

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

JIM FULLER, CLERK OF THE CIRCUIT
COURT, DUVAL COUNTY, FLORIDA,
in his official capacity and on behalf of
all those similarly situated,

Plaintiff,

vs.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation; and
MERSCORP, INC., a Delaware corporation

Defendants.

16- 2011-CA-008974

-XXXX-

CASE NO.: _____

DIVISION CV-C

Class Representation

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CLASS ACTION COMPLAINT

Plaintiff, Jim Fuller, the Clerk of the Circuit Court, Duval County, in his official capacity and on behalf of all those similarly situated, hereby sues Defendants, Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc., and states:

Parties, Jurisdiction and Venue

1. Plaintiff, Jim Fuller ("Duval County Clerk" or "Clerk"), is the Clerk of the Circuit Court for Duval County, Florida.
2. Defendant, Merscorp, Inc., is a Delaware corporation with its principal place of business in Virginia.
3. Defendant, Mortgage Electronic Registrations Systems, Inc., is a Delaware corporation with its principal place of business in Virginia.

4. Mortgage Electronic Registrations Systems, Inc. is a wholly-owned subsidiary of Merscorp, Inc. Mortgage Electronic Registrations Systems, Inc. and Merscorp, Inc. are collectively referred to herein as “MERS” or “Defendants.”

5. This court has jurisdiction over the Defendants pursuant to Section 48.193, Florida Statutes because Defendants: (i) hold mortgages on property within this state; (ii) have committed tortious acts within this state; (iii) have caused injury to persons or property within this state; and (iv) conduct business within this state.

6. This Court has jurisdiction over this action, and venue is proper in Duval County, Florida, because the causes of action set forth herein accrued in Duval County.

Background

7. This is a class action to recover millions of dollars in unpaid recording fees unlawfully avoided through a nationwide scheme perpetrated by MERS, its principals, and its members, and to prohibit MERS from continuing to usurp the rights, duties and obligations of the Duval County Clerk and the clerks of the circuit courts for all Florida counties (collectively referred to herein as the “Florida Clerks of Court”).

8. The Florida Constitution provides that there shall be a clerk of the circuit court in each county in Florida. Art. V, § 16, Fla. Const. The clerk of the circuit court is the steward of the public records for his or her county, who is responsible for recording all instruments required or authorized by law to be recorded in each county. Fla. Stat. § 28.222.

9. Florida’s public recording system serves two important purposes, as it pertains to real property. First, it provides a mechanism by which private individuals can put others on notice of their interest in a particular parcel of real property. Second, it protects the public by

providing a reliable historical record of past and current ownership of all real property in the state.

10. Historically, and in accordance with Florida law, those possessing an interest in real property in Florida would cause their interest to be recorded in the Official Records in the county in which the real property was situated. Despite this longstanding tradition, the Mortgage Bankers Association (“MBA”)—the creator of MERS—and others in the mortgage lending industry determined to sidestep and refuse to comply with the recording laws by physically recording interests in real property.

11. Instead, to further their own purposes to the detriment of the public, the MBA and certain of its members and affiliates established their own private electronic recording system. At the center of this private system is MERS.

12. The MERS system emerged in the early to mid-1990s, by which time the aggregation of mortgages and mortgage-servicing rights had become big business in the United States. At that time, mortgage servicing companies sought to accumulate and trade ever-growing numbers of mortgage-servicing contracts, while others in the industry began purchasing large numbers of mortgages, packaging them into massive investment pools and selling interests in the pools to investors, a process commonly referred to as mortgage “securitization.”

13. In order to aggregate loans into pools and mortgage-servicing rights into large portfolios, promissory notes and mortgages had to be assigned from a multitude of smaller mortgage lenders to large national banks and servicers.

14. The assignment of mortgage loans entails certain costs. One such cost is the payment of fees to governmental institutions which record and keep the public records in each state.

15. The MBA and several large financial institutions desired to “streamline” the assignment of residential mortgages and mortgage-servicing rights by and between mortgage lenders, servicers, securitizers and others in the industry, and to reduce the costs associated with such assignments by circumventing the public recording system altogether. MERS was the vehicle by which they sought to accomplish this scheme.

16. The MERS system avoids the recordation requirement, and the accompanying fees, and in doing so deprives the Florida Clerks of Court of the recording fees to which they are entitled and the public of its ability to identify the true mortgagee of mortgaged property.

MERS and the Private Recording System

17. MERS is listed as the “mortgagee” on millions of loans throughout the nation. However, MERS does not originate any loans, lend any money, or own or hold any promissory notes. MERS instead acts merely as a straw man—a placeholder in the public records—allowing the true, beneficial owner of a loan to remain anonymous and to be changed at will without notice to the public and without recording an assignment in the Official Records or paying the fees associated therewith.

18. MERS’s deceptive business practice is best summarized on its application to potential members, which is available on its website:

MERS saves lenders time and money, and reduces paperwork, by eliminating the need to prepare and record assignments when trading loans. Borrowers name MERS as mortgagee and nominee for the lender on deeds of trust and mortgages that are recorded in the county land records. Lenders then register the loans on the MERS® System and electronically track changes in servicing and beneficial ownership rights over the life of the loan.

Despite MERS’s assertions to the contrary, borrowers took no action “to name MERS as mortgagee and nominee.” This process was entirely driven by MERS as a cost saving mechanism to facilitate MERS’s efforts to permit its members to assign (often repeatedly) their

interests in promissory notes among MERS members on its private system without assigning the mortgage on the Florida Clerks' of Court recording system. This effort to disconnect the debt (the note) from the collateral (the mortgage) to save on recording costs is at the heart of the unlawful scheme that is MERS.

19. Mortgage lenders, banks and other members of the finance industry pay fees to become MERS members and to utilize its system for the electronic tracking of transfers of mortgages and mortgage servicing rights. When a MERS member originates a mortgage loan, the loan is registered with MERS and assigned a Mortgage Identification Number. While the true lender is the obligee on the promissory note, MERS is listed as the "mortgagee" on the mortgage. In this manner, MERS attempts to separate the promissory note evidencing the debt from the mortgage that is collateral or security for the note. According to MERS, the lender takes possession of and holds the note, which may be subsequently assigned multiple times through multiple note owners, while MERS is listed as the "mortgagee" on the mortgage recorded in the Official Records in the county where the land is located. MERS and its members refer to such loans as "MERS on Mortgage" or "MOM" loans.

20. Prior to the formation of MERS, the assignee of a mortgage would record the assignment in the public records (or risk losing its lien priority) each time a mortgage was assigned. Now, when a MOM loan is assigned from the originator to another MERS member, no assignment is recorded because the purported "mortgagee" has not changed. Instead, a notation is made somewhere in MERS's private files which purportedly effectuates the transfer of the mortgage from one MERS member to another. Only when a MERS member transfers its interest to a non-member or when a MERS member wishes to foreclose a mortgage is a true assignment (within the meaning of Section 701.02, Florida Statutes) ever created or recorded.

21. According to MERS, its system is specifically designed to avoid paying public recording fees. MERS estimates that it saves an average of \$30 in assignment costs per loan. MERS also estimates that, assuming each loan on its system has been transferred only once, as of 2009 it “saved” its members \$2.4 billion in recording expenses. Of course, if more than one transfer of a note was done (and there were almost always more transfers to facilitate the securitization process) the actual amount of the avoided recording fees would be a multiple of this number. Such “savings” would otherwise have been paid to the public officials responsible for maintaining the public records in each state, including the Duval County Clerk and the other Florida Clerks of Court.

**The MERS Recording System Unlawfully Competes and Interferes
with the Public Recording System.**

22. MERS has endeavored to privatize the recording of mortgage assignments in Duval County and in the rest of the country. MERS claims that more than 65 million mortgages have been registered on its system since 1997. Whereas before, a mortgage assignment would be recorded in the Official Records by the clerk of the circuit court having jurisdiction over the encumbered property and could be viewed by the public free of charge, now MERS records mortgage assignments in its own private recording system to which only it and its paying members have access.

23. The MERS private recording system violates Section 28.222(1) and (6), Florida Statutes, which provide, respectively, that “[t]he clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk” and that “[a]ll instruments recorded in the Official Records shall always be open to the public, under the supervision of the clerk” The Florida legislature has never retreated from the public recording system required by Section 28.222, Florida Statutes, or

approved the MERS private recording system, nor has any legislation ever passed to authorize MERS to usurp this public function. Florida's long and strong support for public records would suggest any effort to privatize this important public function would not have found favor, had such legislation ever been proposed.

24. Furthermore, the MERS private recording system actually hinders the development of a fully modernized, electronic public recording system. Pursuant to Section 28.24, Florida Statutes, the clerks of the circuit court collect an "additional service charge" for the recordation of mortgage assignments and other documents, which charge is deposited in the Public Records Modernization Trust Fund for use in updating and modernizing the public records system of the office. Because MERS members no longer record interim assignments of mortgages, no additional service charge is received by the Florida Clerks of Court and there are fewer funds to help modernize the public system.

25. MERS has usurped the rights and privileges of the Florida Clerks of Court by establishing, maintaining, and inducing lenders to use its private recording system, which unlawfully interferes and competes with the public recording system. Moreover, the MERS system robs the Florida Clerks of Court of revenue by circumventing the public recording system as it pertains to assignments of mortgages. MERS and its members have avoided paying millions of dollars in recording fees through use of the MERS artifice, while at the same time eroding the accuracy of our Official Records and the public's access to information.

The MERS Recording System is Premised on False and Misleading Statements

26. For the MERS system to work as designed, MERS must falsely claim to be the "mortgagee" on millions of mortgages recorded in the Official Records of the State of Florida. However, MERS is not a mortgagee. A mortgagee is "[o]ne to whom property is mortgaged;

the mortgage creditor, or lender.” Black’s Law Dictionary 1034 (8th ed. 2007). MERS does not lend any money or otherwise finance the purchase of any real property. Accordingly, MERS’s claim—repeated millions of times on mortgages throughout the country—that it is a “mortgagee” is a falsehood, knowingly made for the purpose of promoting the use of the private MERS system and evading public recording fees.

Class Representation Allegations

27. The Duval County Clerk brings this class action on behalf of himself and all other Florida Clerks of Court similarly situated, pursuant to Rules 1.220(b)(1), (2) and, alternatively, (3), Florida Rules of Civil Procedure.

28. There are approximately sixty-seven class members. The Duval County Clerk seeks to represent a class of persons to be defined as follows: the clerk of the circuit court for each Florida county in which a mortgage has been recorded on which MERS purports to be “mortgagee.”

29. Numerosity: The class described above is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit both the parties and this Court.

30. Typicality: The Duval County Clerk’s claims are typical of the claims of the members of the class. The clerk of the circuit court for each county in Florida is charged with the duty to maintain the public records for that county and required to collect certain fees for the recordation of documents. MERS’s conduct has eroded the accuracy of the public records in every county in Florida and has robbed each clerk and county of the revenue which would have been received but for the establishment of MERS’s private recording system. Accordingly, each

member of the class has been similarly harmed and the claims advanced herein by the Duval County Clerk are typical of the claims of each member of the class.

31. Common Questions of Fact and Law: There is a well-defined community of interests and common questions of fact and law similarly affecting each member of the class. The questions of fact and law common to the class predominate over questions which may affect individual members and include, but are not limited to, the following:

- a. Whether MERS's conduct of setting up a competing recording system unlawfully competes with and usurps the rights and obligations of the Florida Clerks of Court;
- b. Whether MERS has conspired with its members to avoid paying recording fees in each county in Florida;
- c. Whether MERS has made negligent or fraudulent misrepresentations on documents filed in the Official Records in each county in Florida; and
- d. Whether MERS has been unjustly enriched at the expense of each Florida Clerk of Court.

32. Adequacy of Representation: As a duly elected constitutional officer, the Duval County Clerk holds the same office, has the same powers, and is charged with carrying out the same duties and obligations as the other sixty-six Florida Clerks of Court. Accordingly, the Duval County Clerk can and will adequately, fairly and vigorously represent the interests of the members of the class. The Duval County Clerk's interests do not conflict with the interests of either party or nonparty members of the class. The Duval County Clerk has retained counsel who are competent and experienced in the prosecution of class action litigation.

33. Class certification is appropriate under Rule 1.220(b)(1)(A), Florida Rules of Civil Procedure, because the prosecution of separate claims by members of the class would create a risk of inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the Defendants. Specifically, if each Florida Clerk's of Court claim is not brought as part of the same class action, various courts throughout Florida may come to different conclusions as to whether MERS has usurped the rights and obligations of the various Florida Clerks of Court, and whether MERS has conspired with its members and made misrepresentations to wrongfully avoid paying recording fees and the proper form and measure of relief due to each Florida Clerk of Court. Such potentially varying and inconsistent adjudications could negatively impact Defendants' ability to govern its conduct according to the standards set by such adjudications.

34. Class certification is also appropriate under Rule 1.220(b)(1)(B), Florida Rules of Civil Procedure, because the prosecution of separate claims by members of the class would create a risk of adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests. Specifically, if each Florida Clerk of Court who has been harmed by MERS's conduct is not permitted to join in this action, there is a risk that the nonparty Clerks of Court would effectively have their rights adjudicated in their absence because, as the county recorder, each stands in the same position with regard to MERS and has suffered the same harm due to the conduct alleged herein. Thus, any ruling in this action could be dispositive of the interests of the nonparty Clerks of Court or otherwise impair their ability to protect their interests on an individual basis.

35. Class certification is also appropriate under Rule 1.220(b)(2), Florida Rules of Civil Procedure, because MERS has acted on grounds generally applicable to all members of the class, thereby making final injunctive relief concerning the class as a whole appropriate. Specifically, MERS's private recording system unlawfully competes and interferes with the public recording system in each county and MERS has therefore usurped the same rights and obligations of each of the Florida Clerks of Court by its universal conduct. Accordingly, injunctive relief prohibiting MERS from operating its private recording system in each Florida county is appropriate.

36. In the alternative to certification under Rule 1.220(b)(1) or (2), class certification is also appropriate under Rule 1.220(b)(3) because (i) a class action is superior to other available means for the fair and efficient adjudication of the claims of the class; and (ii) common questions of law and fact predominate over individual questions of law and fact. The expense and burden of individual litigation makes it economically unfeasible and procedurally impracticable for each member of the class to individually seek redress for the wrongs done to them. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments, which could establish incompatible standards of conduct for the Defendants, effectively adjudicate the rights of non-parties, and which would increase the delay and expense to all parties and the court system resulting from multiple trials of the same factual and legal issues. In contrast, the conduct of this matter as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and would protect the rights of each member of the class. The Duval County Clerk does not know of any other litigation concerning this controversy already commenced by any member of the class. The Duval County Clerk

knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

37. All conditions precedent to the maintenance of this action have occurred, been satisfied or waived.

Count I
Writ of Quo Warranto

38. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

39. This is an action for a writ of quo warranto to prohibit MERS from exercising the rights and privileges exclusively conferred upon the Florida Clerks of Court by the laws and constitution of the State of Florida and to require MERS to rectify the damage the MERS system has caused.

40. All conditions precedent to the bringing of this action under Florida Statutes Chapter 80 have occurred or been satisfied so that the Duval County Clerk may bring this action.

41. The Florida Clerks of Court have each been granted an exclusive franchise to “be the recorder of all instruments that he or she may be required or authorized by law to record” in their respective counties. Fla. Stat. § 28.222(1).

42. The Florida Clerks of Court are each charged with the duty to “record all instruments in one general series called ‘Official Records,’” (including specifically mortgage assignments) and to ensure that “the Official Records shall always be open to the public, under supervision of the clerk” Fla. Stat. § 28.222.

43. MERS has usurped the rights, privileges and authority of the Florida Clerks of Court, including the Duval County Clerk, and has interfered with the Clerks’ ability to carry out their duties to the people of their respective counties by:

- a. setting up a competing, private recording system for mortgage assignments and other documents; and
- b. aiding and encouraging mortgage lenders to utilize its private MERS system in lieu of recording assignments of mortgages and other documents in the Official Records of each county.

44. MERS is not entitled to exercise the powers and functions of the Duval County Clerk, which are reserved solely for Jim Fuller, the duly elected Clerk of Circuit Court for Duval County. MERS is likewise prohibited from exercising the powers and functions of the Florida Clerks of Court for Florida's other sixty-six counties.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, prays this Court (i) issue a writ of quo warranto ordering Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. to come forth and show by what authority they purport to act as county recorder for mortgage assignments and other documents in Duval County and all other counties in Florida; and (ii) enter an order of ouster enjoining Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. from operating their privatized mortgage recording system in Duval County and all other counties in Florida; and (iii) enter an injunction requiring Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. to record and pay recording fees for recording in each county in proper form, all mortgages and mortgage assignment that have been kept on the private MERS system.

Count II
Injunctive Relief

45. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

46. This is an action for injunctive relief to prohibit MERS from exercising the rights and privileges exclusively conferred upon the Florida Clerks of Court by the laws and constitution of the State of Florida and to require MERS to rectify the damage the MERS system has caused.

47. The Florida Clerks of Court have each been granted an exclusive franchise to “be the recorder of all instruments that he or she may be required or authorized by law to record” in their respective counties. Fla. Stat. § 28.222(1).

48. The Florida Clerks of Court are each charged with the duty to “record all instruments in one general series called ‘Official Records,’” (including specifically mortgage assignments) and to ensure that “the Official Records shall always be open to the public, under supervision of the clerk” Fla. Stat. § 28.222.

49. MERS has usurped the rights, privileges and authority of the Florida Clerks of Court, including the Duval County Clerk, and has interfered with the Clerks’ ability to carry out their duties to the people of their respective counties by:

- a. setting up a competing, private recording system for mortgage assignments and other documents; and
- b. aiding and encouraging mortgage lenders to utilize its private MERS system in lieu of recording assignments of mortgages and other documents in the Official Records of each county.

50. The Duval County Clerk has a clear legal right to an injunction because MERS is not entitled to exercise the powers and functions of the Duval County Clerk, which are reserved solely for Jim Fuller, the duly elected Clerk of Circuit Court for Duval County. MERS is

likewise prohibited from exercising the powers and functions of the Florida Clerks of Court for Florida's other sixty-six counties.

51. The Florida Clerks of Court do not have an adequate remedy at law because MERS's wrongful conduct has (i) usurped their rights, privileges and authority; and (ii) eroded the accuracy of the public records, for each of which monetary damages would be inadequate.

52. The Florida Clerks of Court will be irreparably harmed absent injunctive relief because MERS will continue to usurp their rights and privileges and the public records will be further degraded unless MERS is enjoined from continuing the conduct alleged herein.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, prays this Court enter an injunction (i) enjoining Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. from operating their privatized mortgage recording system in Duval County and all other counties in Florida; and (iii) requiring Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. to record and pay recording fees for recording in each county in proper form, all mortgages and mortgage assignment that have been kept on the private MERS system.

Count III
Civil Conspiracy

53. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

54. This is an action against Mortgage Electronic Registration Systems, Inc. and Merscorp, Inc. (collectively referred to as MERS) for civil conspiracy, with the amount in controversy being in excess of \$15,000, exclusive of interest, costs and attorneys' fees.

55. MERS and its members have jointly perpetrated a scheme to avoid paying millions of dollars in recording fees to the Florida Clerks of Court, including the Duval County Clerk.

56. MERS has over 5,000 members which utilize its private recording system, including many, if not all, of the largest financial institutions and mortgage lenders in the country. Collectively, MERS and its members control the vast majority of all residential and commercial loans and lending opportunities. By virtue of their combination, MERS and its members have a peculiar power of coercion over the real property finance industry, including over borrowers and recorders of public documents, which neither MERS nor any of its members would have acting alone.

57. MERS and its members have exercised their aggregate coercive powers to require borrowers to execute mortgages naming MERS as the “mortgagee.” MERS and its members have further conspired and agreed to fail and refuse to record assignments of such mortgages between them. Instead, MERS and its members conspired and agreed to record assignments of mortgages using MERS’s private recording system.

58. In order to avoid statutory recording fees, MERS and its members agreed to—and did in fact—establish and utilize the MERS system, rather than the public recording system, for the recordation and transfer of mortgage assignments and other documents. In addition to avoiding the payment of recording fees to the Florida Clerks of Court, MERS and its members have caused fraudulent and misleading documents to be executed and recorded in the Official Records of Duval County and all other counties in Florida.

59. The Florida Clerks of Court have been damaged by the agreement and conspiracy by and between MERS and its members, in that recording fees which would have been paid to the Florida Clerks of Court (but for the conspiracy) have been avoided and the accuracy of the public records eroded due to the MERS system.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, demands judgment for damages, together with the costs of this action and such other relief as this Court deems just and proper.

Count IV
Unjust Enrichment

60. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

61. This is an action for unjust enrichment, with the amount in controversy being in excess of \$15,000, exclusive of interest, costs and attorneys' fees.

62. The Duval County Clerk and other Florida Clerks of Court have conferred a benefit upon the Defendants by virtue of their use of Florida's public recording system. Specifically, MERS utilizes the Florida Clerks' of Court services to record mortgages in the Official Records of each county in Florida for the purpose of providing notice that it purports to claim an interest in real property owned by the mortgagor. MERS and its members benefit from such recordation because the priority of their interest in the mortgaged property is determined by the date of recordation of the mortgage.

63. MERS has knowingly and voluntarily accepted such benefit.

64. Additionally, MERS receives fees from its members for use of its private recording system which fees would have been paid to the Florida Clerks of Court in the form of recording fees for assignments of mortgages but for the existence of MERS's private recording system.

65. Notwithstanding the benefit conferred upon MERS by use of the Florida Clerks' of Court services and the public recording system, MERS and its members have failed to record

assignments of mortgages between them, and thereby retain for themselves the recording fees properly owed to the Florida Clerks of Court.

66. It would be inequitable for MERS to retain the benefit bestowed upon it without paying for such benefit.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, demands judgment for damages, together with the costs of this action and such other relief as this Court deems just and proper.

Count V
Fraudulent Misrepresentation

67. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

68. This is an action for fraudulent misrepresentation, with the amount in controversy being in excess of \$15,000, exclusive of interest, costs and attorneys' fees.

69. MERS causes mortgages to be recorded in the Official Records in Duval County (and in all other counties in Florida) which state that MERS is the "mortgagee." Such statements are false. MERS is not a mortgagee, as it lends no money and acquires no interest in the promissory notes which are secured by the mortgages being recorded.

70. MERS's false statements that it is a "mortgagee" are knowingly made for the purpose of inducing the Florida Clerks of Court, including the Duval County Clerk of Court to record such mortgages in reliance thereon.

71. The Florida Clerks of Court, including the Duval County Clerk, have in fact recorded such mortgages in reliance upon such false statements.

72. The Florida Clerks of Court have been damaged by MERS's fraudulent misrepresentations, in that they have been denied the subsequent recording fees which otherwise would have been paid but for such fraudulent misrepresentations.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, demands judgment for damages, together with the costs of this action and such other relief as this Court deems just and proper.

Count VI
Negligent Misrepresentation

73. The allegations contained in paragraphs one through thirty-seven above are realleged and incorporated herein.

74. This is an action for negligent misrepresentation, with the amount in controversy being in excess of \$15,000, exclusive of interest, costs and attorneys' fees.

75. MERS causes mortgages to be recorded in the Official Records in Duval County (and in all other counties in Florida) which state that MERS is the "mortgagee." Such statements are false. MERS is not a mortgagee, as it lends no money and acquires no interest in the promissory notes which are secured by the mortgages being recorded.

76. MERS should have known through the exercise of reasonable care that such statements are false. MERS's false statements that it is a "mortgagee" are negligently made for the purpose of inducing the Florida Clerks of Court, including the Duval County Clerk, to record such mortgages in reliance thereon.

77. The Florida Clerks of Court, including the Duval County Clerk, have in fact recorded such mortgages in reliance upon such false statements.

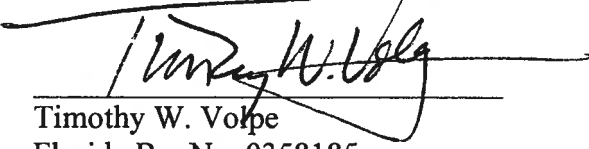
78. The Florida Clerks of Court have been damaged by MERS's negligent misrepresentations, in that they have been denied the subsequent recording fees which otherwise would have been paid but for such negligent misrepresentations.

WHEREFORE, the Duval County Clerk, individually and on behalf of the class, demands judgment for damages, together with the costs of this action and such other relief as this Court deems just and proper.

Demand for Jury Trial

The Duval County Clerk demands a trial by jury on all issues so triable.

**VOLPE, BAJALIA, WICKES,
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