

MORGAN, LEWIS & BOCKIUS LLP  
FRANKLIN BROCKWAY GOWDY, State Bar No. 047918  
JEREMY S. GLADSTONE, State Bar No. 257972  
One Market, Spear Street Tower  
San Francisco, California 94105-1126  
Telephone: 415.442.1000  
Facsimile: 415.442.1001  
E-mail: fgowdy@morganlewis.com  
E-mail: jgladstone@morganlewis.com

ROBERT M. BROCHIN (admitted *Pro Hac Vice*)  
BENJAMIN WEINBERG (admitted *Pro Hac Vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
200 South Biscayne Boulevard, Suite 5300  
Miami, Florida 33131-2339  
Telephone: 305.415.3456  
Facsimile: 305.415.3001  
E-mail: rbrochin@morganlewis.com  
E-mail: bweinberg@morganlewis.com

Attorneys for Defendants  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. and MERSCORP, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MERCEDES PERLAS and LEN  
VILLACORTA, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. and  
MERSCORP, INC.,

Defendants.

No. C 09-04500-CRB

**DECLARATION OF WILLIAM C.  
HULTMAN IN SUPPORT OF  
SUPPLEMENTAL MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION OF  
DEFENDANTS MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC. AND MERSCORP, INC.  
TO DISMISS FIRST AMENDED CLASS  
ACTION COMPLAINT**

Judge: Hon. Charles R. Breyer  
Dept.: Courtroom 8, 19th Floor

I, William C. Hultman, declare:

1           1.       I am the Senior Vice President of MERSCORP Inc. and the Treasurer and  
2 Secretary of Mortgage Electronic Registration Systems, Inc.

3           2.       Mortgage Electronic Registration Systems, Inc., or MERS, is a wholly  
4 owned subsidiary of MERSCORP, Inc.

5           3.       I have personal knowledge of the facts stated in this Declaration. I have  
6 been an officer of MERSCORP, Inc. continuously since 1998, and an officer of MERS  
7 continuously since 1999, and I am familiar with how MERSCORP, Inc and MERS operate and  
8 function.  
9

10          4.       MERS will register to transact intrastate business in the State of California  
11 by obtaining, pursuant to California Corporation Code § 2105, a Certificate of Qualification from  
12 California's Secretary of State ("MERS Registration") such that the MERS Registration is  
13 effective August 1, 2010. The reason that the MERS Registration is to be effective August 1,  
14 2010, rather than immediately, is so MERS has sufficient time to arrange properly for an agent  
15 upon whom process directed to MERS may be served within the State of California ("Calif.  
16 Registered Agent"). Due to the high volume of cases filed against MERS as a result of the  
17 creation by MERS in the State of California of numerous evidences of mortgages, liens or  
18 security instruments on real property, MERS will incur and be faced with significant increased  
19 costs from designating a Calif. Registered Agent for the State of California. By obtaining its  
20 Certificate of Qualification effective August 1, 2010, rather than anytime sooner, the costs  
21 associated with MERS' arrangement for a Calif. Registered Agent will be significantly less than  
22 the costs MERS would incur if it immediately designated a Calif. Registered Agent.  
23  
24

25          5.       The MERS Registration and the obtaining of a Certificate of Qualification  
26 by MERS in the State of California do not mean that MERS is transacting intrastate business in  
27 the State of California. Indeed, the intrastate business conducted by MERS in the State of  
28

1 California is that MERS serves as the beneficiary or mortgagee on security instruments, and thus  
 2 the intrastate business conducted by MERS is limited to creating evidences of mortgages, liens  
 3 or security instruments on real property in the State of California.

4  
 5 6. Generally, when a mortgage lender loans money to a home buyer, two  
 6 documents are obtained from a borrower: (1) a Promissory Note; and (2) a mortgage instrument  
 7 granting secured interests in the property as collateral to repay the note. The Promissory Note is  
 8 generally a negotiable instrument, and as such, it is often bought and sold.

9  
 10 7. The Deed of Trust or Mortgage, as distinguished from the Note,  
 11 establishes a lien on the property that secures the repayment of the loan.

12  
 13 8. MERS serves of record as the mortgagee on a Mortgage, or as the  
 14 beneficiary on a Deed of Trust on behalf of, or as the nominee for, the lender and for the lender's  
 15 successors and assigns, who are members of MERS. MERS is not a party to or obligee under the  
 16 terms of the Promissory Note, and MERS does not appear on the Promissory Note.

17  
 18 9. MERS is not involved in the process by which a borrower applies for a  
 19 new loan, which generally includes the steps from taking a loan application through disbursement of  
 20 funds (or declining the loan application). MERS' single role in the mortgage transactions is and  
 21 was to serve as the beneficiary on Deeds of Trust or as the mortgagee on the Mortgage -- acting  
 22 solely as the nominee or designee for the lender and the lender's successors and assigns, who are  
 23 members of MERS.

24  
 25 10. At the time of the loan origination, the borrower contractually agrees in  
 26 the Deed of Trust or Mortgage that it is MERS who will serve as the beneficiary or mortgagee,  
 27 and the borrower contractually agrees that in the event of a default on the repayment of the loan,  
 28 MERS, as the beneficiary or mortgagee, is authorized and is the proper entity to foreclose on the  
 property.

1           11. After the borrower signs the Deed of Trust or Mortgage, the evidence of  
2 the mortgage or lien is recorded in the public, local land records with MERS as the named  
3 beneficiary or mortgagee.

4           12. It is the MERS Deeds of Trust or MERS Mortgages described herein  
5 which are the evidences of the mortgage or lien on real property in the State of California, and  
6 this is the intrastate business that MERS conducts in the State of California, which I understand  
7 is not considered to be transacting intrastate business in California under Cal. Corp. Code § 191,  
8 and as held by California courts. *Swanson v. EMC Mortgage Corp.*, No. CV F-09-1507, 2009  
9 WL 3627925 \* at 9 (E.D. Cal. Oct. 29, 2009); *Derakhsahn, v. Mortgage Electronic Registration*  
10 *Systems, Inc., et al.*, No. SACV08-1185 AG (RNBx), 2009 U.S. Dist. LEXIS 63176, at \* 20-21  
11 (C.D. Cal. Jun. 29, 2009); *Lomboy v. SCME Mortgage Bankers*, No. 09-1160, 2009 WL.  
12 1457738, at \* 3 (N.D. Cal. May 26, 2009).

13  
14  
15           I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct, and that this declaration was executed on May 14, 2010, at  
17 Reston, Virginia.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
\_\_\_\_\_  
William C. Hultman