

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

CLINTON E. KIRBY AND MARTHA B. KIRBY

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:09-cv-00182-DCB-JMR

**BANK OF AMERICA, N.A., AS SUCCESSOR IN
INTEREST TO COUNTRYWIDE BANK, FSB;
BAC HOME LOAN SERVICING, L.P., F/K/A
COUNTRYWIDE HOME LOAN SERVICING,
LP; AND RECONTRUST COMPANY, NA**

DEFENDANTS

**RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

COMES NOW the Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), by and through its counsel of record, and responds to the First Set of Interrogatories and Requests for Production of Documents propounded by Plaintiffs, CLINTON E. KIRBY and MARTHA B. KIRBY (the "Plaintiffs" or "Kirbys") as follows:

Reservation of Rights

(1) In responding to these discovery requests, MERS does not waive any objection which may be appropriate either to (a) the use of any response to these discovery requests for any purpose or (b) the relevance or materiality of any responses or of the documents produced hereunder to any issue in this case.

(2) MERS specifically reserves all rights to objections which may otherwise be available to it, and further states that no response shall be deemed as an admission of relevancy, materiality, or admissibility into evidence. MERS further reserves the right to alter or amend its responses should more accurate information become available at a subsequent time.

(3) The responses provided herein are subject to the rights of MERS to object to a demand for further response to these discovery requests or other discovery procedures involving

EXHIBIT

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or relating to the subject matter of this action that are not called for by the Federal Rules of Civil Procedure or applicable local rules. MERS further objects to Plaintiffs' definitions as being vague and unauthorized by the Federal Rules of Civil Procedure.

(4) MERS' responses to these discovery requests are based upon information presently available. MERS has neither completed its discovery nor its preparation for trial. Accordingly, these responses are made without prejudice to MERS' rights to present additional evidence or contentions at trial based upon information later obtained or evaluated.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Are you now or have you ever been the holder of the Plaintiffs' Note?

RESPONSE TO INTERROGATORY NO. 1: Objection. Said interrogatory is overbroad, unlimited in time and scope, and seeks information beyond the scope of permissible discovery. Furthermore, said request is vague, susceptible to multiple interpretations, seeks irrelevant information, and the term "holder" is undefined. Without waiving said objection, MERS responds: MERS was never the holder of the subject Note.

INTERROGATORY NO. 2: Describe in detail the benefits MERS receives or ever has been entitled to receive as "beneficiary" of the Plaintiffs' Deed of Trust.

RESPONSE TO INTERROGATORY NO. 2: Objection. Said interrogatory is vague, overbroad, ambiguous, susceptible to multiple interpretations, and seeks irrelevant information. Without waiving said objection, MERS responds: It is unclear as to what Interrogatory No. 2 is asking.

INTERROGATORY NO. 3: If MERS ever loaned Plaintiffs any money, please describe in detail the terms of such a loan and identify all documents which set forth such terms.

RESPONSE TO INTERROGATORY NO. 3: Objection. Said interrogatory is vague, overbroad, ambiguous, and susceptible to multiple interpretations. Furthermore, said interrogatory seeks information that is in the possession of the Plaintiffs.

INTERROGATORY NO. 4: Describe in detail the procedure by which MERS was instructed to prepare what is purported to be an assignment of both the Deed of Trust and the Note to BAC.

RESPONSE TO INTERROGATORY NO. 4: Objection. Said interrogatory is overbroad, ambiguous, susceptible to multiple interpretations, and seeks irrelevant information that is beyond the scope of permissible discovery. Without waiving said objection, MERS responds: A duly authorized officer of MERS would be responsible for preparing and executing the assignment at the direction of the servicer and investor. MERS is only able to transfer what it actually holds and cannot transfer a negotiable instrument by virtue of a transfer of real property.

INTERROGATORY NO. 5: At the time the "Corporation Assignment of Deed of Trust/Mortgage" was signed (Exhibit 35 of Plaintiffs' First Amended Complaint) on or about July 13, 2009, was MERS aware that Countrywide Bank, FSB had transferred and/or sold the Plaintiffs' Note to Fannie Mae in 2007?

RESPONSE TO INTERROGATORY NO. 5: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the

scope of permissible discovery. Further, said interrogatory calls for speculation, and it is unclear to what extent a corporation can be “aware” of something.

INTERROGATORY NO. 6: Describe in detail Your understanding of how You had authority—on or about July 13, 2009—to assign the Plaintiffs’ Deed of Trust as a nominee of Countrywide Bank, FSB to BAC given that Countrywide Bank, FSB was declared an inactive institution by the FDIC on April 27, 2009 (see http://www2.fdic.gov/idasp/main_bankfind.asp).

RESPONSE TO INTERROGATORY NO. 6: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS held the Deed of Trust as an agent of the original lender and its successors and assigns so that MERS would have acted as an agent of whoever the note owner was at any point in time.

INTERROGATORY NO. 7: Explain in detail how MERS, in the capacity of “nominee” for Countrywide Bank, FSB, could assign the Plaintiffs’ Note to BAC on July 13, 2009 if said Note was transferred to Fannie Mae in 2007 (Exhibits 35 and 12 of Plaintiffs’ First Amended Complaint).

RESPONSE TO INTERROGATORY NO. 7: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: A promissory note is a negotiable instrument which is transferred through endorsement and delivery. Any language in the assignment which claimed to assign the note could not do so as notes do not move through assignments in the land records.

INTERROGATORY NO. 8: Was the MERS “Milestone” report (Exhibit 12 of Plaintiffs’ First Amended Complaint) prepared by salaried or hourly paid employees of entities other than MERS?

RESPONSE TO INTERROGATORY NO. 8: Objection. Said request is vague and seeks information beyond the scope of permissible discovery. Further, said interrogatory seeks information that is wholly irrelevant.

INTERROGATORY NO. 9: Is any information in the MERS system related to the Plaintiffs’ Note uploaded to or input into the MERS system by any salaried or hourly paid employees of MERS?

RESPONSE TO INTERROGATORY NO. 9: Objection. Said request is vague and seeks information beyond the scope of permissible discovery. Further, said interrogatory seeks information that is wholly irrelevant.

INTERROGATORY NO. 10: Describe in detail the ways in which MERS is a “separate corporation” (as mentioned in the Plaintiffs’ Deed of Trust) from its “Members,” such as Countrywide Bank, FSB and Bank of America, N.A.

RESPONSE TO INTERROGATORY NO. 10: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks irrelevant information that is beyond the scope of permissible discovery. Without waiving said objection, MERS responds: The Deed of Trust states that MERS is the beneficiary and the borrower agrees that MERS holds legal title to the security instrument. MERS is named as the beneficiary and acts in a nominee capacity for the original lender and its successors or assigns.

INTERROGATORY NO. 11: From August 2007 until the present was MERS authorized to input or upload information on the MERS system regarding the Plaintiffs' Note without the use of "certifying officers," which are salaried or hourly employees of MERS Members?

RESPONSE TO INTERROGATORY NO. 11: Objection. Said request is vague and seeks information beyond the scope of permissible discovery. Further, said interrogatory seeks information that is wholly irrelevant as it seeks to know whether MERS could upload information on its own system.

INTERROGATORY NO. 12: Describe in detail the reason(s) why the MERS investor database names Fannie Mae instead of BAC as the "investor" in the Plaintiffs' Note (Exhibit 40 of Plaintiffs' First Amended Complaint).

RESPONSE TO INTERROGATORY NO. 12: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: Upon information and belief, the underlying Note is currently owned by Fannie Mae.

INTERROGATORY NO. 13: Is it the opinion of MERS that the "Corporation Assignment of Deed of Trust/Mortgage" of July 13, 2009 did in fact transfer beneficial interest in the Plaintiffs' Deed of Trust and Note to BAC?

RESPONSE TO INTERROGATORY NO. 13: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: The MERS

assignment can only assign the interest that MERS is holding. When MERS is named as the beneficiary, it holds legal title to the Deed of Trust and can assign the Deed of Trust. Unless MERS is the note holder it cannot transfer the note since the note moves through endorsement and delivery pursuant to the Uniform Commercial Code.

INTERROGATORY NO. 14: Did or does MERS ever have any beneficial interest in the Plaintiffs' Note?

RESPONSE TO INTERROGATORY NO. 14: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS has never owned the Note.

INTERROGATORY NO. 15: Did or does MERS hold the Plaintiffs' Note as a document custodian?

RESPONSE TO INTERROGATORY NO. 15: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Furthermore, the term "document custodian" is undefined.

INTERROGATORY NO. 16: Does MERS' status as beneficiary of the Plaintiffs' Deed of Trust require payment to MERS of any funds due under the Plaintiffs' Note?

RESPONSE TO INTERROGATORY NO. 16: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: No. MERS has an *in rem* interest in the property as the beneficiary on the DOT.

INTERROGATORY NO. 17: Describe in detail the reason(s) why MERS-instead of the lender or the "Note Holder" (as that term is defined in the Plaintiffs' Note)—is the actual (as opposed to the nominal) beneficiary of the Plaintiffs' Deed of Trust.

RESPONSE TO INTERROGATORY NO. 17: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks irrelevant information beyond the scope of permissible discovery.

INTERROGATORY NO. 18: Which of the following two statements accurately describes MERS vis-à-vis the role of beneficiary of the Plaintiffs' Deed of Trust: 1) MERS "acts as" the beneficiary or 2) MERS is the beneficiary?

RESPONSE TO INTERROGATORY NO. 18: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS role as the beneficiary is set forth on the first page and in the granting clause of the Deed of Trust. The underlying Deed of Trust speaks for itself.

INTERROGATORY NO. 19: Describe in detail what is meant by the following assertion in Your answer to Plaintiffs' Request for Admission #22 to You: "MERS acts as the beneficiary in the land records."

RESPONSE TO INTERROGATORY NO. 19: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS'

answer to Plaintiffs' requests for admissions speak for themselves. No further explanation is required.

INTERROGATORY NO. 20: Describe in detail what is meant by the phrase "Transfer Beneficial Rights Option 1" found in the MERS Milestone report provided to Plaintiffs in pre-discovery disclosure.

RESPONSE TO INTERROGATORY NO. 20: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks irrelevant information that is beyond the scope of permissible discovery. Without waiving said objection, MERS responds: This information can be found on MERS' website.

INTERROGATORY NO. 21: Describe in detail how, without any employees at all (as admitted by You in Request For Admission #22 to You), You can perform any of Your contractual duties and obligations to Your Members, including but not limited to the following: preparing and recording assignments, acting as a beneficiary, tracking servicing rights, and creating Milestone reports and MIN Summaries.

RESPONSE TO INTERROGATORY NO. 21: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks irrelevant information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS' answer to Plaintiffs' requests for admissions speak for themselves. No further explanation is required.

INTERROGATORY NO. 22: Describe in detail what is meant by Your response to Request For Admission #9 to You, in which You state that MERS “holds legal title to the Deed of Trust,” as opposed to legal title to the property.

RESPONSE TO INTERROGATORY NO. 22: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS’ answer to Plaintiffs’ requests for admissions speak for themselves. No further explanation is required.

INTERROGATORY NO. 23: State the names of all persons or entities, in order of assignment, who at any time were holders or holders in due course of the Plaintiffs’ Note.

RESPONSE TO INTERROGATORY NO. 23: Objection. Said interrogatory is overbroad, vague, susceptible to multiple interpretations, and seeks information beyond the scope of permissible discovery. Furthermore, the term, “holders or holders in due course” is not defined. Without waiving said objection, MERS responds: The information requested in Interrogatory No. 23 is readily available to the Plaintiffs documents in their possession and through the documents previously produced in this matter.

INTERROGATORY NO. 24: Please identify each person who answers these interrogatories and each person (attach pages if necessary) who assisted, including attorneys, accountants, employees of third party entities, or any other person consulted, however briefly, on the content of any answer to these interrogatories.

RESPONSE TO INTERROGATORY NO. 24: Objection. Said interrogatory is overbroad, unlimited in time and scope, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: William C. Hultman

INTERROGATORY NO. 25: For each of the above persons please state whether they have personal knowledge regarding the subject loan transaction.

RESPONSE TO INTERROGATORY NO. 25: Objection. Said interrogatory is overbroad, unlimited in time and scope, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: Nobody with MERS would have any relevant knowledge.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce any and all of Your membership agreements with any and all of the other Defendants in the instant case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection. Said request is overbroad, unduly burdensome, and seeks irrelevant information that is beyond the scope of permissible discovery. Without waiving said objection, MERS responds: See documents produced herewith.

REQUEST FOR PRODUCTION NO. 2: Please produce the corporate resolution and/or power(s) of attorney documents which show Jill Arnold to be an "assistant secretary" of MERS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Objection. Said request is overbroad, unduly burdensome, and seeks irrelevant information that is beyond the scope of permissible discovery. Without waiving said objection, MERS responds: See documents produced herewith.

REQUEST FOR PRODUCTION NO. 3: Please produce a list of stockholders in MERS and the percentage of their shares of the company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Objection. Said request is overbroad, unduly burdensome, and seeks irrelevant information that is beyond the scope of permissible discovery. Mortgage Electronic Registration Systems, Inc. is a wholly-owned subsidiary of MERSCORP, Inc. Both are privately – held Delaware corporations.

REQUEST FOR PRODUCTION NO. 4: Please produce any agency agreements, other than the Plaintiffs' Deed of Trust, which establish Your agency or nominee status with any and/or all of the other Defendants in the instant case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: See documents produced herewith.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all assignments of the Plaintiffs' Note and/or Deed of Trust, if any, that have been recorded on the MERS system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. MERS does not possess any responsive documents.

REQUEST FOR PRODUCTION NO. 6: Please produce any and all contracts, agreements, memos, or other documents which show that G. Dewey Hembree, III, Stephen Masley, and/or McGlinchey Stafford has the delegated authority to represent You.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objection. Said request is overbroad, seeks information beyond the scope of permissible discovery, and seeks otherwise confidential and privileged information.

REQUEST FOR PRODUCTION NO. 7: Please produce any and all manuals (as well as addenda thereto) which detail Your policies and practices.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Objection. Said request is extremely overbroad, unlimited in time and scope, seeks information beyond the scope of permissible discovery and seeks information that is confidential and otherwise privileged. All rules, policies and procedures manuals and terms and conditions are publically available on MERS' website.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents and records upon which You base Your answers to the Interrogatories above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Objection. Said request is extremely overbroad, unlimited in time and scope, seeks information beyond the scope of permissible discovery and seeks information that is confidential and otherwise privileged.

REQUEST FOR PRODUCTION NO. 9: Please produce all correspondence and documentation exchanged between You and any and all of the other Defendants in the instant case that refer to the Plaintiffs' Note and/or Deed of Trust.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Objection. Said request is extremely overbroad, unlimited in time and scope, seeks information beyond the scope of permissible discovery and seeks information that is confidential and otherwise privileged.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents and records which show any pecuniary damage to You as a result of the alleged default of the Plaintiffs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. Without waiving said objection, MERS responds: MERS is not seeking or asking for pecuniary damages in this matter.

REQUEST FOR PRODUCTION NO. 11: Please produce any and all documents in Your possession that refer to a trustee's sale of the subject property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. MERS does not have any responsive documents.

REQUEST FOR PRODUCTION NO. 12: Please produce any and all agreements between You and any and all of the other Defendants in the instant case which describe Your duties and obligations to said Defendants.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible

discovery. Without waiving said objection, MERS responds: See documents produced herewith.

REQUEST FOR PRODUCTION NO. 13: Please produce an employment history for the last three years for Jill Arnold, who signed the "Corporation Assignment of Deed of Trust/Mortgage" as an "assistant secretary" of "Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Bank, FSB."

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. Jill Arnold is a MERS officer but not an employee. As a result, MERS has no responsive documents.

REQUEST FOR PRODUCTION NO. 14: Please produce any and all documents that instructed Jill Arnold to sign the "Corporation Assignment of Deed of Trust/Mortgage" as an "assistant secretary" of "Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Bank, FSB."

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Objection. Said request is overbroad, unduly burdensome, and seeks information beyond the scope of permissible discovery. MERS does not have any responsive documents instructing Jill Arnold to do anything.

THIS, the 18th day of February, 2011.

Respectfully submitted,

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

By: 

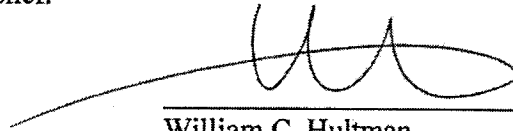
Of Counsel

STATE
COUNTY OF FAIRFAX

OF

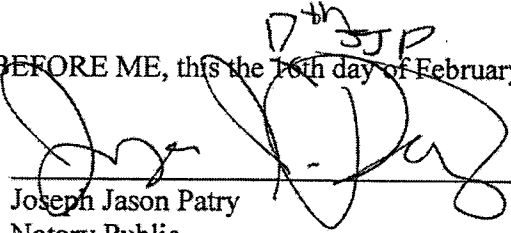
VIRGINIA

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said County and State, within my jurisdiction, the within named William C. Hultman who is the Treasurer of Mortgage Electronic Registration Systems, Inc. ("MERS") who, being by me first duly sworn, states on oath that he/she is authorized to sign said interrogatory Responses for and on behalf of MERS, that the information contained in the Responses is based in part on his/her personal knowledge, and on information furnished to him/her by others who have assisted in providing information necessary to respond to said interrogatories; and that the matters and things in the above and foregoing Responses are true and correct to the best of his/her knowledge, information, and belief.



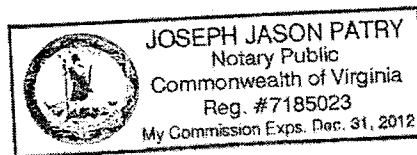
William C. Hultman

SWORN TO AND SUBSCRIBED BEFORE ME, this the ^{17th} ~~16th~~ day of February, 2011.


Joseph Jason Patry
Notary Public

My Commission Expires:

12/31/12



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