

PROS

FILED
IN COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
2011 OCT 13 AM 11:42 GEAUGA COUNTY, OHIO

DENISE H. KAHINSKI
CLERK OF COURTS
GEAUGA COUNTY

STATE OF OHIO, *ex rel.*
DAVID P. JOYCE
PROSECUTING ATTORNEY OF GEAUGA
COUNTY, OHIO
Courthouse Annex, 231 Main St., Suite 3A
Chardon, Ohio 44024

*On behalf of Geauga County and all others similarly
situated,*

Plaintiff,

v.

MERSCORP, INC.
1818 Library Street, Suite 300
Reston, Virginia 20190

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEM, INC.
1818 Library Street, Suite 300
Reston, Virginia 20190

and

HOME SAVINGS & LOAN COMPANY OF
YOUNGSTOWN
c/o Statutory Agent:
Jude J. Nohra
275 Federal Plaza West
Youngstown, Ohio 44503

and

BANK OF AMERICA CORPORATION
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

11W 1087

Case No. _____

JUDGE FORREST W. BURT

Judge: _____

CLASS ACTION COMPLAINT,
REQUEST FOR DECLARATORY
RELIEF, PERMANENT
INJUNCTIVE RELIEF, AND
DAMAGES

(JURY DEMAND ENDORSED
HEREON)

and)

CCO MORTGAGE CORPORATION)
c/o Statutory Agent:)
The Prentice-Hall Corporation System, Inc.)
50 West Broad Street, Suite 1800)
Columbus, Ohio 43215)

and)

CHASE HOME MORTGAGE CORPORATION)
c/o Statutory Agent:)
Chase Manhattan Mortgage Corporation)
2175 Terminal Tower)
Cleveland, Ohio 44113)

and)

CITIMORTGAGE, INC.)
c/o Statutory Agent:)
CT CORPORATION SYSTEM)
1300 East 9th Street)
Cleveland, Ohio 44114)

and)

CORELOGIC REAL ESTATE SOLUTIONS, LLC)
c/o Statutory Agent:)
CSC-Lawyers Incorporating Service)
(Corporation Service Company))
50 West Broad Street, Suite 1800)
Columbus, Ohio 43215)

and)

CORINTHIAN MORTGAGE CORPORATION)
c/o Statutory Agent:)
CT CORPORATION SYSTEM)
1300 East 9th Street)
Cleveland, Ohio 44114)

and)

EVERHOME MORTGAGE COMPANY)
c/o Statutory Agent:)
CT CORPORATION SYSTEM)

1300 East 9th Street
Cleveland, Ohio 44114

and

GMAC RESIDENTIAL FUNDING CORPORATION
c/o Statutory Agent:
CSC-Lawyers Incorporating Service
(Corporation Service Company)
50 West Broad Street, Suite 1800
Columbus, Ohio 43215

and

GUARANTY BANK, S.S.B.
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

and

HSBC BANK U.S.A. N.A.
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

and

MGIC INVESTORS SERVICES CORPORATION
c/o Statutory Agent:
National Registered Agents, Inc.
145 Baker Street
Marion, Ohio 43302

and

NATIONWIDE ADVANTAGE MORTGAGE
COMPANY
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

and

PMI MORTGAGE SERVICES COMPANY
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

and

SUNTRUST MORTGAGE INC.
c/o Statutory Agent:
CSC-Lawyers Incorporating Service
(Corporation Service Company)
50 West Broad Street, Suite 1800
Columbus, Ohio 43215

and

UNITED GUARANTY CORPORATION
c/o Statutory Agent:
CT CORPORATION SYSTEM
1300 East 9th Street
Cleveland, Ohio 44114

and

WELLS FARGO BANK, N.A.
c/o Statutory Agent:
CSC-Lawyers Incorporating Service
(Corporation Service Company)
50 West Broad Street, Suite 1800
Columbus, Ohio 43215

and

DOE CORPORATIONS I – MMM, names and
addresses unknown,

Defendants.

CLASS ACTION COMPLAINT

AND NOW COMES Plaintiff Geauga County, by and through David P. Joyce as Prosecuting Attorney for the County of Geauga and in the name of the State, on behalf of itself and all other Ohio counties, for its class action complaint against Defendants MERSCORP, Inc., Mortgage Electronic Registration System, Inc., Home Savings & Loan Company of Youngstown, Bank of America Corporation, CCO Mortgage Corporation, Chase Home Mortgage Corporation, CitiMortgage, Inc., CoreLogic Real Estate Solutions, LLC, Corinthian Mortgage Corporation, EverHome Mortgage Company, GMAC Residential Funding Corporation, Guaranty Bank, S.S.B., HSBC Bank U.S.A N.A., MGIC Investors Services Corporation, Nationwide Advantage Mortgage Company, PMI Mortgage Services Company, Suntrust Mortgage, Inc., United Guaranty Corporation, Wells Fargo Bank, N.A., and Defendants Doe Corporations I – MMM (collectively, “Defendants”) alleges and states upon information and belief as follows:

NATURE OF THE ACTION

1. This is a class action commenced by Plaintiff Geauga County, on behalf of itself and all other Ohio counties, arising out of Defendants’ failure to record each and every mortgage assignment in the proper Ohio county recording office, and pay the attendant recording fees, as required by Ohio law.

2. Ohio law requires that each and every mortgage assignment must be recorded with the county recorder of the recording office in the county in which the property is located, a practice codified in Ohio statutes for nearly two hundred years. Ohio law also requires that county recorders, who work at county recording offices and are responsible for maintaining each

county's public land records, collect fees for each entitled land instrument (e.g., a mortgage assignment) presented for recording.

3. Mortgage securitization is a financial practice that generally involves the transfer (i.e., assignment) of mortgages among Defendants and other banking institutions so that the mortgages can eventually be pooled into trusts that will, in turn, issue mortgage-backed securities for sale to investors. To securitize, mortgages are typically assigned at least twice.

4. Defendants and others realized that it would be faster and cheaper to securitize mortgages, thus rendering higher profits, if they did not record each and every intermediate mortgage assignments in county recording offices.

a. To accomplish this goal, Defendants and others began to record land instruments in the name of a private corporate entity that they contended could act as their placeholder in county public records should they want to use public records to alter or foreclose on the mortgage.

b. In other instances, Defendants and others simply failed to record mortgage assignments in county recording offices at all.

5. By circumventing county recording requirements, Defendants and others avoided the time it took to physically file for recording each and every mortgage assignment at county recording offices --- and, most importantly, Defendants and others avoided paying counties the attendant recording fees.

6. Defendants, therefore, violated (and continue to violate) Ohio's statutory recording requirements by failing to record each and every mortgage assignment, and pay attendant recording fees.

7. Even worse, Defendants systematically broke chains of land title throughout Ohio counties' public land records by creating "gaps" due to missing mortgage assignments they failed to record, or by recording patently false and/or misleading mortgage assignments. Defendants' failure to record has eviscerated the accuracy of Ohio counties' public land records, rendering them unreliable and unverifiable.

8. Consequently, Defendants' purposeful failure to record each and every mortgage assignment has resulted in far-reaching, devastating consequences for Ohio counties and their public land records -- damage to public records that may never be entirely remedied.

JURISDICTION AND VENUE

9. This Court has both subject matter and personal jurisdiction over the parties and causes of action set forth in this Complaint.

10. This Court has jurisdiction over Defendants where each Defendant has sufficient minimum contacts with Ohio so as to render the exercise of jurisdiction by Ohio courts permissible under traditional notions of fair play and substantial justice.

PARTIES

11. Plaintiff Geauga County ("Plaintiff") is located in the State of Ohio. Pursuant to §§ 305.14, 309.12 of the Ohio Rev. Code Ann., Plaintiff Geauga County, by and through David P. Joyce as the Prosecuting Attorney for the County of Geauga and in the name of the State, sues on behalf of itself and all other Ohio counties.

12. Defendant MERSCORP, Inc. ("MERSCORP") is a Delaware corporation that maintains its principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. As a national organization, Defendant MERSCORP conducts business in the State of Ohio.

13. Defendant Mortgage Electronic Registration System, Inc. ("MERS"), a wholly-owned subsidiary of Defendant MERSCORP, is a Delaware corporation and maintains its principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. As a national organization, Defendant MERS conducts business in the State of Ohio.

14. Defendant Home Savings & Loan Company of Youngstown ("Home Savings"), a subsidiary of United Community Financial Corporation, is an Ohio corporation that is headquartered at 275 West Federal Street, Youngstown, Ohio 44503. As an Ohio organization, Defendant Home Savings conducts business in the State of Ohio and its registered agent in Ohio is Jude J. Nohra, 275 Federal Plaza West, Youngstown, Ohio 44503.

15. Defendant Bank of America Corporation ("Bank of America") is a Delaware corporation that maintains its principal place of business at 100 N. Tryon St. Charlotte, North Carolina 28255. As a national organization, Defendant Bank of America conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

16. Defendant CCO Mortgage Corporation ("CCO") (f/k/a American Home Funding, Inc. and Charter One Mortgage Corporation), a division of RBS Citizens, N.A. and a subsidiary of Citizens Financial Group Inc., is a New York corporation that maintains its principal place of business at 10561 Telegraph Road, Glen Allen, Virginia 23059. As a national organization, Defendant CCO conducted business in the State of Ohio and its registered agent in Ohio was The Prentice-Hall Corporation System, Inc., 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

17. Defendant Chase Home Mortgage Corporation ("Chase") (f/k/a Chase Home Finance), a division of Chase Bank N.A., and JPMorgan Chase & Co., is a Delaware corporation

that maintains its principal place of business at 4915 Independence Parkway, Tampa, Florida 33634. As a national organization, Defendant Chase conducts business in the State of Ohio and its registered agent in Ohio is Chase Manhattan Mortgage Corporation, 2175 Terminal Tower, Cleveland, Ohio 44113.

18. Defendant CitiMortgage, Inc. (“CitiMortgage”), a wholly owned subsidiary of Citibank N.A., is a New York corporation that maintains its principal place of business at 1000 Technology Drive, MS 140, O’Fallon, Missouri. As a national organization, Defendant CitiMortgage conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

19. Defendant CoreLogic Real Estate Solutions, LLC (“CoreLogic”) (f/k/a First American Real Estate Solutions LLC) is a Delaware corporation that maintains its principal place of business at 4 First American Way, Santa Ana, California 92707. As a national organization, Defendant CoreLogic conducts business in the State of Ohio and its registered agent in Ohio is CSC-Lawyers Incorporating Service (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

20. Defendant Corinthian Mortgage Corporation (“Corinthian”), a fully owned subsidiary of SOUTHBank, is a Mississippi corporation that maintains its principal place of business at 5700 Broadmoor, Suite 500, Mission, Kansas 66202. As a national organization, Defendant Corinthian conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

21. Defendant EverHome Mortgage Company (“EverHome”) (f/k/a Alliance Mortgage Company), a fully owned subsidiary of Everbank Financial Corp., is a Florida corporation that maintains its principal place of business at 8100 Nations Way, Jacksonville,

Florida 32256. As a national organization, Defendant EverHome conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

22. Defendant GMAC Residential Funding Corporation (d/b/a GMAC Bank, GMAC Commercial Mortgage Corp., GMAC Mortgage, GMAC Mortgage Corp., GMAC Mortgage LLC) ("GMAC"), a wholly owned subsidiary of Ally Financial Inc., is a Delaware corporation that maintains its principal place of business at 8400 Normandale Lake Blvd., Minneapolis, Minnesota 55437. As a national organization, Defendant GMAC conducts business in the State of Ohio and its registered agent in Ohio is CSC-Lawyers Incorporating Service (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

23. Defendant Guaranty Bank, S.S.B. ("Guaranty") is a Delaware corporation that maintains its principal place of business at 4000 West Brown Deer Road, Brown Deer, Wisconsin 53209. As a national organization, Defendant Guaranty conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

24. Defendant HSBC Bank U.S.A N.A. (d/b/a HSBC Mortgage Corp. U.S.A., HSBC Bank U.S.A. Trust, HSBC Mortgage Services Inc.) ("HSBC") is a Delaware corporation that maintains its principal place of business at 1800 Tysons Blvd., Suite 50 Mclean, Virginia 22101. As a national organization, Defendant HSBC conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

25. Defendant MGIC Investors Services Corporation ("MGIC"), a subsidiary of MGIC Investment Corp., is a Wisconsin corporation that maintains its principle place of business

at 250 E. Kilbourn Ave., Milwaukee, Wisconsin 53202. As a national organization, Defendant MGIC conducts business in the State of Ohio and its registered agent in Ohio is National Registered Agents, Inc., 145 Baker Street, Marion, Ohio 43302.

26. Defendant Nationwide Advantage Mortgage Company (d/b/a Nationwide Bank, Nationwide Mortgage Concepts, Nationwide Mortgage Corp.) ("Nationwide"), a subsidiary of Nationwide, is an Iowa corporation that maintains its principal place of business at 1100 Locust Street, Dept. 2009, Des Moines, Iowa 50391. As a national organization, Defendant Nationwide conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

27. Defendant PMI Mortgage Services Company ("PMI") is a California corporation that maintains its principal place of business at 3003 Oak Road, Walnut Creek, California 94597. As a national organization, Defendant PMI conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

28. Defendant Principal Residential Mortgage, Inc. ("Principal Residential") was an Iowa corporation that maintained its principal place of business at 711 High Street, Des Moines, Iowa 50392 and a principal office located in Columbus, Ohio 43215. Defendant Principal Residential, in conjunction with Principal Wholesale Mortgage, Inc., merged into Defendant CitiMortgage on February 11, 2005. As a national organization with Ohio offices, Defendant Principal Residential conducted business in the State of Ohio and its registered agent in Ohio was CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

29. Defendant Suntrust Mortgage, Inc. ("Suntrust") is a Virginia corporation that maintains its principal place of business in 901 Semmes Avenue, Richmond, Virginia 23224. As

a national organization, Defendant Suntrust conducts business in the State of Ohio and its registered agent in Ohio is CSC-Lawyers Incorporating Service (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

30. Defendant United Guaranty Corporation (“United”) is a Nevada corporation that maintains its principal place of business at 230 N. Elm Street, Greensboro, North Carolina 27401. As a national organization, Defendant United conducts business in the State of Ohio and its registered agent in Ohio is CT CORPORATION SYSTEM, 1300 East 9th Street, Cleveland, Ohio 44114.

31. Defendant Wells Fargo Bank, N.A. (d/b/a America’s Mortgage Outsource Program) (“Wells Fargo”), a subsidiary of Wells Fargo and Company, is a South Dakota corporation that maintains its principal place of business at 101 North Phillips Avenue, Sioux Falls, South Dakota 57104 and a principal office at 115 Hospital Drive, Van Wert, Ohio 45891. Wells Fargo Home Mortgage, Inc. (f/k/a Directors Mortgage Loan Corporation, Courtesy Funding, Norwest Mortgage, Inc.) merged into Defendant Wells Fargo on October 1, 2004. Wachovia Shared Resources, LLC merged into Defendant Wells Fargo on January 1, 2011. Wells Fargo Dealer Services, Inc. and SouthTrust Mortgage Corporation merged into Defendant Wells Fargo on July 1, 2011. As a national organization with Ohio offices, Defendant Wells Fargo conducts business in the State of Ohio and its registered agent in Ohio is CSC-Lawyers Incorporating Service (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

32. The true names and capacities of Defendants Doe Corporations I – MMM are unknown to Plaintiff. Plaintiff believes that through discovery, the identity of Defendants Doe Corporations I – MMM will become known to Plaintiff.

FACTUAL STATEMENT

A. Ohio Requires the Recording of Certain Land Instruments in County Recording Offices

33. To finance the purchase of real property, a borrower typically receives a loan, often in the form of a mortgage, from an originating lender.¹ A “mortgage” is a land instrument comprised of two separate documents: (1) a promissory note, which establishes the borrower’s obligation to repay the loan, and (2) the mortgage itself, which gives the lender a security interest in the borrower’s property to secure repayment of the loan.

34. Land instruments, such as mortgages and mortgage assignments, must be recorded in proper county recording offices, which are operated by county recorders. Ohio Rev. Code Ann. § 5301.25 (“[I]nstruments of writing properly executed for the conveyance or encumbrance of lands . . . shall be recorded in the office of the county recorder of the county in which the premises are situated.”); Ohio Rev. Code Ann. § 5301.32 (“The separate instrument of [a mortgage] assignment or partial release shall be recorded.”).

35. County recorders are required to collect nominal fees for each mortgage-related land instrument presented and entitled to be recorded. Ohio Rev. Code Ann. § 317.32 (“The county recorder shall charge and collect the following fees, to include base fees for the recorder’s services . . .”).

B. The MERS Operation

36. MERS maintains a private computer system that allows its users to, among other things, register and track changes in ownership interests in mortgages.

¹ Mortgages and deeds of trust are collectively referred to herein as “mortgages.”

37. Since 1997, over 65 million mortgages have been registered on MERS's system – three out of every five on the market. Currently, nearly 5,600 participating MERS members (“MERS Members” or “Members”) track roughly 31 million active residential mortgage loans on the MERS system. MERS Members include a collection of banking and mortgage entities that ranges from local banks and investments banks to mortgage lenders and title insurers to approximately 3,000 mortgage servicers.

a. Members pay MERS membership fees to register and track mortgage ownership interests and servicing rights on MERS's system.

b. Members also pay MERS fees for each transaction conducted, such as assigning a mortgage within to itself or to another MERS Member, identifying the mortgage's servicer, or using the MERS corporate seal.

38. MERS does not itself originate, assign, service or invest in mortgages.

39. Instead, MERS Members used (and continue to use) the “MERS” name to avoid recording in county recording offices each time a mortgage ownership interest was assigned – thereby avoiding the payment of attendant county recording fees.

40. MERS Members, at times, avoid recording every mortgage assignment by recording an initial land instrument, on which they claim “MERS” as their agent through a series of designations, such as “MERS as assignee,” “MERS as nominee,” “MERS as beneficiary.”

41. MERS Members contend that, as long as mortgage ownership interests are assigned to other MERS members, they are not required to record each mortgage assignment in county recording offices because MERS acts on behalf of both the assignor and assignee (representing both MERS Members simultaneously).

C. The MERS Scheme

1. How MERS Members Place MERS in Land Instruments

42. MERS Members typically record the initial land instrument, on which “MERS” is named, in county recording offices in two different ways:

a. One way occurs when Members record an original mortgage on which “MERS” is designated in a myriad of ways: “MERS as mortgagee of record,” “MERS as nominee,” “MERS as beneficiary,” and even “MERS (solely as nominee for Lender) as beneficiary.” MERS and its Members use the term “MERS as Original Mortgagee (MOM)” to describe this type of mortgage.

b. The second way occurs when Members record a mortgage assignment on which “MERS” is named. On such mortgage assignments, Members often *purport* to assign the mortgage and underlying debt either to: (i) MERS itself; or (ii) MERS on behalf of another Member.

43. MERS, however, does not draft or execute paperwork on behalf of itself or its Members. Rather, MERS instructs its Members to self-certify their employees (e.g., people who work for the lending banks and mortgage servicers) to become certified MERS “assistant secretaries” and “vice-presidents” in order to appear on various “MERS land instruments” for the purpose of recording land instruments. MERS Members’ employees access MERS certification forms on MERS’s website.

44. Members have their employees self-certify as MERS “assistant secretaries” or “vice-presidents” in order to appear as though those employees actually work for MERS. In doing so, county recorders record what facially appear to be proper mortgages and assignments,

even though the lenders' and servicers' employees are only acting under the guise of MERS employment.

2. How MERS Members Fail to Record Intermediate Mortgage Assignments

45. MERS was intended to improve the profitability of the primary and secondary mortgage market, and facilitate securitization of mortgages through the rapid assignment of mortgages between financial institutions – while avoiding: (i) recording each time the mortgages are assigned in county recording offices, and (ii) paying the attendant county recording fees.

46. Beginning in the 1990s, securitization of mortgages became more common. The overall scheme of securitizing mortgages began with mortgage lenders who would originate as many residential mortgage loans as possible for sale to various banks and financial institutions. Those banks and financial institutions would, in turn, trade the mortgages amongst themselves and subsequently pool them into trusts for eventual sale to investors as mortgage-backed securities (“MBS”).

47. Thus, to securitize a mortgage, several assignments must be made.

a. First, originating lenders sell mortgages (each of which includes both the promissory note and the mortgage documents) to an aggregator or sponsor. The sponsor is a special purpose entity that is often affiliated with a large financial institution or investment bank.

b. Second, the sponsor initiates the securitization by transferring (i.e., assigning) the mortgage to a depositor.

c. Third, the depositor then transfers the mortgage to a “special purpose vehicle” (usually a trust) to be held for the eventual sale to and subsequent benefit of investors.

48. The typical life of a securitized mortgage, therefore, entails *at least three* assignments – all of which are statutorily required to be recorded in the Ohio county recording office in which the underlying property is located. Securitization of a mortgage does not vitiate the legal requirement to record each assignment of a mortgage.

49. In reality, however, once “MERS land instruments” – such as mortgages and mortgage assignments – are recorded in county land records and purportedly registered on MERS’s private system (either as a MOM or mortgage assignment), MERS Members usually fail to record subsequent, intermediate mortgage assignments.

50. MERS Members often only record a mortgage assignment (regardless of how many times the mortgage had been assigned prior) in county recording offices when they are attempting to assign the mortgage *from MERS*. This generally occurs when MERS Members seek to initiate a terminating event (e.g., to foreclosure when the mortgage is in default, or to release when the mortgage is refinanced or satisfied).

51. When MERS Members finally record a mortgage assignment, they break the mortgage’s chain of title by creating “gaps” from the prior mortgage assignments they made, yet failed to record in county recording offices.

CLASS ALLEGATIONS

52. Plaintiff brings this class action on behalf of itself and, pursuant to Ohio Civ. R. 23, on behalf of all other Ohio counties (collectively referred to herein as the “Class”).

53. The Class is comprised of each of the eighty-eight counties in the State of Ohio, thus joinder of all Class members in one action would be impracticable.

54. The Class claims present common questions of law and fact that predominate over questions that may affect particular putative class members individually, including without limitation the following:

a. Whether the Class members are irreparably harmed by Defendants' conduct in violation of Ohio Rev. Code Ann. §§ 5301.25, 5301.32 as alleged herein and are thus entitled to injunctive relief;

b. Whether Defendants failed to record each and every prior and future mortgage and mortgage assignment on real property located in Ohio with the county recorder of the proper Class Member's county recording office, in accordance with Ohio Rev. Code Ann. §§ 5301.25, 5301.32;

c. Whether Defendants should be enjoined from continuing to assign Ohio mortgages without recording each and every prior and future mortgage and mortgage assignment in the proper Class Member's county recording office; and

d. Whether Defendants should be ordered to correct the failure to record each and every prior and future mortgage and mortgage assignment with the county recorder of the proper Class Member's county recording office, and thereby pay attendant recording fees, as required by Ohio law.

55. The claims asserted by Plaintiff are typical of claims asserted for the Class in that all claims are based on the same legal and remedial theories:

a. Ohio state law is applicable to all claims asserted by the Class;

b. Ohio recording laws create identical requirements for the recording of each and every mortgage and mortgage assignment on real property located in Ohio

with the county recorder of the proper county recording office in each of Ohio's 88 counties; and

c. Each Ohio county is required by Ohio state law to collect fees for the recording of each and every entitled mortgage and mortgages assignment presented to the county recorder for recording at the county recording office.

56. Plaintiff is an adequate representative of the Class that will fairly and adequately represent the interests of the Class.

57. Plaintiff has retained competent class counsel with experience in prosecuting class action litigations of this nature, and will vigorously prosecute the putative class claims alleged herein.

58. This action is maintainable as a class action where Defendants have acted on grounds generally applicable to the Class thereby making final, injunctive, and declaratory relief, and a damage award appropriate with respect to the Class as a whole.

59. Class action treatment is superior to other methods for resolution of this controversy where:

a. Separate actions by individual Class Members could lead to inconsistent adjudications for individual Class Members, which would impose varying conduct requirements for each Defendant;

b. Separate actions by individual Class Members could injure Class Members' ability to adequately protect their interests;

c. The financial burden on individual Class Members would make it impractical for them to pursue their claims against Defendants individually; and

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

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION DECLARATORY JUDGMENT AND A PERMANENT INJUNCTION AGAINST ALL DEFENDANTS

60. Plaintiff incorporates by reference herein Paragraphs 1 through 59 as though set forth in full.

61. Plaintiff Geauga County, by and through David P. Joyce as Prosecuting Attorney for the County of Geauga, is authorized by Ohio Rev. Code Ann. § 309.12 to institute proceedings upon being satisfied the funds belonging to the county are illegally withheld from the county treasury and to recover such funds illegally withheld for the benefit of the county.

62. Defendants' failure to record each and every prior and future mortgage and mortgage assignment on real property located in Ohio with the county recorder of the county recording office in which the property is located constitutes an actual existing justiciable controversy between the parties, having opposing interest, which can and should be resolved by this Court through declaratory relief.

63. Plaintiff and Class Members request a judgment declaring that Defendants are required to record, pursuant to Ohio Rev. Code Ann. §§ 5301.25, 5301.32, each and every prior and future mortgage and mortgage assignment on real property located in Ohio must be recorded in, and attendant statutory recording fees paid to, the county recording office in which the real property is located.

64. Plaintiff and Class Members request that this Court enter an injunction compelling Defendants to record each and every, prior and future, mortgage and mortgage

assignment on real property located in Ohio that was not recorded in the proper county recording office, and to immediately cease the practice of non-recording of mortgages and mortgage assignments on real property located in Ohio counties.

**SECOND CAUSE OF ACTION
UNJUST ENRICHMENT AGAINST ALL DEFENDANTS**

65. Plaintiff incorporates by reference herein Paragraphs 1 through 64 as though set forth in full.

66. In order to avoid the payment of attendant recording fees to the Class, Defendants failed to record each and every prior and future mortgage and mortgage assignment on real property located in Ohio in Plaintiff and Class Members' county recording officers, in violation of Ohio state law.

67. Instead of properly recording each and every prior and future mortgage and mortgage assignment on real property located in Ohio in Plaintiff and Class members' county recording offices, Defendants unjustly retained recording fees per mortgage assignments, which in justice and equity belong to the Class.

68. By their wrongful and improper conduct, Defendants were, and are, unjustly enriched at the expense of and to the detriment of Plaintiff and the Class.

69. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff, on behalf of itself and the Class, seeks restitution from Defendants and respectfully requests that this Court disgorge all profits, benefits, and other compensation Defendants obtained by their wrongful and improper conduct.

PRAYER FOR RELIEF

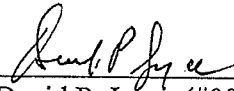
WHEREFORE, on behalf of itself and all other Ohio counties, by and through its undersigned counsel, Plaintiff prays for judgment declaring and determining that:

- a. This action is properly maintainable as a class action under Ohio Civil R. 23(B)(1)(a) and/or (B)(1)(b), Ohio Civil R. 23(B)(2), and Ohio Civil R. 23(B)(2);
- b. Plaintiff is an adequate class representative of the Class, and Plaintiff's counsel is designated lead counsel for the Class;
- c. Each and every prior and future mortgage and mortgage assignment on real property located in Ohio shall be recorded by Defendants with the proper Class Members' county recorder in the county recording office in which the property is located, thereby paying Plaintiff and the Class attendant recording fees;
- d. Defendants are permanently enjoined from non-recording of mortgages and mortgage assignments on real property located in Ohio with the county recorder in the recording office in the county in which the property is located;
- e. Plaintiff and the Class are entitled to restitution and disgorgement of Defendants' profits, benefits, and other compensation Defendants obtained by their wrongful and improper conduct;
- f. Plaintiff and the Class are entitled to an award of damages as set forth above;
- g. Plaintiff and the Class are entitled to an award of reasonable attorneys' fee and costs of bringing this action; and
- h. Plaintiff and the Class are entitled to such other and further relief as the Court deems just and proper.

JURY DEMAND

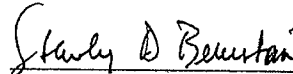
Plaintiff demands a trial by jury.

Respectfully submitted,



David P. Joyce (#0022437)
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and



Stanley D. Bernstein (#1703503) (NY) *per telephone consent*
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Sara Goodman (#4868923) (NY)
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