

STATE OF MICHIGAN

30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CURTIS HERTEL, the Register of Deeds and Representative of **INGHAM COUNTY**; and **NANCY HUTCHINS**, the Register of Deeds and Representative of **BRANCH COUNTY**, both as Class Representatives of all 83 counties in the State of Michigan.

Plaintiffs,

V

Case No.
HON.

NZ

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., MERSCORP, INC., JEANNE KIVI, ELLEN COON, MARSHALL ISAACS, BANK OF AMERICA N.A., JP MORGAN CHASE & CO, CHASE HOME MORTGAGE CORPORATION f/k/a CHASE HOME FINANCE, WELLS FARGO BANK, N.A., CITIMORTGAGE INC., eTITLE AGENCY INC, 1ST CHOICE TITLE SERVICES INC, ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LLC, and FEDERAL NATIONAL MORTGAGE ASSOCIATION, and JOHN DOE as Any Other authorized signers for MERS or MERSCORP, INC. and Defendants JOHN DOE Corporations I – MMM,

Defendants.

William E. Maxwell, Jr. P35846

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There was another pending action arising out of the same transaction or occurrence as alleged in the Complaint with Case No. _____

_____ /

TRUE VALUE CLASS ACTION COMPLAINT
AGAINST MERS AND OTHERS FOR UNPAID TRANSFER TAXES

NOW COMES Plaintiffs, **CURTIS HERTEL, as Register of Deeds and Representative for INGHAM COUNTY** and **NANCY HUTCHINS, as the Register of Deeds and Representative for BRANCH COUNTY** by and through their attorneys, and state as follows:

INTRODUCTION

I. JURISDICTION AND VENUE

1. Real property mortgage assignments and/or property transfers that are the subject of this litigation occurred in all 83 Counties of the State of Michigan.
2. For all times relevant hereto, Plaintiff **INGHAM COUNTY'S** designated representative by its Board of Commissioners is **CURTIS HERTEL**, a resident of INGHAM COUNTY and its Register of Deeds.
3. For all times relevant hereto, Plaintiff **BRANCH COUNTY'S** designated representative by its Board of Commissioners is **NANCY HUTCHINS**, a resident of BRANCH COUNTY and its Register of Deeds.
4. This court has jurisdiction over the parties who have standing and the subject matter herein pursuant to MCL 207.501 et seq., as the subject matter of this action; and that the amount in controversy exceeds TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), exclusive of interest, costs and attorneys fees and this litigation requests the court to issue equitable orders and enforce it's equitable powers over the actions and activities of Defendants concerning assignments and post default transfers of interests in real property located within Ingham and Branch County and the State of Michigan, and is therefore, within the jurisdiction of this Court.

5. Venue is proper as the acts complained of occurred, in substantial part, in the Counties of Ingham and Branch, State of Michigan, and the Defendants were doing business in Michigan. MCL 600.1605

6. This Court has jurisdiction over the matters related to the declaratory, monetary and equitable relief sought herein.

7. Plaintiffs are seeking money and punitive damages, tax penalties, costs, and attorney fees in the return of unpaid taxes, interest and penalties to Plaintiffs as class representatives of the 83 counties of the State of Michigan.

II. PARTIES

8. Plaintiff **CURTIS HERTEL** in his position as Register of Deeds of Ingham County, and the representative of **INGHAM COUNTY**, is responsible for recordation and property tax payments of property transfers in the county, including but not limited to assignments, sheriff's and other deeds or documents transferring property rights.

9. Plaintiff **NANCY HUTCHINS** in her position as Register of Deeds of Branch County, and the representative of Plaintiff **BRANCH COUNTY**, is responsible for recordation and property tax payments of property transfers in the county, including but not limited to Deeds or instruments of conveyance of real property or any interest in property, for consideration.

10. Plaintiff, **BRANCH COUNTY** is a body corporate with powers and immunities provided by law and established by the Michigan Constitution, and seeks to collect monies owed to it from Defendants. See Const 1963, art 7, §1 and §4.

11. Plaintiff, **INGHAM COUNTY** is a body corporate with powers and immunities provided by law and established by the Michigan Constitution, and seeks to collect monies owed to it from Defendants. See Const 1963, art 7, §1 and §4.

12. Defendant, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC.**, (“**MERS**”) is a foreign corporation organized and existing under the laws of the State of Delaware, with its headquarters at 1595 Spring Hill Rd., Ste. 310, Vienna, Virginia 22182, allegedly licensed to do business in Michigan, and MERS recorded assignments in **INGHAM COUNTY** and **BRANCH COUNTY**, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration." Its registered agent is RK Arnold III, 8201 Greensboro Drive, Ste. 350; McLean, VA 22102.

13. Defendant, **MERSCORP, INC.**, (“**MERSCORP**”) is a Delaware corporation that maintains its principal place of business at 1818 Library Street, Suite 300, Reston, Virginia 20190. MERSCORP'S registered agent is the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. MERSCORP is owned by many of the most significant stakeholders in the mortgage industry, including mortgage originating and servicing companies to include but not limited to Bank of America, CitiMortgage, Inc., JP Morgan Chase, and Wells Fargo Bank, N.A., government sponsored entities Fannie Mae and Freddie Mac, and the Mortgage Bankers Association. MERSCORP accepts service at P.O. Box 2026, Flint, MI 48051-2026 (no signature) and 1901 East Vorhees Street, Suite 3, Danville, IL 61834 (signature provided). MERSCORP owns and operates the MERS System, which is a national registry that tracks the ownership and servicing rights of its members in residential mortgage loans. As a national organization, Defendant MERSCORP conducts business in the State of Michigan.

14. Defendant, **MARSHALL ISAACS**, (“**Isaacs**”) is a resident of Oakland County, State of Michigan resident who holds himself out as a Vice President or Secretary of MERS in signing assignments and deeds as a MERS contractor and corporate officer through corporate resolution of

MERS, when transferring property and security interests from MERS to various banks and foreclosing entities with the instruments being recorded without paying the appropriate fees and taxes on the assignments.

15. Defendant, **JEANNE KIVI**, (“**Kivi**”) is a resident of Oakland County, State of Michigan resident who holds herself out as a Vice President or Secretary of MERS in signing assignments and deeds as a MERS contractor and corporate officer through corporate resolution of MERS when transferring property and security interests from MERS to various banks and foreclosing entities with the instruments being recorded without paying the appropriate fees and taxes on the assignments.

16. Defendant, **ELLEN COON**, (“**Coon**”) is a resident of Oakland County, State of Michigan resident who holds herself out as a Vice President or Secretary of MERS in signing assignments and deeds as a MERS contractor and corporate officer through corporate resolution of MERS, when transferring property and security interests from MERS to various banks and foreclosing entities with the instruments being recorded without paying the appropriate fees and taxes on the assignments.

Please see Exhibit 1 attached hereto as an example of the FANNIE MAE corporate resolution(s) that seeks to grant signing power to individuals.

17. Defendant, **BANK OF AMERICA, N.A.** (“**BOA**”) 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 Michigan and its registered agent in Michigan is CT Corporation System, 30600 Telegraph Suite 2345 Bingham Farms, MI 48025. Bank of America recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134 – “CRETT”) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330 – “SRETT”) on "Deeds or instruments of conveyance of real property or any interest

in property, for consideration."

18. Defendant **JP MORGAN CHASE & CO.** ("**CHASE**") is a Delaware corporation that maintains its principal place of business at 270 Park Avenue New York, New York, 10017. As a national organization, Defendant Chase conducts business in the State of Michigan and its registered agent in Michigan is CT Corporation System, 30600 Telegraph Suite 2345 Bingham Farms, MI 48025. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company. CHASE is a principal shareholder of MERS. Chase recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

19. Defendant **CHASE HOME MORTGAGE CORPORATION** ("**CHASE HOME MORTGAGE**") (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 270 Park Avenue New York, New York, 10017. As a national organization, Defendant Chase conducts business in the State of Michigan and its registered agent address is 7610 West Washington Street, Indianapolis, IN 46231-1335. Chase Home Mortgage recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

20. Defendant **WELLS FARGO BANK, N.A. ("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. As a national organization with Michigan offices, Defendant Wells Fargo conducts business in the State of Ohio and its registered agent in Michigan is CSC-Lawyer Incorporating Service, 601 Abbott Rd., East Lansing, MI 48823. WELLS FARGO BANK is a principal shareholder of MERS. Wells Fargo recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

21. 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 Michigan and its registered agent in Michigan is CT Corporation System, 30600 Telegraph Suite 2345 Bingham Farms, MI 48025. CITIMORTGAGE is a principal shareholder of MERS. CitiMortgage recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

22. Defendant **eTITLE AGENCY, INC (“eTITLE”)** is a Michigan corporation that maintains its principal place of business at 1650 West Big Beaver, Suite 200, Troy, Michigan 48084. Defendant eTITLE’S resident agent is LINDA ORLANS and the Resident Agent’s address is the same as the corporation’s principal place of business. eTITLE as makers, executors, issuers and/or deliverers of deeds or instruments conveying an interest in real property recorded assignments and transfers of real property in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

23. Defendant **1ST CHOICE TITLE SERVICES, INC., (“1ST CHOICE”)** is a Michigan corporation that maintains its principal place of business and has its Registered Office at 850 East Long Lake, Troy, Michigan 48085, and its Registered Agent is Charles R. Fillion. Defendant 1St CHOICE, as makers, executors, issuers and/or deliverers of deeds or instruments conveying an interest in real property, recorded assignments and transfers of real property in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

24. Defendant **ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LLC, (“ATTORNEYS TITLE”)** is a Michigan corporation that maintains its principal place of business and has its Registered Office at 31440 Northwestern Highway, Suite 300, Farmington Hills, Michigan 48334, and its Registered Agent is David A. Trott. Defendant ATTORNEYS TITLE, as

makers, executors, issuers and/or deliverers of deeds or instruments conveying an interest in real property, recorded assignments and transfers of real property in INGHAM COUNTY and BRANCH COUNTY, and upon information and belief, in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

25. Defendant, **FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE")** is a foreign corporation allegedly licensed to do business in Michigan. Defendant Fannie Mae is located at 3900 Wisconsin Avenue NW, Washington DC 20016. FANNIE MAE, recorded assignments in INGHAM COUNTY and BRANCH COUNTY, and in each and every other county in the State of Michigan; and failed to pay transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on "Deeds or instruments of conveyance of real property or any interest in property, for consideration."

26. The true names and capacities of Defendants **JOHN DOE as Any Other authorized signers for MERS or MERSCORP,INC.** and **Defendants JOHN DOE Corporations I – MMM** are unknown to Plaintiffs. Plaintiffs believe that through discovery, the identity of Defendants Doe Corporations I - MMM will become known to Plaintiffs.

III. GENERAL ALLEGATIONS

27. Any person seeking to record deeds or instruments of conveyance of real property or any interest in property, for consideration has a duty to remit payment of specific fees and taxes to the Register of Deeds at the time the recording is made for county taxes and within 15 days of delivery of

the transferring instrument for state taxes. MCL 207.502/207.523; MCL 207.507/MCL 207.523(3)

28. The property transfer documents in Exhibit 2 are examples of filings made by Defendants that fit squarely in the definitions of instruments executed within or outside this state to which the transfer taxes apply.¹

29. Based on the requirements of MCL 207.504 and MCL 207.525(2), each of the Exhibit 2 examples, as well as all those other similar filings made by Defendants, should have the true value of the property being transferred plainly stated on the face of the instrument as defined in the SRETT and CRETT statutes.

30. Defendants, as grantors, makers, executors, issuers and deliverers of deeds or instruments conveying an interest in real property under MCL 207.507, had a DUTY to declare the true value of the property and full consideration given/received on the face of each and every property transfer documents in Exhibit 2, as well as all those other similar filings made by Defendants; or in the alternative Defendants had a DUTY to attach an affidavit to the deeds and instruments stating the true value of the property. Defendants had these same DUTIES with regard to all those other deeds and instruments filed by them in all 83 counties of the State of Michigan over the last 15 years.

¹ **§ 207.502. Instruments executed within state subject to tax**

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when said instrument is recorded.

(a) Contracts for the sale or exchange of real estate or any interest therein or any combination of the foregoing or any assignment or transfer thereof.

(b) Deeds or instruments of conveyance of real property or any interest therein, for a consideration.

(2) The tax shall be upon the person who is the seller or grantor.

§ 207.523. Written instruments subject to tax; person liable for tax; payment date

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when the instrument is recorded:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

(c) Contracts for the transfer or acquisition of a controlling interest in any entity only if the real property owned by that entity comprises 90% or more of the fair market value of the assets of the entity determined in accordance with generally accepted accounting principles which shall be recorded.

(2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.

31. Defendants made, executed, issued and/or delivered for recording with the Registers of Deeds in all 83 counties in Michigan, assignments and other real property transfer documents transferring all or part of an interest in real property without stating the actual and true value of the property on the face of the instrument; and without alternatively attaching an affidavit stating the true value of the property interest being transferred. MCL 207.504/MCL207.525(2).

32. As a direct consequence of Defendants' failure to properly make, execute, issue, and/or deliver real property transfer deeds, assignments, and other documents recorded in the 83 counties of the State of Michigan transferring property and security interests, neither County nor State Real Estate Transfer Taxes have been paid on thousands of real property transfers filed by/for Defendants across the counties of the State of Michigan as required by law.

33. Defendants, in concert between themselves and with others, including their agents who prepared and filed the deeds as part of a plan and process, negligently and/or purposely created and filed deeds in all 83 counties in Michigan without stating the true value of the property on the face of the real property transfer documents or in an attached affidavit, thereby eliminating evidence of the true value of the property transfer upon which transfer taxes would be owed and should have been paid.

34. The assignments/instruments recorded by Defendants in the 83 counties, which are the subject matter of this class action litigation, also failed to state on their face the reason for Defendants' failure to pay and exemption from state and county real estate taxes as required by law. MCL 207.511/MCL 207.533.

35. Acceptance and recording of the instrument by the Register of Deeds upon which transfer taxes and fees were owed but not paid, does not exempt the taxpayer from future demand for payment. MCL 207.511/MCL 207.533(1).

36. Failure to pay the appropriate taxes results in penalties and interest for which Defendants are fully responsible.

37. Defendants, individually and jointly, breached their duties to investigate the facts and circumstances required to properly and legally file an **appropriate** property transfer assignment, deed or other instrument with the true and actual value of the property, and pay the appropriate transfer taxes within the time allowed after filing of the real estate assignment or transfer document in the 83 counties of the State of Michigan.

38. Defendants, individually and jointly, by their actions and omissions, violated their duties to the public in general, and to these Plaintiffs in particular; each and every action or failure to act by the Defendants being the proximate cause of Plaintiffs' damage and injury as follows:

- a. Improperly filing assignments that did not declare the true value of the property being assigned/transferred as well as the full consideration given/received on the face of each and every assignment;²
- b. Alternatively failing to attach an affidavit stating the true value of the property interest being assigned/transferred where the true value of the transfer was not placed on the front of the assignment;³
- c. Improperly filed deeds in all 83 counties in Michigan without stating the true value of the property on the face of the assignment or in an attached affidavit, thereby eliminating evidence of the true value of a property transfer upon which transfer taxes would be owed;
- d. Failed to pay the full and required State and County real estate transfer taxes on the true value of the property interest being assigned/transferred for each and every document/instrument transferring a real property interest filed in the 83 counties of Michigan;
- e. Failed to state on the face of the subject documents/transfer instruments any reason for Defendants' failure to pay and any applicable exemption from state and county real estate taxes as required by law;⁴
- f. For other acts and failures to act which will be proven at trial.

39. That Defendants **ISAACS**, **COON** and **KIVI** made, executed, issued and/or delivered the assignments and other transfer instruments which are the subject of this litigation, when they knew or

² § 207.501. Real estate transfer tax; definitions

(c) "Value" means the current or fair market worth in terms of legal monetary exchange at the time of the transfer.

³ MCL 207.504/MCL207.525(2)

⁴ MCL 207.511/MCL 207.533

should have known as **MERS** corporate officers, that the documents/instruments transferring real property interests were not in conformity with MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330).

40. That Defendants **ISAACS, COON and KIVI** made, executed, issued and/or delivered the assignments and other real property transfer documents/instruments, which are the subject of this litigation, that did not have the proper value for property transfers stated on the documents/instruments of transfers, did not include on the transfer documents/instruments proper reasons for exemption from the taxes due under the acts, and included inapplicable statutory exemptions from the real estate transfer taxes under MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330).

41. That Defendants **eTITLE AGENCY INC, 1ST CHOICE TITLE SERVICES INC, and ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LL** made, executed, issued and/or delivered the assignments and other transfer instruments which are the subject of this litigation, when they knew or should have known, that the documents/instruments transferring real property interests were not in conformity with MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330).

42. That Defendants **eTITLE AGENCY INC, 1ST CHOICE TITLE SERVICES INC, and ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LLC,** made, executed, issued and/or delivered the assignments and other real property transfer documents/instruments, which are the subject of this litigation, that did not have the proper value for property transfers stated on the documents/instruments of transfers, did not include on the transfer documents/instruments proper reasons for exemption from the taxes due under the acts, and included inapplicable statutory exemptions from the real estate transfer taxes under MCL 207.501 et seq. (the

County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330).

43. That as a direct result of each of the Defendants' actions and inactions in violating the statutory requirements for MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) by filing real property assignments and other real property transfer documents/instruments without the true value of the property interest transferred being placed on the face of the instrument or affidavit; and not properly applying Real Estate Property Tax exemptions to the recorded instruments pursuant to Michigan law, each of these actions and failures to act were the proximate cause of Plaintiffs' damages specifically and the State of Michigan class generally in the loss of real property taxes.

VI. CLASS ACTION ALLEGATIONS

44. Plaintiff incorporates the above allegations, Paragraphs one (1) through forty eight (48) of this Complaint as if specifically set forth hereafter in their entirety.

45. Plaintiffs bring this lawsuit as a class action under MCR 3.501 et seq. Plaintiff tentatively defines the class as all counties and county representatives for each and every one of the 83 counties in the State of Michigan who, during the fifteen year period prior to the filing of this complaint, received real property assignments and deeds from and/or signed by Defendants as grantors that were filed without stating the true value of the real property being transferred or stating the grantor/seller's entitlement to exemptions to paying the proper amount of state and county transfer taxes for the true value of the property interest assigned or transferred in the real property assignments and transfer documents/instruments filed by Defendants. (examples attached as Exhibit 2) Plaintiffs may subsequently refine and/or narrow the class definition in light of discovery.

46. There are two types of real estate transfer taxes requested in this litigation; those being transfer taxes under the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate

Transfer Tax Act, 1966 PA 134) and those imposed under 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330) on “Contracts for the sale or exchange of real estate or any interest therein or any combination of the foregoing or any assignment or transfer thereof; (b) Deeds or instruments of conveyance of real property or any interest therein, for a consideration.”

47. The Plaintiff counties collect the transfer taxes due them under the County Real Estate Transfer Tax Act, 1966 PA 134 pursuant to §507 of the Act; and pursuant to the State Real Estate Transfer Tax, 1993 PA 330, §530 the counties are statutorily required to collect the transfer taxes due to the State of Michigan.

48. On information and belief, and based in part on Defendants’ filing of real property assignments and documents/instruments transferring real property interests including post-default instruments that do not conform to the statutory requirements imposed by MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and those imposed under 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330); the class is so numerous and cumbersome because of the tens of thousands of assignments filed in 83 counties over the last that fifteen years, that joinder of all members is impractical.

49. There are questions of law and fact common to class member, and said common issues greatly predominate over any issues involving only individual class members. The claims of the class representatives are entirely typical for the entire class of 83 counties. The principal and common issue is whether Defendants’ manner of drafting and recording sworn affidavit style real property transfers of rights in real property conforms with the dictates of MCL 207.501 et seq. (the County Real Estate Transfer Tax Act, 1966 PA 134) and those imposed under 207.521 et seq. (the State Real Estate Transfer Tax, 1993 PA 330); and secondarily whether Defendants failure to pay the transfer taxes on each real property transfer violates the specific requirements of those acts. (MCL 207.501/MCL 207.521)

50. There are no individual questions, other than the true value of the property being transferred by each real property transfer documents/instruments as defined by MCL 207.501(c) 207.522(g); and whether Defendant grantors are entitled to claim exemptions to payment of the transfer taxes, which can be determined by review and ministerial inspection of the public financing records for each property, Defendants records, and the local taxation authorities records collection of notes concerning the market value/taxable value of each property.

51. Plaintiffs and their counsel will fairly and adequately protect the interests of the class. Plaintiffs' representatives **HERTEL** and **HUTCHINS** have worked in the location where the real property transfer documents/instruments of the type filed by Defendants herein were filed on a daily basis, and are thoroughly versed and cognizant of the issues and the proofs necessary to prevail in this litigation.

52. Plaintiffs' class representatives are committed to vigorously litigating this matter and have allocated significant public funds and access to public records to process this class action. To that end, **INGHAM COUNTY** and **BRANCH COUNTY** have retained counsel experienced in litigation and class claims to collect what they believe is due and owing to them and their fellow class members. Neither representative **HUTCHINS** or **HERTEL**, or their counsel, has any interests that would cause them to not vigorously pursue this claim.

53. Plaintiffs claims are typical of the claims of the class, which all arise from the same operative facts and are based on the same legal theories.

54. A class action is a superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum damages in an individual action are at the rate of 55 cents per \$500 in a county with a population of less than 2,000,000 and not more than 75 cents as authorized by the county board of commissioners in a county with a population of 2,000,000 or more for each \$500.00 or fraction thereof for the *CRET*; and levied at the rate of \$3.75 for each \$500.00 or fraction

of \$500.00 of the total value of the property being transferred for the *SRETT*. Management of this class claim is likely to present significantly fewer difficulties than those presented in many class claims (i.e., securities fraud) as the legal and factual issues herein are straightforward and statutorily based.

Defendants drafted, made, executed, issued, and/or delivered assignments and other instruments of conveyance of real property or interest in property for consideration, which did not comply with Michigan law and for which they failed to pay any transfer taxes what so ever.

55. Certification of each class under MCR 3.501 is appropriate as stated above because of the numerous and common claims of Plaintiffs specifically, and the Class generally.

56. Plaintiffs' seek money damages in the form of unpaid taxes, costs and penalties on real property transfers including deeds, documents and other instruments transferring property interests.

VII. CLAIMS FOR RELIEF

Count 1-County Unpaid Taxes

57. Plaintiff incorporates the above allegations, Paragraphs one (1) through fifty six (56) of this Complaint as if specifically set forth hereafter in their entirety.

58. Defendants have violated the County Transfer Tax under MCL 207.501 et seq. in the following manner:

- a. Improperly filing real property transfer documents/instruments that did not declare the true value of the property being assigned/transferred as well as the full consideration given/received on the face of each and every assignment;
- b. Alternatively failing to attach an affidavit stating the true value of the property interest being assigned/transferred where the true value of the transfer was not placed on the front of the document/instrument;⁵
- c. Improperly filing deeds in all 83 counties in Michigan without stating the true value of the property on the face of the transfer document/instrument or in an attached affidavit, thereby eliminating evidence of the true value of a property transfer upon which transfer taxes would be owed;
- d. Failing to pay the required state and county real estate transfer taxes on the true value of the property interest being assigned/transferred for each and every transfer document/instrument filed in the 83 counties of Michigan;

⁵ MCL 207.504

- e. Failing to state on the face of the subject assignments/transfer instruments any reason for Defendants' failure to pay and any applicable exemption from state and county real estate taxes as required by law;⁶
- f. Defendants have converted a portion of the consideration creating the real property transfer they were paid as grantor/seller for their own use, monetary or otherwise, for each assignment which is the subject of this class action, that should have been paid over to the Plaintiff class members for transfer taxes due and owing;
- g. For other acts and failures to act which will be proven at trial.

Wherefore, Plaintiffs and the Class they represent seek judgments against Defendants jointly and severally, and respectfully demand equitable and monetary relief as follows:

a. Declaratory Judgment declaring the activities of Defendants as violative of the applicable statutes, improper, and void regarding the exemptions contained on the deeds and other transfer instruments filed by Defendants in Ingham and Branch County;

b. Judgment in Plaintiff's favor of monetary damages for each deed or document/instrument transferring a property interest for filing with the Ingham and Branch County Register of Deeds that was presented for filing without payment of the proper transfer taxes and fees;

c. Judgment in Plaintiff's favor for monetary damages and triple damages as punitive damages pursuant to MCL 600.2919a and/or MCL 440.3420 for the penalties and interest owed for each deed or document/instrument transferring a property interest for filing with the Ingham County Register of Deeds without the proper transfer taxes and fees;

d. Judgment awarding the Plaintiffs their costs and expenses, including actual attorney's fees, expert fees, and other costs and disbursements;

e. Judgment awarding the Plaintiff such other and further relief as the Court may deem just and proper under the circumstances of this case.

Count 2 - State of Michigan Unpaid Taxes

59. Plaintiff incorporates the above allegations, Paragraphs one (1) through fifty six (56) of this Complaint as if specifically set forth hereafter in their entirety.

60. Defendants have violated the State Transfer Tax under MCL 207.523 et seq. in the following manner:

- a. Improperly filing real property transfer documents/instruments that did not declare the true value of the property being assigned/transferred as well as the full consideration given/received on the face of each and every assignment;

⁶ MCL 207.511

- b. Alternatively failing to attach an affidavit stating the true value of the property interest being assigned/transferred where the true value of the transfer was not placed on the front of the transfer document/instrument;⁷
- c. Improperly filing deeds in all 83 counties in Michigan without stating the true value of the property on the face of the transfer document/instrument or in an attached affidavit, thereby eliminating evidence of the true value of a property transfer upon which transfer taxes would be owed;
- d. Failing to pay the required state and county real estate transfer taxes on the true value of the property interest being assigned/transferred for each and every transfer document/instrument filed in the 83 counties of Michigan;
- e. Failing to state on the face of the subject assignments/transfer instruments the reason for Defendants' failure to pay for and any applicable exemption from state and county real estate taxes as required by law;⁸
- f. Defendants have converted a portion of the consideration they were paid as grantor/seller in creating the real property transfer, for their own use, monetary or otherwise, for each real property transfer which is the subject of this class action, that should have been paid over to the Plaintiff class members for transfer taxes due and owing;
- g. For other acts and failures to act which will be proven at trial.

Wherefore, Plaintiffs and the Class they represent seek judgments against Defendants jointly and severally, and respectfully demand equitable and monetary relief as follows:

a. Declaratory Judgment declaring the activities of Defendants as violative of the applicable statutes, improper, and void regarding the exemptions contained on the deeds and other transfer instruments filed by Defendants in Ingham and Branch County;

b. Judgment in Plaintiffs' favor of monetary damages for each deed or document transferring a property interest for filing with the Ingham and Branch County Register of Deeds that was presented for filing without payment of the proper transfer taxes and fees;

c. Judgment in Plaintiffs' favor for monetary damages and triple damages as punitive damages pursuant to MCL 600.2919a and/or MCL 440.3420 for the penalties and interest owed for each deed or documents transferring a property interest for filing with the Ingham and Branch County Register of Deeds without the proper transfer taxes and fees;

d. Judgment awarding Plaintiffs their costs and expenses, including actual attorney's fees, expert fees, and other costs and disbursements;

⁷ MCL 207.525(2)

⁸ MCL 207.533

e. Judgment awarding Plaintiffs such other and further relief as the Court may deem just and proper under the circumstances of this case.

RESPECTFULLY SUBMITTED:

DANIEL P. MARSH, PLLC
By:

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WM MAXWELL & ASSOCIATES
By:

Wm Maxwell, Jr. P35846
Attorney for Plaintiff

Dated: November 10, 2011

STATE OF MICHIGAN

30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CURTIS HERTEL, the Register of Deeds and Representative of **INGHAM COUNTY**; and **NANCY HUTCHINS**, the Register of Deeds and Representative of **BRANCH COUNTY**, both as Class Representatives of all 83 counties in the State of Michigan.

Plaintiffs,

V

Case No.
HON.

NZ

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. , MERSCORP, INC., JEANNE KIVI, ELLEN COON, MARSHALL ISAACS, BANK OF AMERICA, JP MORGAN CHASE & CO, CHASE HOME MORTGAGE CORPORATION f/k/a CHASE HOME FINANCE, WELLS FARGO, CITIMORTGAGE INC., eTITLE AGENCY INC, 1ST CHOICE TITLE SERVICES INC, ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LLC, and FEDERAL NATIONAL MORTGAGE ASSOCIATION, and JOHN DOE as Any Other authorized signers for MERS or MERSCORP, INC. and Defendants JOHN DOE Corporations I – MMM,

Defendants.

William E. Maxwell, Jr. P35846

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JURY DEMAND

NOW COMES Plaintiffs, **CURTIS HERTEL, individually and as Register of Deeds and Representative for INGHAM COUNTY** and **NANCY HUTCHINS, individually and as the Register of Deeds and Representative for BRANCH COUNTY** by and through their attorneys, and hereby demands a jury trial for all issues properly presented in this complaint.

DANIEL P. MARSH, PLLC

By:

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WM MAXWELL & ASSOCIATES

By:

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Attorney for Plaintiff

Dated: November 10, 2011