Plaintiff and the Class those material facts as alleged herein.

67. As a proximate result of Defendants' and the Defendant Class' unfair and deceptive conduct, Plaintiffs and the Class have been damaged.

68. Plaintiff requests reasonable attorneys' fees and costs as the Court deems appropriate.

## **COUNT II**

### **UNJUST ENRICHMENT**

1-68. Plaintiff realleges and incorporates paragraphs 1 through 68 above as if fully set forth in this Count II.

69. Defendants and the Defendant Class, to the detriment of the Plaintiff and the Class, have benefitted and have been unjustly enriched where, among other things, they have avoided the expense of filing fees for properly filed, accurate and/or corrected property interests, assignments, transfers, satisfactions and mortgage documents.

70. The circumstances described herein are such that it would be inequitable, unconscionable, unfair and unjust for Defendants and the Defendant Class to retain and/or divert these ill-gotten benefits without filing proper, accurate and/or revised property interests, assignments, transfers, satisfactions and mortgage documents with the appropriate Recorders of Deeds throughout Illinois.

71. As a result of Defendants' and the Defendant Class' unjust enrichment, Plaintiff and the Class have and will suffer damages.

### COUNT III

#### PUBLIC NUISANCE

1-71. Plaintiff realleges and incorporates paragraphs 1 through 71 above as if fully set forth in this Count III.

72. Plaintiff and the Class have a common right to be free from conduct that injures the public's welfare. Further, Plaintiff and the Class have a right to be free from conduct that created a disturbance as to their person and/or property.

73. Defendants and the Defendant Class interfered with Plaintiff's and the Class members' right to be free from injurious conduct through knowingly and intentionally using MERS to avoid accurately recording property interests, assignments, transfers, and satisfactions, to prevent landowners and the public from accessing property records and from deceptively creating false and inaccurate mortgage documents and filing those documents with Recorders of Deeds throughout Illinois.

74. Defendants and the Defendant Class knowingly and intentionally used MERS to avoid accurately recording property interests, assignments, transfers, and satisfactions, to prevent landowners and the public from accessing property records and from deceptively creating false and inaccurate mortgage documents and filing those documents with Recorders of Deeds throughout Illinois.

75. Defendants' and the Defendant Class' conduct has harmed Plaintiff, the Class, and the public at large.

76. It was foreseeable that Defendants' and the Defendant Class' conduct would harm Plaintiff, the Class and the public at large.

77. Facilitating MERS to avoid accurately recording property interests, assignments,

transfers, and satisfactions, to prevent landowners and the public from accessing property records and from deceptively creating false and inaccurate mortgage documents and filing those documents with Recorders of Deeds throughout Illinois, constitutes a nuisance.

#### **COUNT IV**

#### **INJUNCTION**

1-77. Plaintiff realleges and incorporates paragraphs 1 through 77 above as if fully set forth in this Count IV.

78. The failure to record mortgages, deeds of property interests, assignments, transfers, satisfactions, and other mortgage documents with the Recorders of Deeds throughout Illinois impairs the rights of the property owners, and harms the public.

79. Defendants and the Defendant Class created this mess in the public recording system and now, they should bear the burden of cleaning it up.

80. Plaintiff and the Class have no adequate remedy at law to restrain Defendants' and the Defendant Class' conduct as alleged herein with respect to their utilization of MERS to avoid accurately recording mortgages, property interests, assignments, transfers, and satisfactions, to prevent landowners and the public from accessing property records and from deceptively creating false and inaccurate mortgage documents and filing those documents with Recorders of Deeds throughout Illinois, and they will suffer irreparable harm and injury from Defendants' and the Defendant Class' conduct if they are not so restrained, requiring the entry of a temporary restraining order, a preliminary/permanent injunction and/or mandatory injunction.

81. Pursuant to §11-101 of the Injunction Act (735 ILCS 5/11-101), and based upon the facts and circumstances alleged herein, Defendants and the Defendant Class should be restrained by a temporary restraining order, preliminary and/or permanent injunction from

continuing to utilize MERS and/or like and kind companies or entities, to avoid accurately recording mortgages, property interests, assignments, transfers, and satisfactions of the Plaintiff and the Class with the Recorders of Deeds throughout Illinois, to prevent landowners and the public from accessing property records and from deceptively creating false and inaccurate mortgage documents, until further order of Court.

82. Pursuant to §11-102 of the Injunction Act (735 ILCS 5/11-102), and based upon the facts and circumstances alleged herein, the Defendants and the Defendant Class should be directed by a preliminary and permanent injunction to record all mortgages, property interests, assignments, transfers and satisfactions of the Plaintiff and the Class with the Recorders of Deeds throughout Illinois. Further, a Trustee should be appointed by the Court to hold the corrective mortgage documents in escrow and/or a constructive trust at the Defendants' and the Defendant Class' expense, until further order of Court.

83. Plaintiff and the Class are likely to succeed on the merits and the hardships are balanced in their favor.

84. For good cause shown, bond should be waived.

## **COUNT V**

### **DECLARATORY JUDGMENT**

1-84. Plaintiff realleges and incorporates paragraphs 1 through 84 above as if fully set forth in this Count V.

85. Plaintiff and the putative members of the Class have substantial legal interests in the events described above and deserve to be free of the Defendants' and the Defendant Class' continued failure to file and record corrective mortgage documents as alleged herein, with the Illinois Recorders of Deeds.

86. The Defendants and the Defendant Class have taken the opposite approach by continuing to fail to file corrective mortgage documents as alleged herein with Recorders of Deeds throughout Illinois and have demonstrated an intent to continue doing so for the foreseeable future.

87. The Defendants and the Defendant Class have interests adverse to Plaintiff and the Class and in fact have benefitted as a result of their conduct as alleged herein at the expense of Plaintiff and the Class, so that an actual case or controversy exists between the Defendants, Defendant Class, Plaintiff and the Class.

88. The Court can resolve this dispute by declaring the parties' relevant rights and obligations under Illinois law, by: (a) requiring the Defendants and the Defendant Class to place corrective mortgage documents into an escrow fund and/or constructive trust; (b) appointing a trustee; and (c) preventing the Defendants and the Defendant Class from continuing their illegal acts and conduct, until further order of the Court.

## **COUNT VI**

### **ACCOUNTING**

1-88. Plaintiff realleges and incorporates paragraphs 1 through 88 above as if fully set forth in this Count VI.

89. Pursuant to the conduct alleged herein and causes of action, the circumstances and relationship between the parties gives rise to a duty on the part of the Defendants and the Defendant Class to account to Plaintiff and the Class.

90. No other adequate remedy at law exists.

91. The exact number or amount of corrective mortgage documents that have not been filed and recorded with Recorders of Deeds throughout Illinois cannot be presently known

because all books of account and records pertaining to same are in the possession and control of the Defendants and the Defendant Class.

92. Accordingly, an accounting would permit Plaintiff and the Class, and the Court to ascertain the corrective mortgage filings and recordings with Recorders of Deeds throughout Illinois as alleged herein.

93. An accounting should be conducted in equity under the supervision of this Court because it would involve intricate itemizations of the aforesaid mortgages and corrective mortgage documents placed into the Trustee's escrow and/or constructive trust, and there is a need for discovery.

## **COUNT VII**

### **FRAUDULENT CONCEALMENT**

1-93. Plaintiff realleges and incorporates paragraphs 1 through 93 above as if fully set forth in this Count VII.

94. At all times relevant herein, Defendants and the Defendant Class concealed the fact that the mortgages of the Plaintiff and the Class and/or assignments, transfers or conveyances thereof were not being recorded and/or memorialized with the Recorder of Deeds.

95. The facts alleged in paragraphs 1-93 above were material in that had Plaintiff and the Class known the true nature of the Defendants' and the Defendant Class' conduct they would not have allowed the Defendants and the Defendant Class to fail to record, preserve and maintain vital records concerning their property and mortgages.

96. Defendants and the Defendant Class had a duty to disclose the material facts, as alleged herein to Plaintiff and the Class because Defendants and the Defendant Class were in a position of superior knowledge to Plaintiff and the Class in that Defendants knew of and the



Plaintiff and the Class could never have known of the fraudulent nature of Defendants' and the Defendant Class' misrepresentations, omissions, statements and conduct.

97. As a result of Defendants' and the Defendant Class' fraudulent concealment of material acts, such as those alleged herein, Plaintiff and the Class have and will continue to suffer damages.

## **COUNT VIII**

### **BREACH OF STATUTORY AND FIDUCIARY DUTY**

1-97. Plaintiff realleges and incorporates paragraphs 1 through 97 above as if fully set forth in this Count VIII.

98. The Defendants and the Defendant Class have a statutory and fiduciary duty to Plaintiff and the Class to record all mortgages, assignments of mortgages and other instruments relating to or affecting the title to real estate in Illinois, in order to maintain the certainty, reliability, ownership and sanctity of title to real property.

99. That 765 ILCS 5/28 provides, in part:

"Sec. 28. Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this state, shall be recorded in the county in which such real estate is situated; but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes. No deed, mortgage assignment of mortgage, or other instrument relating to or affecting the title to real estate in this State may include a provision prohibiting the recording of that instrument, and any such provision in an instrument signed after the effective date of this amendatory Act shall be void and of no force and effect."

100. That the acts and conduct of the Defendants and the Defendant Class are in breach of 765 ILCS 5/28 and the statutory and fiduciary duties arising therefrom, all to the damage and detriment of the Plaintiff and the Class.

101. Based upon the facts and circumstances alleged herein, the aforesaid mortgages

and corrective mortgage documents should be placed into the Trustee's escrow and/or constructive trust until further order of Court.

**PRAYER**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray that the Court enter an Order:

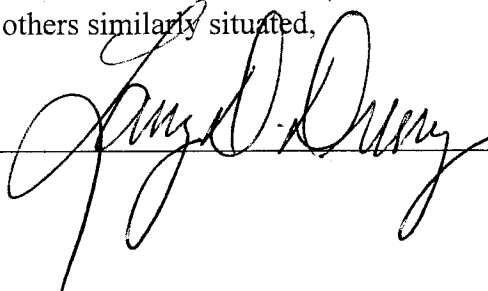
- A. Certifying this matter as a class action with Plaintiff as Class Representative, and designating Plaintiff's counsel as class counsel;
- B. Designating Defendant, U.S. Bank, as the Defendant Class Representative;
- C. Finding that Defendants and the Defendant Class violated the Illinois Consumer Fraud and Deceptive Business Practices Act;
- D. Finding that Defendants and the Defendant Class were unjustly enriched by their unlawful conduct and disgorge their ill-gotten benefits and/or related profits;
- E. Finding that Defendants' and the Defendant Class' conduct constitutes a public nuisance;
- F. Finding that Defendants and the Defendant Class breached their statutory and fiduciary duties;
- G. Requiring that Defendants and the Defendant Class place corrective mortgage documents in an escrow and/or constructive trust with a trustee as alleged herein, and for such other injunctive relief as the Court deems appropriate;
- H. Appointing, at Defendants' and the Defendant Class' expense, a Trustee to record all mortgages, property interests, assignments, transfers and satisfactions, as alleged herein;
- I. Establishing an escrow fund and/or constructive trust, at Defendants' and the

Defendant Class' expense, for the corrective mortgage documents, as alleged herein;

- J. Declare the rights of the parties;
- K. Requiring that Defendants and the Defendant Class provide Plaintiff and the Class with an accounting;
- L. Awarding reasonable attorney's fees and costs; and
- M. Grant such other relief as this Court deems appropriate.

CHARLES E. DANIELS, on behalf of himself and all others similarly situated,

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Larry D. Drury", is written over a horizontal line.

Larry D. Drury  
Larry D. Drury, Ltd.  
100 North LaSalle Street, Suite 1010  
Chicago, Illinois 60602  
(312) 346-7950  
ATTORNEY # 22873