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9	9 Attorneys for Plaintiffs	•
10	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA	
11	IN AND FOR THE COUNTY OF MARICOPA	
12	JOSELIL MOROTON AND LINE	
13	HERNANDEZ,	N
14	Plaintiffs,	No.CV20:2 008573
15	; v.	VERIFIED COMPLAINT
16	TOWER TOWNE, III IIIS capacity as Automicy /	FOR DECLARATORY AND INJUNCTIVE RELIEF
17	(Capacity as	
18)	
19	Defendants.	
20		
21	PRELIMINARY STATEMENT	
22	1. This case is brought on behalf of Arizona residents who are or will be	
23	subject to a mortgage foreclosure process on their homes and need assistance to be able	
24	to stay in their homes. The assistance needed includes, but is not limited to, credit	
25	counseling, advocacy with creditors and legal representation.	
26	2. Arizonans have been hit hard by the mortgage foreclosure crisis and	
27	Arizona has one of the highest rates of foreclosure in the county.	

3.

Arizona joined forty-eight other states and the federal government to sue

five major loan servicers and financial institutions for misconduct related to their origination and servicing of single family residential mortgages. The litigation settled and according to the terms of the Consent Judgments, Arizona Attorney General Horne will receive Arizona's share of the direct state payments ("Settlement Funds"). Pursuant to the agreement memorialized in the Consent Judgments, the Attorney General shall deposit the Settlement Funds into a Court Ordered Trust Fund and the principal and interest from that fund can only be used for designated purposes.

- 4. On May 1, 2012, the Arizona Legislature passed a general appropriations bill, SB 1523 Governor Brewer signed SB 1523 on May 7, 2012. In SB 1523 the legislature directed the Attorney General to place \$50 million of the Settlement Funds, more than half of the funds that are to be deposited into Court Ordered Trust Fund, into the state's general fund.
- 5. If this transfer occurs, the Settlement Funds in the Court Ordered Trust Fund will not be used for the designated purposes and distressed Arizona homeowners will be not receive the assistance they need to be able to stay in their homes and avoid foreclosure.
- 6. Plaintiffs seek declaratory and injunctive relief to enjoin Defendants from taking any action to transfer the Settlement Funds from the Court Ordered Trust Fund into the state's general fund and from using the Court Ordered Trust Funds for purposes not designated in the Consent Judgments.

VENUE AND JURISDICTION

- 7. This action arises under state law and the Arizona Constitution. This Court has jurisdiction pursuant to A.R.S. § 12-123 and A.R.S. § 35-213.
 - 8. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.
 - 9. Declaratory relief is sought pursuant to A.R.S. § 12-1831 et seq.
 - 10. Injunctive relief is sought pursuant to A.R.S. §§ 12-1801 and 35-212.

PARTIES

- 11. Plaintiff Joseph Morones is a homeowner who lives in Mesa, Arizona with his minor son. He is an Arizona taxpayer, who pays state and federal income taxes, property taxes and state sales taxes. He is a victim of the foreclosure crisis and is currently at risk of losing his home.
- 12. Plaintiff Elvira Hernandez is a homeowner who lives in Chandler, Arizona with her disabled son, her daughter and her three minor grandchildren. She is a 71 year old widow and taxpayer. She pays state and federal income taxes, property taxes and state sales taxes. She is a victim of the foreclosure crisis and is currently at risk of losing her home.
 - 13. Defendant State of Arizona is a body politic.
- 14. Defendant Tom Horne is the Arizona Attorney General and is responsible for enforcing the consumer protection laws of Arizona. He also is the designated trustee of the Court Ordered Trust Fund created by the Consent Judgments. He is responsible for ensuring that the Court Ordered Trust Fund is used for the purposes designated in the Consent Judgments.
- 15. Doug Ducey is the Arizona Treasurer and is responsible for the Arizona treasury. According to the Consent Judgments, he is required to hold the funds in a separate Court Ordered Trust Fund.

FACTS COMMON TO ALL CLAIMS

General Tom Horne joined with forty-eight other states and the United States government on March 12, 2012, to file Civil Action No. 12-0361 in the U. S. District Court for the District of Columbia against the country's five largest loan servicers, Ally/GMAC Mortgage, Bank of America, CitiMortgage, JP Morgan Chase and Wells Fargo ("Defendant Banks"). The plaintiffs alleged violations of numerous federal and state laws in the manner in which the Defendant Banks originated and serviced single family residential mortgages.

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- A national settlement was successfully negotiated by the parties and on April 4, 2012, Consent Judgments were entered by the district court for each of the five Defendant Banks. The terms of the Consent Judgments were identical, except for the amount to be paid by each Defendant Bank. The intention of the parties in effecting the settlement was "to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant[s]." Page 2 of Consent Judgments. One part of the settlement was called the "Direct Payment Settlement Amount." Paragraph 3 of the Consent Judgments; Exhibit B to Consent Judgments. Part of the direct payment settlement amount went to each plaintiff-state and is to be sent to the attorney general for each state. Arizona's direct payment settlement amount is to be sent to the Arizona Attorney General.
 - 18. Section I(b)(1) in Exhibit B to the Consent Judgments provides:
 - i. Each State Attorney General shall designate the uses of the funds set forth in the attached Exhibit B-1. To the extent practicable, such funds shall be used for purposes intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the States for costs resulting from the alleged unlawful conduct of the Defendants. Such permissible purposes for allocation of the funds include, but are not limited to, supplementing the amounts paid to state homeowners under the Borrower Payment Fund, funding for housing counselors, state and local foreclosure assistance hotlines, state and local foreclosure mediation programs, legal assistance, housing remediation and anti-blight projects, funding for training and staffing of financial fraud or consumer protection enforcement efforts, and civil penalties. Accordingly, each Attorney General has set forth general instructions for the funds in the attached Exhibit B-2.
- 19. Pursuant to Exhibit B1 of the Consent Judgments, the Arizona Attorney General will receive \$97,784,204.
- 20. Exhibit B2 of the Consent Judgments sets forth the agreed upon uses of the state payment settlement amounts for Arizona and provides in relevant part:

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1. <u>State Payment Settlement Amounts, Consent</u>. <u>Judgments Ex. B, Paragraph 1(b)(i)</u>

Arizona's share of the State Payment Settlement Amounts ('Funds') provided under this Consent Judgments, and any interest thereon, shall be made payable to the Office of the Arizona Attorney General. The Attorney General shall direct the use of the Funds in Arizona. The Funds shall be used for purposes intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the State for costs resulting from the alleged unlawful conduct of Defendants. Such permissible purposes for allocation of the funds include, but are not limited to, supplementing the amounts paid to state homeowners under the Borrower Payment Fund, funding for housing counselors, state and local foreclosure assistance hotlines, state and local foreclosure mediation programs, legal assistance, housing remediation and anti-blight projects, funding for training and staffing of financial fraud or consumer protection enforcement efforts, and civil penalties.

The Attorney General shall deposit the Funds with the State Treasurer and the Funds shall be held in a separate Court Ordered Trust Fund account and all interest thereon deposited into that account and used only for the purposes set forth herein. (emphasis added).

- 21. Exhibit B to the Consent Judgments sets forth the allowable uses of the funds and requires that the Attorney General as trustee "shall" deposit the funds with the State Treasurer and the funds shall be held in a "separate Court Ordered Trust Fund."
- 22. The settlement documented by the Consent Judgments is referred to as the "National Mortgage Settlement" by the State of Arizona.
- 23. On May 1, 2012, the Arizona Legislature passed the general appropriation bill for fiscal year 2012, SB 1523. Governor Brewer signed SB 1523 on May 7, 2012.
 - 24. Section 128 of SB 1523 provides:
 - Sec. 128. Fund transfer; mortgage settlement; fiscal year 2012-2013; intent

- A. Notwithstanding any other law, on or before June 30, 2013, the attorney general shall direct a total of \$50,000,000 received pursuant to the Consent Judgments in the National Mortgage Settlement to the state general fund to compensate the state for costs resulting from the alleged unlawful conduct of the defendants.
- B. It is the intent of the legislature that the monies deposited into the state general fund pursuant to subsection A of this section be used in current state general fund efforts in areas covered by the National Mortgage Settlement, including agencies such as the state real estate department, department of insurance and attorney general department of law, and for other areas impacted by the alleged unlawful conduct of the defendants in the National Mortgage Settlement.
- 25. On information and belief, the federal government is expected to send the settlement payment to the Attorney General on or after May 11, 2012, and any directive from the Attorney General made pursuant to SB 1523 directing the State Treasurer to transfer funds from the Court Ordered Trust Fund to the state general fund will not occur until on or after July 1, 2012.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(SB 1523 Violates Article IV, Part 2, §20 of the Arizona Constitution)

- 26. Plaintiffs restate and reincorporate by reference the allegations contained in paragraphs 1 through 25 above.
- 27. Article 4, Part 2, Section 13 of the Arizona Constitution provides that "[e]very act shall embrace but one subject and matters properly connected therewith..."
- 28. Article 4, Part 2, Section 20 of the Arizona Constitution creates an exception for the general appropriations bill and provides that "[t]he general appropriation bill shall embrace nothing but appropriations for the different departments of the state, for state institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing but one subject."
- 29. Any attempt at legislation other than the appropriation of money in a general appropriations bill is void.

- 43. The Attorney General is a member of the Executive Branch and is the chief legal officer of the state.
- 44. He is authorized under Arizona law to compromise or settle any action or claim brought by the state.
- 45. In executing the Consent Judgments on behalf of the state and agreeing to their terms, including the responsibility to serve as Trustee of the Court Ordered Trust Fund, the Attorney General was exercising his executive and administrative powers.
- 46. By directing the Attorney General to transfer \$50 million of the Settlement Funds from the Court Ordered Trust Fund to the state general fund, the legislature is encroaching upon the powers and duties of an officer of the Executive Branch in violation of Article III.
- 47. If the Settlement Funds are transferred, plaintiffs are in danger of suffering irreparable harm. Plaintiffs have no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

- 48. Plaintiffs restate and reincorporate by reference the allegations contained in paragraphs 1 through 47 above.
- 49. The Consent Judgments established a trust when they specified that the Settlement Funds paid into the Court Ordered Trust Fund and any interest thereon could only be used for specified purposes, to wit: to benefit Arizona homeowners who were harmed by the actions of the Defendant Banks.
- 50. The trust created by the Consent Judgments designated the Attorney General as trustee.
- 51. As trustee of the Court Ordered Trust Fund, the Attorney General has a duty to administer the trust in accordance with its terms.
- 52. As trustee of the Court Ordered Trust Fund, the Attorney General may not delegate his responsibilities under the trust.

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- A transfer of \$50 million in Settlement Funds from the Court Ordered Trust 53. Fund to the state general fund would constitute a breach of the Attorney General's fiduciary duty as trustee.
- If the Settlement Funds are transferred, plaintiffs are in danger of suffering 54. irreparable harm. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- Enter a declaratory judgment that Section 128 of SB 1523 is a Α. violation of the appropriation provisions of the Arizona Constitution and is, therefore, void.
- B. Enter a declaratory judgment that the Settlement Funds are custodial or trust funds and not subject to legislative appropriation.
- C. Enter a declaratory judgment that Section 128 of SB 1523 is a violation of Article III, the Separation of Powers Clause, of the Arizona Constitution.
- Enter a declaratory judgment that a transfer of the Settlement Funds D. to the general fund would be a violation of the Attorney General's fiduciary duty under the Court Ordered Settlement Fund.
- E. Enter a preliminary and permanent injunction enjoining Defendants from transferring any funds from the Court Ordered Trust Fund to the state general fund and from directing any use of the funds except as set forth in Exhibit B2 of the Consent Judgments;
- F. Award Plaintiffs their attorneys' fees pursuant to the private attorney general doctrine and A.R.S. §35-213(C).
- G. Award Plaintiffs their costs; and
- H. Grant such other relief as is just and proper.

,	Respectfully submitted this 24 th day of May 2012.	
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3	PUBLIC INTEREST	
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5	By J-g.M	
6	Timothy M. Hogan	
7	Joy Herr-Cardillo 202 East McDowell Road, Suite 153	
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9	WILLIAM E. MORRIS INSTITUTE FOR JUSTICE	
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My Commission Expires:

1/26/16

VERIFICATION

I, Timothy M. Hogan, do hereby depose and swear that I am the attorney for the plaintiffs in the above action and that I have read the above Complaint and that the facts alleged in it are true and correct to the best of my knowledge.

Timothy M. Hogan

SUBSCRIBED AND SWORN TO me this 24^{th} day of May 2012, by Timothy M. Hogan.

Notary Public

