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THIRD JUDICIAL DISTRICT COURT
COUNTY OF CHURCHILL

STATE OF NEVADA ex rel BARRETT
BATES, on behalf of real parties in
interest, WASHOE COUNTY, CLARK
COUNTY, HUMBOLDT COUNTY,
STOREY COUNTY, PERSHING
COUNTY, CHURCHILL COUNTY, CITY
AND COUNTY OF CARSON CITY,
ESMERELDA COUNTY, WHITE PINE
COUNTY, LYON COUNTY, ELKO
COUNTY, NYE COUNTY, MINERAL
COUNTY, LANDER COUNTY, EUREKA
COUNTY, LINCOLN COUNTY, and
DOUGLAS COUNTY,

Plaintiff,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., a
subsidiary of MERSCORP, Inc., a
Delaware corporation; BANK OF
AMERICA, N.A., COUNTRYWIDE
HOME LOANS, INC., nka BANK OF
AMERICA, N.A., CITIMORTGAGE, INC.,
GMAC MORTGAGE, LLC, GMAC LLC, ,
J.P. MORGAN CHASE BANK, WELLS
FARGO, N.A., COOPER CASTLE LAW
FIRM, STANLEY S. SILVA, and

Case No. 35004

Third Amended Complaint

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1 DOES A-MMM,

2 Defendants.

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4 COMES NOW the State of Nevada ex rel. Barrett Bates, on behalf of real parties in
5 interest, the Counties of Nevada, above-named, by and through counsel Robert R. Hager,
6 Treva J. Hearne, and Mark Mausert, and hereby complains of defendants as follows:

7 **Statement of the Case**

8 Plaintiff Barrett Bates seeks recovery pursuant to NRS 357, the False Claims Act
9 because the Defendant made false representations in order to avoid payment in full of all
10 recording fees reflecting the establishment and/or transfer of secured interests in real
11 property in the State. After having recorded false, fraudulent, misleading and untruthful
12 documents with the land records of the Counties of this State, Defendants failed to
13 cure/correct said false, fraudulent, misleading and untruthful documents and, thereby,
14 avoided, decreased and/or diminished their obligation to pay fees or monies to the
15 Counties, the above named real parties in interest.

16 **Parties**

17 1. Barrett Bates, Relator, is a resident of the State of Nevada and an original
18 source of information and authorized to bring this action pursuant to and within the
19 meaning of NRS 357.080 and is the qui tam Plaintiff because Bates has worked in the
20 secondary mortgage market business and, during the course of his work in June 2009,
21 became aware that Defendants were making false statements in order to avoid or
22 decrease payments owed to the above-named Counties, and brings this action under
23 NRS 357 against Defendants for violations of these sections.

24 2. The State of Nevada, ("State") is a sovereign State and is one of the United
25 States of America and may be entitled damages for the benefit of State and the Counties
26 based upon the false claims asserted herein.

27 3. The above-named Counties are political subdivisions of the State, which will
28 ultimately be entitled to a portion of the proceeds of this action. The Counties are the

1 real parties in interest. Qui tam Plaintiff Bates has brought this action on behalf of the
2 real parties in interest.

3 4. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., is a
4 Delaware corporation is a subsidiary of MERSCORP, Inc., and has done business and is
5 doing business in the State and/or in each of the above-named Counties, with its
6 principle place of business in Reston, VA.

7 5. Defendant BANK OF AMERICA, NA (BofA) is a national association that
8 originated and serviced residential home loans in the counties of the State.

9 6. Defendant COUNTRYWIDE HOME LOANS, INC., is a foreign corporation that
10 originated and serviced home loans in the counties of the State.

11 7. Defendant J. P. MORGAN CHASE, INC., dba CHASE HOME MORTGAGE
12 CORPORATION is a corporation that originated and serviced residential home loans in
13 the counties of the State.

14 8. Defendant CITIMORTGAGE, INC. is a corporation that originated and serviced
15 residential home loans in the counties of the State.

16 9. Defendant GMAC MORTGAGE LLC is a limited liability corporation that
17 originated and serviced residential home loans in the counties of the State and is wholly
18 owned by Defendant GMAC MORTGAGE CORPORATION.

19 10. Defendant WELLS FARGO BANK, NA, is a national association that originated
20 and serviced residential home loans in the counties of the State.

21 11. Defendant COOPER CASTLE LAW FIRM is a Nevada limited liability
22 partnership that is an example of the type of foreclosing entity used by the other
23 defendants when foreclosing on homes and then Cooper Castle transfers those homes
24 pursuant to foreclosure and records and fails to record documents regarding those
25 transfers.

26 12. Defendant STANLEY S. SILVA is a resident of Reno, Nevada and acts as an
27 agent that signs for various foreclosing entities including but not limited to Cal Western
28

1 Reconveyance, LSI, Trustee Corps, National Default Servicing, and records and fails to
2 record certain documents pursuant to foreclosure.

3 13. Doe defendants I – MMM are corporations, partnerships, limited liability
4 companies, or some other entities which are liable and responsible for concealing,
5 avoiding, or decreasing fees or monies which were owed to the above-named counties
6 and the State.

7 **General Allegations**

8 14. Recovery is sought pursuant to the Nevada False Claims Act, NRS 357.010 et
9 seq. for all acts and false claims made by the Defendants and occurring within ten (10)
10 years immediately preceding the filing of this Complaint.

11 15. During the ten years immediately preceding the filing of the original Complaint
12 herein, Defendants, with full knowledge, and /or reckless disregard, and or willful
13 ignorance, made false representations in order to avoid payment in full for all fees for
14 recordation of documents reflecting the establishment and/or transfer of secured
15 interests in real property in the State, and further knowingly failed to record documents
16 with the intent of avoiding payments of recording fees to the Counties.

17 16. The Defendants adopted the Mortgage Electronic Registration System
18 (“MERS”) to intentionally and knowingly deprive county and state governments of
19 revenue used among other things to maintain county real property records, fund the
20 judiciary, fund school systems, and provide other government services. But for the
21 recordation of false statements, the Defendants would have paid additional recording
22 fees to the counties and the State.

23 17. MERS is named in millions of recorded documents in the counties in the State.

24 18. Defendants recorded or caused to be recorded deeds of trust/mortgages and
25 other documents which identified MERS as the “beneficiary,” which MERS is not, or the
26 “nominee of the lender” and “lender’s successors and assigns,” which MERS never was,
27 as holding “legal title” when the legal title rested with the Trustee in the deed of trust in
28 this State which uses a deed of trust to secure a mortgage; thereby, the Defendants

1 falsely named, appointed and or characterized MERS in any of the afore-named
2 capacities in numerous documents recorded throughout the counties of the State over
3 the last ten (10) years.

4 19. Defendants made these characterizations for MERS despite the fact that MERS
5 never had and has no employees, and, instead, purported to act since MERS' inception,
6 through alleged authorized certifying officers and signatories who were never authorized
7 to act by any official act or corporate resolution of MERS or to act in any MERS'
8 representative capacity whatsoever. Further, such alleged signatories or certifying
9 officers were not and are not authorized by any applicable law to take any action on
10 behalf of MERS with regard to any documents recorded in the State bearing MERS'
11 name or on MERS' behalf.

12 20. Additionally, these documents affected the interests in real estate and, if
13 recorded, were required to be recorded pursuant to NRS 107.080 in order to avail
14 themselves of the applicable foreclosure statutes, benefit from the designation and
15 presumption which accompany the characterization as a secured creditor and ultimately
16 benefit from the secured lien position in land records, all recorded documents were
17 required to be recorded without false statements so as to maintain the veracity and
18 sanctity of the land records and to allow the general public to rely on the truth of any
19 document filed therein.

20 21. Despite millions of deeds of trust that were executed with promissory notes
21 which notes were then transferred to various MBS that were not members of MERS, the
22 Defendants with reckless disregard, and or willful ignorance, failed to record the
23 documents described in this Amended Complaint and other documents in the above-
24 named Counties. Relator Bates now brings this action under NRS § 357.010 et seq.
25 against defendants for violations of these sections.

26 22. As of September, 2009, MERS had been named as the mortgagee or beneficiary
27 on approximately 62 million mortgages and deeds of trust in the United States by MERS
28 members.

1 23. Defendants acted in concert in violation of NRS 107.080 and NRS 246.100 and
2 are each liable for violations of the False Claims Act.

3 24. Defendants obtained monies from borrowers on mortgages in each County of
4 this State, pursuant to settlement statements which indicated recording fees were due
5 and owing, which reflected each defendants' knowledge that such recordings were
6 required by law, but which documents defendants thereafter failed to record.

7 25. Additionally, these documents affected the interests in real estate and were,
8 therefore, to be recorded pursuant to NRS 107.080 in order to proceed falsely under the
9 provisions of NRS 107.080 and other provisions of Nevada law. Thus, Defendants
10 recorded documents that did not reflect and do not reflect the true nature of the security
11 instruments in the land recording systems throughout the State.

12 26. While recording deeds of trust, mortgages, or any other security instruments
13 and/or assignments the Defendants availed themselves of protection from subsequent
14 purchasers and lien holders as provided by the Nevada recording statutes. When
15 recording such interests Defendants were obliged to record only truthful documents
16 pursuant to the laws of the State.

17 27. The Defendants' contractual and agency relationships with MERS also
18 required, as does Nevada law, that additional documents be truthfully recorded if there
19 was a transfer of an interest in real property, i.e. the status of the loans and/or
20 documents changed to a non-MERS Member. Specifically, MERS' policies and promises
21 with their members oblige them to record and pay for recordation of documents
22 reflecting the establishment and/or transfer of secured interests in real property, or
23 beneficial interest in the underlying promissory notes, when a non-MERS member
24 acquires an interest in any debt evidenced by a security instrument.

25 28. Defendants failed to record or cause to be recorded any such documents of a
26 non-MERS member interest in the applicable loans and security instrument with the
27 specific intent of avoiding payments to the Counties of the State. Specifically, all
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1 securitized mortgage trusts created by defendants were never members of MERS but yet
2 allegedly bought ownership interests in the applicable loans.

3 29. Based on the false representations, the recorded documents in the land records
4 do not reflect the true beneficial ownership of the loans in question or accurately
5 represent the ownership of the security instruments securing the loans/notes. Thus, the
6 Defendants, BANK OF AMERICA, N.A., COUNTRYWIDE HOME LOANS, INC., nka
7 BANK OF AMERICA, N.A., CITIMORTGAGE, INC., GMAC MORTGAGE, LLC, GMAC
8 LLC, , J.P. MORGAN CHASE BANK, and WELLS FARGO, N.A., acted in contravention
9 of their own contractual relationships with MERS and , likewise, the residential
10 mortgage backed securitization trusts which Defendants represent were also violated and
11 not adhered to as required. Specifically, the applicable disclosures to investors of those
12 securitization certificates obliged Defendants to truthfully record deeds of trust,
13 mortgages, deeds of trust/mortgages assignments, and other documents evidencing the
14 non-MERS Member investors' interest in real property, and, in an event of default, other
15 foreclosure related documents recorded in the counties of the State.

16 30. But for the initial recordation of false statements and documents, which false
17 documents also then created an obligation to record other curing/corrective documents,
18 the Defendants would have paid additional recording fees to county recording offices
19 that would have been used for the benefit of all residents of the counties and the State.

20 31. Using those false statements, the Defendants failed to satisfy their own
21 contractual obligations, violated the sanctity of the land records and used those
22 misleading documents to induce securitization and certificate investors to purchase
23 residential mortgage backed securities issued from mortgage securitization pools that the
24 Defendant financial institutions created, aggregated, sponsored, underwrote, and sold in
25 the securities markets around the world. All the time never recording any real estate
26 interests of those securitizing trusts in the land records of the State; thereby, not paying
27 the necessary recording fees in the applicable land recording offices.

28

1 32. But for the false assertions and claims in the recorded documents, MERS
2 and/or the other Defendants would have recorded documents and paid county
3 governments fees that accurately reflected the status of the respective loans and
4 documents.

5 33. Falsely recording MERS as the beneficiary on their deeds of trust created an
6 oversimplified, illusory, and false chain of title that purported to justify payment of less
7 money in recording fees; depriving the counties and the State from those fees and
8 directly contributed to the financial deficits that the counties are currently experiencing.

9 34. Further, in an event of foreclosure and in order to proceed under NRS 107.080
10 et seq., Defendants continued to record false and misleading documents to avail
11 themselves of the privilege of the non-judicial foreclosure statutes and falsely asserted
12 that MERS was authorized, as a false “nominee of lender or beneficiary of lender,” to
13 record documents. This enabled Defendants to continue perpetrating the fraud in the
14 recorded documents by filing additional documents purporting to designate substitute
15 beneficiaries and appoint substitute trustees to commence foreclosure proceedings.

16 35. When a promissory note secured by a MERS deed of trust/mortgage was
17 assigned to a mortgage backed security entity (“MBS”), a securitized mortgage investor
18 pool, mortgage loan pool, special purpose vehicle (“SPV”), or real estate mortgage
19 investment conduit (“REMIC”), pursuant to MERS’ own rules and membership
20 agreements, the agency authority, if any, and the relationship of MERS and all of its
21 members to the promissory note and deed of trust/mortgage was extinguished, and a
22 truthful recording should have been made to accurately reflect the change of status with
23 respect to the loans; and with respect to the borrowers’ and REMIC investors’
24 expectations and contractual obligations.

25 36. The MERS membership agreement obliged Defendants to make two separate
26 recordings in the event of a transfer to a mortgage backed security pool or trust (MBS,
27 SPV, or REMIC) outside the MERS system: (1) an assignment of beneficial interest and
28 (2) a designation of substitute trustee or beneficiary.

1 37. Immediately upon every such assignment to a securitized mortgage pool trust,
2 the assignment of the Note and/or Deed of Trust to a new beneficiary was required to be
3 recorded in the County where the real estate was located. Defendant MERS and the
4 named Defendants, however, failed to make such recordings or pay the fees, or made,
5 caused to be made and used false statements regarding the identity of the true
6 beneficiary of the deeds of trust to commence and advance foreclosure in the State.

7 38. Despite more than 800,000 deeds of trust in the State of Nevada being
8 executed with promissory notes, which notes were then allegedly transferred to various
9 MBS, SPV or REMICs that were non-MERS Members, the Defendants intentionally
10 failed to record the documents described above, and other documents, so as to reflect the
11 non-MERS' Members' interest in the loans and in the land records.

12 39. As of September 2009, MERS had been named as the mortgagee or beneficiary
13 on approximately 62 million mortgages and deeds of trust in the United States.

14 40. Defendants violated the False Claims Act by taking such actions as preparing
15 and recording documents containing information the Defendants knew was false
16 including without limitation documents which incorrectly and untruthfully designate
17 MERS as a beneficiary or nominee of lender, including but not limited to: 1.) deeds of
18 trust, 2.) notices of substitute trustee, 3.) notices of default 4.) trustees' deeds of sale
19 following foreclosure, and 5.) recorded documents which purported to assign *from*
20 MERS to some other entities, even entities that are not MERS Members, a deed of
21 trust/mortgage without first transferring the underlying promissory note evidencing
22 such indebtedness, 6.) Preparing and recording other documents intended to avoid / or
23 decrease recording fees that would otherwise have reflected the truth.

24 41. Defendants, with reckless disregard and or willful ignorance recorded, and
25 continue to record documents wherein employees of companies other than MERS falsely
26 identify themselves as being "officers and/or vice presidents" of MERS, or in some
27 instances, of the Federal Deposit Insurance Corporation or other entity which has no
28 knowledge of the actions of these supposed authorized signatories or certifying officers.

1 These so called certifying “officers and/or vice presidents” have no employment
2 relationship with MERS and are not, in fact, officers or vice presidents of MERS.

3 42. MERS and the other Defendants allow non-MERS employees to identify
4 themselves as officers or vice presidents of MERS because it creates the illusion of a
5 recorded chain of title whereby the actual creditors and/or loan beneficiaries remain
6 hidden from public record. Because promissory notes were frequently assigned, the
7 falsely recorded documents decreased the number of recording fees paid by Defendants.

8 43. Defendants with reckless disregard, an/or willful ignorance, or otherwise, with
9 the requisite actionable *scienter*, made, caused to be made and used, and continued to
10 cause to be made and used, false records and statements designed to conceal, avoid
11 and/or decrease obligations to pay recording fees to the above-named Counties of the
12 State.

13 44. The stated MERS’ business model was to eliminate the recordation of
14 assignments and transfers of interests that affect real estate throughout State and the
15 remaining jurisdictions of the United States. MERS advertises itself, via its website and
16 written material as providing the ability to avoid the time and expense of recording
17 through a scheme whereby MERS falsely holds itself out to the world as a beneficiary, or
18 as a nominee or mortgagee. Each Defendant herein was aware, at all relevant times, that
19 this recording fee avoidance scheme was predicated upon the false recordings disclosed
20 in this Complaint.

21 45. Defendants and others affirmatively acted to make, cause and use and continue
22 to make, cause and use documents wherein MERS is listed as the lien holder of record on
23 all recorded security instruments relating to notes registered on the MERS® System.

24 46. The process of falsely using MERS as the beneficiary under a security
25 instrument to avoid naming the true owner of the applicable Note was devised to
26 eliminate recording of documents affecting interests in real estate, in violation of the
27 state laws under which MBS trusts were created, the laws of the State as referred to
28 hereinabove, and the Defendants continue to use those false documents to avoid

1 payment of required recording fees and to pursue judicial and non-judicial foreclosures
2 around the country. The Defendants MORTGAGE ELECTRONIC REGISTRATION
3 SYSTEM, INC., BANK OF AMERICA, N.A., COUNTRYWIDE HOME LOANS, INC.,
4 CITIMORTGAGE, INC., GMAC MORTGAGE, LLC, GMAC LLC, , J.P. MORGAN CHASE
5 BANK, and WELLS FARGO, N.A., have made, caused to be made, used and continue to
6 make, cause to be made and use false statements and records stating that MERS
7 transferred and continues to transfer notes secured by deeds of trust in the State, and
8 those false statements are made for the purpose of concealing, avoiding and/or
9 decreasing their obligations to pay recording fees to the above-named Counties of the
10 State.

11 47. When the note was transferred to a non-MERS member, the policies and terms
12 and conditions of MERS required that the assignment of the loan from MERS to the non-
13 MERS member be executed by MERS and recorded in the county where the real property
14 was located.

15 48. Each and every loan registered on the MERS System secured by real property
16 in the State that was secured by a deed of trust, that designated MERS as the beneficiary
17 and was transferred to an MBS, is a loan that was required under SEC rules and
18 regulations and State trust law under which the pool was created, to be the subject of a
19 recorded assignment of the deed of trust from MERS to the MBS pool.

20 49. MERS did and does maintain a list of all MERS Members, and no MBS pool
21 and no trust (i.e. MBS, SPV, REMIC) which owned loans secured by MERS' deeds of
22 trust on real estate in the State was or is a MERS Member, and defendants MORTGAGE
23 ELECTRONIC REGISTRATION SYSTEM, INC., BANK OF AMERICA, N.A.,
24 COUNTRYWIDE HOME LOANS, INC., CITIMORTGAGE, INC., GMAC MORTGAGE,
25 LLC, GMAC LLC, , J.P. MORGAN CHASE BANK, and WELLS FARGO, N.A., and each of
26 them knew that the failure to record the assignment of beneficial interest in each such
27 deed of trust to the pool was a violation of the MERS membership agreements and its
28 Rules and Regulations, of federal banking laws, of SEC rules and regulations, of the State

1 laws under which the pools were created, and of the contractual obligations of those
2 Defendants to the investors in the pools which owned those loans.

3 50. Defendants failed to record the transfers of promissory notes and the
4 assignment of the deeds of trust to non-MERS members, then continued, even after the
5 Defendants knew such notes had been assigned outside the MERS system, to
6 intentionally record documents which Defendants knew were false and fraudulent in that
7 the documents purported to reflect a continuing relationship between MERS, and its
8 MERS Members to those loans, and finally the Defendants failed to pay to the counties
9 the recordation fee for documents the Defendants knew were required to be recorded in
10 order to cause the real property recordation system in the State to reflect the true
11 ownership thereof and convey any authority to act relative to those loans.

12 51. The failure to record the required transfers and assignments of security
13 interests and the recordation of knowingly false documents was motivated by the
14 financial self-interest of Defendants to improperly profit from their business activities.
15 Further, having filed false documents, such false recordings enabled Defendants BANK
16 OF AMERICA, N.A., COUNTRYWIDE HOME LOANS, INC., CITIMORTGAGE, INC.,
17 GMAC MORTGAGE, LLC, GMAC LLC, , J.P. MORGAN CHASE BANK, and WELLS
18 FARGO, N.A., to hide their other activities with respect to their: 1. acquisition of credit
19 default swaps, 2. credit derivatives, 3. lack of any loan origination underwriting
20 standards, 4. lack of any underwriting standards for the securitized mortgage trusts
21 Defendants created, 5. hide/clouded their failure to comply with any IRS REMIC rules
22 regarding transfer of loans to the REMIC entities, and 6. create the appearance of an
23 arms-length transaction so as not to violate the well-established principle of good faith
24 and fair dealing.

25 52. The designation of MERS as a beneficiary or nominee of the lender on a deed of
26 trust was an intentional and knowing false designation by MERS in numerous ways,
27 namely: 1) neither MERS nor the "lender" so designated was the true lender; 2) MERS
28 was not the nominee of the true lender of the funds for which the promissory note was

1 executed; 3) MERS did not collect or distribute payments, pay escrow items, hold client
2 funds on deposit, pay insurance for clients or borrowers, or pay taxes; 4) MERS had no
3 right to collect money on the note or to receive any proceeds or value from any
4 foreclosure; and, 5) the name "MERS" does not appear on any promissory note secured
5 by real estate in the State.

6 53. The Defendants have used the non-judicial foreclosure statute to foreclose
7 upon borrowers with known false documents in violation of the laws of the State. If
8 accurate and non-fraudulent records would be maintained and recorded by Defendants,
9 these truthful documents would result in the payment of fees for the recording of such
10 documents.

11 54. An example of how the Defendants availed themselves of the benefit of the non
12 judicial foreclosure system through the recording of false statements without paying the
13 obligations under those same recording statutes can be demonstrated by the cradle-to-
14 grave review of the documents in the life-cycle of the MERS deed of trust of Nicole
15 (Javier) Contreras.

16 a. On or about February 22, 2006, Contreras refinanced the residence by
17 executing a deed of trust with Master Financial, Inc. named as the
18 "lender" and would be referred to in common parlance as the true
19 beneficiary of the note because the "lender" is assumed to have been
20 the entity that loaned the funds for the loan. MERS was named on the
21 deed of trust as the beneficiary or the "nominee of the lender" and the
22 Trustee named was T.D. Services. The deed of trust contained false
23 statements in that Master Financial, Inc. was not the lender and loaned
24 no funds, and MERS was not a beneficiary and was not an agent of the
25 lender and had no authority to act as an agent of the true lender/true
26 beneficiary.

27 b. Contreras made payments on the loan until the rate and payment
28 adjusted. On June 5, 2009 Quality Loan Services by LSI Title Agency

1 Inc, as agents for the “beneficiary” recorded a Notice of Default
2 pursuant to NRS 107.080 No document was recorded that transferred
3 any interest in the loan or real property of Contreras to Quality Loan
4 Services or LSI Title Agency. No document was recorded that
5 substituted the trustee by the owner of the note or the true beneficiary
6 and MERS did not allege to act on behalf of Wells Fargo Home
7 Mortgage which had five days earlier recorded the

8 c. On April 8, 2009, a Notice of Trustee’s Sale was sent to Contreras but
9 was not recorded in the Washoe County Recorder’s office. A recording
10 was required for a Notice of Trustee’s Sale. .

11 52. When a mortgage loan is securitized (placed in a mortgage loan pool that is
12 subsequently sold in the securities market), and *does not default*, the false designation of
13 and use of MERS allows: (1) the loan funder; (2) the securitized loan sponsor; (3) the
14 loan master servicer; (4) the loan sub-servicers; (5) the securitized loan trust; (6) the
15 loan custodian; (7) the securitized loan trustee; (8) the credit default swap and credit
16 derivatives parties/counter parties, and others, to avoid recording any interest that each
17 and every one of them would have in the property secured by the deed of trust/mortgage.

18 53. MERS and the other Defendants effectuate transfers of real estate interests via
19 “electronic handshake(s)” that the Legislature of the State intended to be recorded by the
20 county land recorders for the purpose of providing an accessible public record that
21 reflects the actual transfers of interests in real estate available to the public and,
22 particularly, by other interested secured creditors and judgment holders where the real
23 estate is situated. That is, Defendants availed themselves of the protection and benefit
24 of the recording and non-judicial foreclosure statutes, while avoiding full payment and
25 while impairing integrity of the land records.

26 54. All Defendants knew, and should have known, the MERS system was a sham;
27 was intended to wrongfully bypass the counties’ recording requirements; divested the
28 borrowers of the right to know who owned the promissory note that was executed with

1 the deed of trust/mortgage or other security instrument; and recorded false documents
2 to initiate and pursue non-judicial foreclosures, and to otherwise decrease or avoid
3 payment of fees to the Counties and the Cities where the real estate is located.

4 55. All Defendants' actions complained of hereinabove were taken with reckless
5 disregard, and or willful ignorance that the recording of false documents and the failure
6 to record truthful documents jeopardized the real property recording system adopted by
7 the Legislature for the purpose of maintaining certainty in real estate transactions and
8 for public knowledge.

9 56. These recordings and failures to record created/create a cloud on title as to
10 property secured by MERS deeds of trust/mortgages, security instruments and lien
11 releases throughout the State.

12 57. Unlike the recordation system adopted by the General Assembly of the State of
13 California, MERS does not have a reasonable monitoring system to ensure that
14 knowledge of the ownership of the interests in real estate is made available to the public.
15 MERS failed to monitor the documents recorded in the counties of the State and failed to
16 monitor the transfer of interests in real estate by MERS' members and so called
17 "authorized signatories" or "certifying officers."

18 58. All Defendants have used these security instruments with MERS being falsely
19 designated as the "beneficiary" as a means of effectuating foreclosures by use of the
20 county Recorders just prior to the foreclosure by recording documents only to the extent
21 of effectuating the foreclosure without recording any of the interim transfers prior to the
22 foreclosure.

23 59. MERS claims to have "saved" at least \$2.4 billion dollars in recording costs by
24 not filing or recording documents that reflect the transfer of an interest in real estate on
25 loans that have a MERS deed of trust or security instrument, which documents would
26 have otherwise been recorded and which costs are due and owing to the counties of the
27 State by Defendants.

28

CLAIM FOR RELIEF

(Violation of NRS 357: the False Claims Act)

1
2
3 60. The Plaintiff relator hereby incorporates all other paragraphs of this First
4 Amended Complaint as if set forth herein.

5 61. MERS was formed and has operated in the State of Nevada for ten (10) years
6 immediately preceding the filing of this Complaint in this matter and continues to
7 operate with the effect of avoiding and/or decreasing payment of fees or monies to the
8 county Recorders of each county of the State in violation of NRS 357.

9 62. Defendants prepared and/or recorded false documents, including security
10 instruments (e.g. deeds of trusts/mortgages), notices of default, notices of appointment
11 of substitute trustees, notices of sale, trustees' deeds upon sale, and other documents for
12 the purpose of avoiding and/or decreasing their obligation to pay recording fees.

13 63. As a direct and proximate result of Defendants' actions as described herein, the
14 above-named counties and the State have been deprived of revenues to which such
15 governmental bodies were legally entitled.

16 64. As a further direct and proximate result of the actions of the Defendants and
17 each of them, as complained of herein, the counties have been deprived of the use of
18 these revenues and interest thereon.

19 65. All Defendants, with willful ignorance or reckless disregard, failed to pay these
20 recording fees and failed to disclose the transfers and assignments of interests in real
21 estate which had the effect of avoiding and decreasing the recordation fees owed to the
22 counties of the State of Nevada.

23 66. All Defendants, and each of them, with willful ignorance or reckless disregard,
24 made, caused to be made and used and continued to make, cause to be made, and use
25 false, misleading, and untruthful statements recorded in documents in the land records
26 which falsely assert that an interest is held and/or transferred by MERS, or that MERS
27 was or is authorized to act as an agent or nominee for non-MERS members.
28

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1 67. Pursuant to NRS 357, Defendants are liable for three times the amount of
2 damages actually sustained; for the costs of bringing this action; and for liquidated
3 damages for each act constituting a violation of the False Claims Act.

4 68. Pursuant to the Nevada False Claims Act, Relator Bates is entitled to recover
5 reasonable expenses and attorneys' fees.

6 69. The acts of the Defendants in violation of the False Claims Act are continuing by
7 Defendants, and the continuing acts are included as claims on behalf of the real parties
8 in interest and by the Relator.

9 WHEREFORE, Plaintiff the State of Nevada, *ex rel.* Barrett Bates requests that the
10 Court enter judgment in favor of the State and its counties against Defendants as follows:

11 1. For treble damages for all recording fees which were not paid in full as required
12 by the laws of the State on any and all such avoided recording fees during the ten (10)
13 years immediately preceding the filing of the original complaint herein;

14 2. For civil penalties of between \$5,000 and \$10,000 for each unpaid and/or
15 underpaid recording fee in the ten (10) years immediately preceding the filing of the
16 original Complaint herein;

17 3. For civil penalties of between \$5,000 and \$10,000 for each false document
18 recorded, without limitation, each deed of trust, deed of appointment of substitute
19 trustee, deed of foreclosure sale, and other documents recorded in the ten (10) years
20 immediately preceding the filing of the Complaint, which security instrument purported
21 to secure an obligation by real estate in the State and in which MERS was named as
22 beneficiary and/or nominee of the lender;

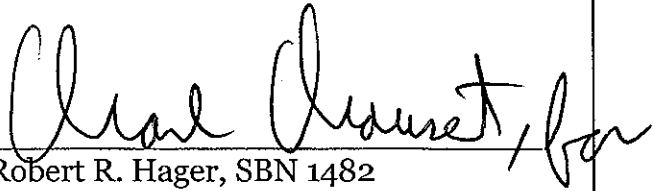
23 4. For civil penalties of between \$5,000 and \$10,000 for each act during the ten
24 (10) years immediately preceding the filing of this Complaint for having knowingly
25 made, used and caused to be made or used, false records and/or statements to conceal,
26 avoid or decrease obligations to pay or transmit money duly owed to the State and/or its
27 Counties for recording fees reflecting the assignments of rights or interests in real
28 property in the State;

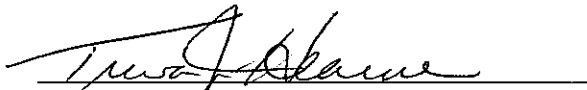
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- 5. For pre-judgment interest on all damages awarded;
- 6. For reasonable costs and attorneys' fees;
- 7. For an award to Plaintiff Bates in an amount consistent with the False Claims Act of Nevada; and
- 8. For such other relief that the Court or jury deems just and equitable.

Dated this 14th day of June, 2010.


Robert R. Hager, SBN 1482


Treva Hearne, SBN 4450


Mark Mausert, SBN 2398