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5 **UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF NEVADA**

7 MICHAEL HARKEY,
Plaintiff and Proposed Lead Class
Plaintiff for All Nevada Property
8 Owners Similarly Situated,
who were deprived of their
9 right to petition the judiciary
for redress of grievances by
10 the use of fraudulent recorded
documents by the MERS®-LPS
11 RACKETEERING ENTERPRISE
described herein,

Case No. 2:14-cv-00177-RFB-GWF

12 vs.

13 US BANK, N.A., as Trustee for
14 the CSMC MORTGAGE-BACKED TRUST 2007-6
TRUST 2007-6, a national banking association;
15 CSMC MORTGAGE-BACKED TRUST 2007-6,
a Trust purportedly declared under the laws of the State of New York;
16 CREDIT SUISSE FIRST BOSTON
MORTGAGE SECURITIES CORPORATION,

HON. RICHARD F. BOULWARE

17 a Delaware corporation;
DLJ MORTGAGE CAPITAL, INC.,

SECOND AMENDED COMPLAINT

18 a Delaware corporation;
SELECT PORTFOLIO SERVICING, INC., a Utah corporation;
19 CREDIT SUISSE, AG, a banking corporation organized
under the laws of Switzerland;

JURY TRIAL DEMANDED

20 WELLS FARGO BANK, N.A., a national banking association;
MERSCORP HOLDINGS, INC., a Delaware corporation;
21 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
a Delaware corporation;

22 OLD REPUBLIC TITLE COMPANY OF NEVADA,
a Nevada corporation;

23 NANCY BRÖDY, as an employee or agent of
OLD REPUBLIC TITLE COMPANY OF NEVADA,
24 BLACK KNIGHT FINANCIAL SERVICES, LLC, a Delaware limited liability company,
formerly known as LENDER PROCESSING SERVICES, INC., a Delaware corporation;
25 FIDELITY NATIONAL TITLE COMPANY, a California corporation;
FIDELITY INFORMATION SERVICES, LLC, an Arkansas limited liability company, formerly
26 known as FIDELITY INFORMATION SERVICES, INC.;

1 LSI TITLE AGENCY, INC., a purported corporation organized under the laws of an unknown
state;
2 FIDELITY NATIONAL FINANCIAL, INC., a Delaware corporation;
BILL KOCH, individually and as an employee of
3 SELECT PORTFOLIO SERVICING, INC.;
KIMBERLY CLARK, as an employee of
4 SELECT PORTFOLIO SERVICING, INC.;
PATRICK PITTMAN, as an employee of
5 SELECT PORTFOLIO SERVICING, INC.;
JULEE METERS, as an employee of
6 SELECT PORTFOLIO SERVICING, INC.;
JESSE BEWLEY, as an employee of
7 LENDER PROCESSING SERVICES, INC., now known
as BLACK KNIGHT FINANCIAL SERVICES, LLC;
8 JOSEPH NOEL, as an employee of
LENDER PROCESSING SERVICES, INC., now known
9 as BLACK KNIGHT FINANCIAL SERVICES, LLC;
CHRISTINA ALLEN, now known as CHRISTINA SCHATWING,
10 as an employee of LENDER PROCESSING SERVICES, INC.,
now known as BLACK KNIGHT FINANCIAL SERVICES, LLC;
11 SHOUA MOUA, as an employee of LENDER PROCESSING SERVICES,
INC., now known as BLACK KNIGHT FINANCIAL SERVICES, LLC;
12 QUALITY LOAN SERVICE CORPORATION, a California corporation;
KEVIN R. MCCARTHY, individually and as Director of
13 QUALITY LOAN SERVICE CORPORATION;
VANESSA GONZALES, as an employee of
14 QUALITY LOAN SERVICE CORPORATION;
MICHELLE NGUYEN, as an employee of
15 QUALITY LOAN SERVICE CORPORATION;
COOPER CASTLE, LLP, a Nevada limited liability partnership;
16 SAFEGUARD PROPERTIES, LLC, a Delaware limited liability company;
ADAM FENN, individually;
17 EARL BEUTLER, individually and as Trustee of the
EARL AND EVE BEUTLER FAMILY TRUST;
18 EVE BEUTLER, individually and as Trustee of the
EARL AND EVE BEUTLER FAMILY TRUST;
19 EARL AND EVE BEUTLER FAMILY TRUST;
BRYCE D. BEUTLER;
20 PATRICK PITTMAN, as an employee or agent of
SELECT PORTFOLIO SERVICING, INC.;
21 JULEE METERS, as an employee or agent of
SELECT PORTFOLIO SERVICING, INC.; DOES I-XX and
22 ROE CORPORATIONS I-XX, inclusive
Defendants.

24 VERIFIED
SECOND AMENDED COMPLAINT

1 **COMES NOW** the Plaintiff, Michael Harkey, by his attorney, Mitchell Posin of the Law
2 Office of Mitchell Posin, Chtd., and for his Second Amended Complaint, shows the Court:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this Second Amended Complaint under 28 USC sec.
5 1331 because it pleads violations of 18 USC sec. 1961, et seq., 42 USC secs. 1983 and 1985 and
6 has supplemental jurisdiction over HARKEY's pendent state claims pursuant to 28 USC sec.
7 1367; this Court has jurisdiction to provide the declaratory relief requested herein under 28 USC
8 secs. 2201 and may fashion the remedies requested herein under 28 USC sec. 2202.

9 2. Venue in this district is proper under 28 USC sec. 1391(b)(1) because four (4) of the
10 Defendants who are natural persons are residents of this district, one (1) corporate entity is a
11 Nevada corporation and primarily under 28 USC sec. 1391(b)(2), because the substantial part of
12 the events or omissions giving rise to the claim occurred in this district, and because the real
13 estate which is the subject of the action is situated in this district.

14 **THE PARTIES AND THEIR RELATIONSHIPS TO EACH OTHER AND TO**
15 **THE SUBJECT MATTER**

16 3. Plaintiff, MICHAEL HARKEY, hereinafter HARKEY or PLAINTIFF, was at all times
17 relevant hereto a property owner seized of title to real estate located in County of Clark, State of
18 Nevada, and is the lawful record owner of 2220 Village Walk Drive, Unit 3315, Henderson,
19 Nevada 89052 (hereinafter the "subject property") under the Grant, Bargain and Sale Deed
20 (Deed) attached hereto as Exhibit 1, whose personal and property rights were violated by the acts
21 complained of herein.

22 4. Defendant US BANK, N.A. (hereinafter US BANK) is a national banking association,
23 organized under 12 USC sec. 21, et seq., with its headquarters located at 425 Walnut Street
24 Cincinnati, Ohio 45202-3923 and is purported to be the Trustee of the CSMC MORTGAGE-
25 BACKED TRUST 2007-6.

26 5. In these consolidated proceedings, counsel purporting to appear for the Defendant US
27
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1 BANK has consistently asserted that US BANK is purported to be the “Trustee” on behalf of
2 “the holders of the CSMC Mortgage-Packed Pass-Through Certificates, Series 2007-6.”

3 6. There is no entity formally or informally organized as “the holders of the CSMC
4 Mortgage-Packed Pass-Through Certificates, Series 2007-6.”

5 7. US BANK cannot be Trustee on behalf of an nonexistent entity.

6 8. US BANK is a “member” of MERSCORP Holdings, Inc. in its corporate capacity and
7 “US Bank as Document Custodian–All Locations” and “US Bank as Trustee” also appear to be
8 “members” of MERSCORP Holdings, Inc., according to the website located at
9 <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp>

10 9. Defendant CSMC MORTGAGE-BACKED TRUST 2007-6 (hereinafter the TRUST)
11 is a purported Real Estate Mortgage Investment Conduit (REMIC) Trust purportedly created
12 under and operating pursuant to New York Trust Law.

13 10. The TRUST is not registered to do business in the State of Nevada.

14 11. The TRUST is, therefore, not entitled to the benefit of the Nevada Statutes of
15 Limitation as to any state law cause of action pleaded herein pursuant to NRS sec. 80.090.

16 12. The TRUST is identified as being the issuing entity of “CSMC Mortgage-Backed
17 Pass-Through Certificates, Series 2007-6,” according to Exhibit 2, the Prospectus Supplement
18 supplementing a Prospectus purportedly dated April 20, 2007.

19 13. The April 20, 2007 Prospectus for the CSMC Mortgage-Backed Trust 2007-6 cannot
20 be located in any public securities filing with the Securities and Exchange Commission by a
21 search of the public records data base attached hereto as Exhibit 3 and searchable at
22 <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001412949&owner=exclu>
23 [de&count=40&hidefilings=0](http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001412949&owner=exclud&count=40&hidefilings=0)

24 14. According to Exhibit 2, the TRUST was represented to have been declared by
25 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORPORATION in
26 accordance with the laws of the State of New York, according to the Prospectus Supplement filed
27
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1 with the Securities and Exchange Commission (SEC) effective October 1, 2007. (Exhibit 2, See
2 page 6 under heading of “The Trust.”)

3 15. The TRUST is not a “member” of MERSCORP Holdings, Inc. (MERSCORP),
4 which owns and operates the MERS® System, and the TRUST was not a “member” of
5 MERSCORP at any time relevant to the fraudulent transactions described herein according to the
6 website maintained by MERSCORP,¹ retrievable at
7 <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp>
8 (See Exhibit 3, which is the complete list of MERSCORP “members,” retrieved on December
9 23, 2014.)

10 16. Defendant CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES
11 CORPORATION (hereinafter CSFBMSC) is a corporation organized under the laws of the State
12 of Delaware.

13 17. CSFBMSC was not registered to do business in the State of Nevada at the time of
14 commencement of this action.

15 18. CSFBMSC, having not registered to do business in the State of Nevada, is, therefore,
16 not entitled to the benefit of the Nevada Statutes of Limitation as to any state law cause of action
17 pleaded herein pursuant to NRS 80.090.

18 19. Upon information and belief, CSFBMSC is a subsidiary of CREDIT SUISSE AG, a
19 banking corporation organized under the laws of Switzerland, with its headquarters located in
20 Zurich, Switzerland.

21 20. CSFBMSC is identified as the “depositor” in the Prospectus Supplement (Exhibit 2).

22 21. The Prospectus Supplement purports that the Pooling and Servicing Agreement
23 (hereinafter PSA) for the TRUST and the Trust Agreement were filed as Exhibits to the
24 Registration Statement. (Exhibit 2, page 79.)

25
26 ¹ The complete list of “members” of MERSCORP operating as the MERS® System is
27 attached hereto as Exhibit 3. Individual members may be searched on-line at
<https://www.mersinc.org/about-us/member-search>.

1 22. At page 79, the Prospectus Supplement (Exhibit 2) reads, “Forms of the pooling and
2 servicing agreement and the trust agreement have been filed as exhibits to the Registration
3 Statement of which this prospectus is a part.”

4 23. No Registration Statement was filed with the SEC. (See Exhibit 4.)

5 24. CSFBMSC is not a “member” of MERSCORP Holdings, Inc. (MERSCORP),
6 which owns and operates the MERS® System, and was not a “member” of MERSCORP any
7 time relevant to the fraudulent transactions described herein according to the website
8 <https://www.mersonline.org/mers/mbrsearch/validateembrsearch.jsp>. (Exhibit 3.)

9 25. Entities identified as Credit Suisse First Boston Mortgage Capital, LLC, Credit
10 Suisse Financial Corporation, Credit Suisse Lending LLC, and Credit Suisse Securities (USA)
11 LLC are reported as “members” of MERSCORP. (Exhibit 3.)

12 26. Defendant DLJ MORTGAGE CAPITAL, INC. (hereinafter DLJMC) is a Delaware
13 corporation.

14 27. DLJMC was not registered to do business in the State of Nevada at the time of
15 commencement of this action and is, therefore, not entitled to the benefit of the Nevada Statutes
16 of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

17 28. Upon information and belief, it is a subsidiary of CREDIT SUISSE AG, a banking
18 corporation organized under the laws of Switzerland, with its headquarters located in Zurich,
19 Switzerland.

20 29. DLJMC is the identified as the seller of the securities offered under the Prospectus
21 Supplement offering of securities to be issued by the TRUST and sponsored the securities
22 offering. (See Exhibit 2.)

23 30. DLJMC is a “member” of MERSCORP, according to the website located at
24 <https://www.mersonline.org/mers/mbrsearch/validateembrsearch.jsp>. (Exhibit 3.)

25 31. Defendant SELECT PORTFOLIO SERVICING, INC. (hereinafter SPS) is a
26 corporation organized under the laws of the State of Utah.

32. SPS is registered to do business in the State of Nevada.

33. Upon information and belief, SPS is a subsidiary of CREDIT SUISSE AG, a banking corporation organized under the laws of Switzerland, with its headquarters located in Zurich, Switzerland.

34. SPS is a “member” of MERSCORP, according to the website located at <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp>. (Exhibit 3.)

35. CREDIT SUISSE, AG (hereinafter CREDIT SUISSE) is a banking corporation organized under the laws of Switzerland.

36. CREDIT SUISSE is identified as the “underwriter” of the securities transaction described in the Prospectus Supplement (Exhibit 2).

37. As underwriter of the securities transaction, CREDIT SUISSE purportedly purchased the certificates issued by the CSMC MORTGAGE-BACKED TRUST 2007-6 in order to sell the certificates to investors.

38. CREDIT SUISSE knew or should have known that the certificates purporting to be “mortgage-backed” were, in fact, based upon collateral documents (Notes and Mortgages or Deeds of Trust) taken from unsuspecting homeowners at what appeared to be conventional real estate closings throughout the nation but were actually concealed purchases of Notes and Mortgages or Deeds of Trust (collateral documents) by the “loan originator” (the unlicensed securities dealer) with funds supplied by undisclosed third parties at closing for re-sale as collateral for CREDIT SUISSE’s securities offering.

39. CREDIT SUISSE is not a “member” of MERSCORP, according to the website located at <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp>. (Exhibit 3.)

40. Defendant WELLS FARGO BANK, N.A. (hereinafter WELLS FARGO) is a national banking association, organized under 12 USC sec. 21, et seq., with its headquarters located at 420 Montgomery Street, San Francisco, California 94163.

41. WELLS FARGO is identified as the Master Servicer and Administrator of the

1 CSMC MORTGAGE-BACKED TRUST 2007-6. (See Exhibit 2.)

2 42. WELLS FARGO is a “member” of MERSCORP Holdings, Inc. according to the
3 website located at <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp> with
4 multiple “member” identities: Wells Fargo as Trustee; Wells Fargo Bank N.A; Wells Fargo Bank
5 NA-Mortgage Banker Finance Group; Wells Fargo Bank, N.A., d/b/a America’s Servicing
6 Company; Wells Fargo Funding Inc Correspondent eLending; Wells Fargo Home Equity, a
7 division of Wells Fargo Bank,N.A.; Wells Fargo Home Mortgage a Division of Wells Fargo
8 Bank NA; and Wells Fargo Home Mortgage, a division of Wells Fargo Bank NA. (Exhibit 3.)

9 43. Defendant MERSCORP HOLDINGS, INC. (MERSCORP) is a corporation
10 organized under the laws of the State of Delaware.

11 44. MERSCORP is the parent company of MORTGAGE ELECTRONIC
12 REGISTRATION SYSTEMS, INC. in its third iteration (MERS III as described below).

13 45. MERSCORP owns and operates MERS®, an electronic database which purports to
14 track the ownership of Notes secured by Mortgages or Deeds of Trust among its “members.”
15 (Exhibit 5.)

16 46. Neither MERSCORP nor MERS III has any interest in the Notes or Mortgages and
17 Deeds of Trust. (Exhibit 6.)

18 47. MERSCORP which receives and reports income from the operations of the MERS®
19 System, sells the MERS® System products and publishes the private “Rules” under which the
20 MERS® System operates.

21 48. MERSCORP was not registered to do business in the State of Nevada at the time of
22 commencement of this action and is, therefore, not entitled to the benefit of the Nevada
23 Statutes of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

24 49. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
25 (hereinafter MERS III) is a corporation organized under the law of the State of Delaware and is
26 the third entity bearing the name MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
27

1 INC. to have been organized in and registered in the State of Delaware.

2 50. MERS III is a “bankruptcy-remote,” name-only, shell corporation presently existing
3 under the name of Mortgage Electronic Registration, Inc. in the State of Delaware.

4 51. The history of the use of the name “Mortgage Electronic Registration Systems, Inc.”
5 is set forth below:

6 a. The first entity organized as MORTGAGE ELECTRONIC REGISTRATION
7 SYSTEMS, INC. (MERS I) was registered with the State of Delaware Division of Corporations
8 in 1995 as File No. 2543543.

9 b. MERS I registered the service mark, MERS®, with the United States Trademark and
10 Patent Office on July 29, 1997. (Exhibit 5.)

11 c. On June 30, 1998, “MERS I,” created a second corporation with the name NEW
12 MERS, Inc., retained the name of Mortgage Electronic Registration Systems, Inc. (MERS II) for
13 a period of six (6) months and MERS I, the 1995 entity, Delaware File No. 2543543) ceased to
14 exist.

15 d. The only corporate resolution identified as having be made by which Signing Officers
16 could be appointed by then-MERS I corporate secretary William C. Hultman was reportedly
17 made on April 9, 1998, before MERS I ceased to exist. (See Exhibit 7: April 7, 2010 Deposition
18 of William Hultman at T. 24:22-T:25-4.)

19 e. According to the sworn testimony of William C. Hultman, the original signed and
20 executed corporate resolution had not been located as of April 7, 2010. Exhibit 7.

21 f. At his April 7, 2010 Deposition, it appeared that the oldest known surviving copy of
22 the April 9, 1998 resolution of the Board of Directors of MERS I by which Hultman appoints
23 Signing Officers for MERSCORP in the name of MERS III is dated December 20, 2002, more
24 than four and one half years (4½ years) after the corporation which made the resolution ceased to
25 exist. Exhibit 7.

26 g. In December of 1998, MERS II, filed a Certificate of Amendment with
27
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1 the State of Delaware to change its name to MERSCORP, Inc. effective January 1, 1999 as
2 Delaware Division of Corporations File No. 2915165.

3 h. Effective January 1, 1999 MERSCORP, Inc. created yet another company known as
4 “Mortgage Electronic Registration System, Inc.” (MERS III) under Delaware Division of
5 Corporations File No. 2990193.

6 i. According to the sworn testimony of William C. Hultman, former Secretary of
7 MERSCORP (Exhibit 7), the current iteration of Mortgage Electronic Registration Systems, Inc.
8 (designated herein as MERS III) was formed as a “bankruptcy remote” entity at the behest of
9 “ratings agencies.”

10 j. MERS III has no employees. (Hultman Deposition T. 72:8, 107:15-23, 117:5-13;
11 118:1-6.)

12 k. Upon information and belief, MERS III reports no income and has no income.

13 j. A flow chart of the creation of the “MERS” entities is attached hereto as Exhibit 8 and
14 incorporated by reference.

15 l. The name Mortgage Electronic Registration Systems, Inc. which appears in over 62
16 Million Mortgages and Deeds of Trust throughout this nation actually the former name of
17 MERSCORP and it is MERSCORP which has the “members,” owns operates the electronic
18 tracking system registered as MERS® (purporting to be an alternative to the public records
19 system), enters into contracts with its “members,” and establishes the Rules under which the
20 MERS® System operations.

21 m. When MERSCORP created MERS III at the behest of the ratings agencies who were
22 rating the mortgage backed securities sold by MERSCORP’s “members” and the other
23 participants in what has been identified as the MERS®-LPS Racketeering Enterprise,
24 MERSCORP pretended that MERS III would function in the same capacities as MERSCORP
25 had previously functioned under the name of Mortgage Electronic Registration Systems, Inc.,
26 which was as a “common agent” for MERSCORP’s “members.”

1 n. MERS III, as a “bankruptcy remote,” shell corporation with no employees and,
2 therefore, no human intelligence, and having no “members,” is legally incapable of acting as an
3 agent or a “common agent” for members of MERSCORP.

4 o. In order for the vaunted “common agency” to be effective, MERSCORP would have
5 to be the named agent appearing in the Mortgages and Deeds of Trust and all “trades” would
6 have to be conducted between “members” of MERSCORP.

7 p. As will be demonstrated herein, the unregistered and unregulated securities deals and
8 trades conducted behind the veil of MERSCORP, masquerading as Mortgage Electronic
9 Registration Systems, Inc. in its third iteration, as MERS III, are not even supervised by
10 MERSCORP for compliance with its own “Rules” purporting to create the common agency, by
11 which millions of homes have been liquidated upon claimed defaults which did not actually
12 occur.

13 q. The claimed “defaults” were almost always covered by mortgage insurance, credit
14 default swaps and funds made available by Congress through the Troubled Asset Relief Program
15 (TARP) funds, along with the Quantitative Easing (QE) programs (QE I, QE 2 and QE 3)
16 operated by the Federal Reserve System, and were paid multiple times upon purported defaults
17 engineered by CREDIT SUISSE and other members of the US Dollar LIBOR Panel in order to
18 collect on multiple secondary payment systems established at the time of the unregistered
19 securities offerings.

20 r. The proceeds of the ultimate foreclosure liquidations of United States homes under the
21 MERS®-LPS RACKETEERING ENTERPRISE, in excess of the payments obtained from
22 private mortgage insurance, unsubrogated credit default swaps, TARP funds, and QE payments
23 are paid to the “servicers” who initiated the foreclosure process to obtain the bonus payment for
24 liquidating this nation’s homes for defaults already cured by multiple payments.

25 52. The service mark MERS® is registered with the United States Patent and Trademark
26 Office to MERSCORP, which owns and operates the MERS® database. (Exhibit 9.)

53. MERS III was not registered to do business in the State of Nevada at the time of commencement of this action and is not entitled to the benefit of the Nevada Statutes of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

54. MERSCORP purports to use the name of MERS III in various capacities in an attempt to combine the for-profit, income-producing MERSCORP, the “bankruptcy remote” entity known as MERS III and the computer database which bears the service mark of MERS® under the single acronym of “MERS,” thereby obscuring the separate identities and functions of MERSCORP and MERS III and MERSCORP’s ownership and operation of the MERS® database.

55. MERSCORP conceals its ownership of the MERS® database in order to obscure the operation of the MERS®-LPS RACKETEERING ENTERPRISE (hereinafter, from time to time, the ENTERPRISE) described herein, controlled and directed by MERSCORP, its “members” and associated entities involved in the unregulated purchase and sale of unregistered securities by unlicensed securities dealers which profit from the operation of the ENTERPRISE.

56. MERS III (the third iteration of Mortgage Electronic Registration Systems, Inc.) is a “bankruptcy-remote,” name-only, shell corporation and has no “members.”

57. MERSCORP has instructed its “members” to “appoint” their employees as officers of Mortgage Electronic Registration Systems, Inc., so that employees of MERSCORP’s “members” are able to pretend to have the authority to transfer mortgagee interests associated with Notes and Mortgages or Deeds of Trust (collateral documents) taken from homeowners under the false pretense that the homeowners had obtained conventional mortgage loans when collateral documents were purchased at the pretend mortgage loan closing for re-sale by unlicensed securities dealers, falsely identified as “loan originators.”

58. The use of the name “Mortgage Electronic Registration Systems, Inc.” has been sold by MERSCORP to its “members” for purposes of concealing the transactions involved in the “securitization” process from homeowners, their counsel, County Recorders and Registers of

1 Deeds (and other public recording officials), the public, and the courts of this nation, so that a
2 web of transactions thus concealed prevents anyone, except the participants in the scheme at the
3 highest levels of the operation, from ascertaining the real parties in interest who profit from the
4 unregistered securities transactions.

5 59. The unregistered securities transactions are obscured by the purported “nomination”
6 of a name-only, shell corporation (MERS III) as “agent” for the “members” of MERSCORP and
7 their affiliated entities.

8 60. MERSCORP, its “members,” and an indecipherable, incomprehensible and
9 incoherent series of agencies, assignees and successors in interest benefit from the effective
10 concealment and confusion of the transactions which involve unregistered securities trades,
11 derivative products and insurance claims to the detriment of this nations’ homeowners, the public
12 and courts, who can no longer rely on the validity of public land title records to establish the
13 interests in this nation’s lands.

14 61. The MERSCORP “membership” scheme has been an essential element of the
15 MERS®-LPS RACKETEERING ENTERPRISE described herein in which MERSCORP allows
16 its “members,” their agents and affiliated entities to falsely represent to courts throughout the
17 nation that MERS III, a “bankruptcy-remote,” name-only corporation, having no employees and,
18 upon information and belief, no income or assets (by definition, a “shell” corporation), is the
19 “common agent” for MERSCORP “members.”

20 62. The scheme operated by MERSCORP purports to avoid the necessary evidence of
21 lawful authorization to take a wide variety of actions on behalf of its “members” and third
22 parties, many of which never existed as *de jure* entities or associations (e.g., in this case: “US
23 BANK, N.A. as Trustee on behalf of the holders of the CSMC Mortgage-Backed Pass-Through
24 Certificates, Series 2007-6”), or ceased to exist prior to the actions being taken (see for examples,
25 Countrywide Bank, FSB, IndyMac Bank, FSB, Wachovia Bank, N.A. Washington Mutual Bank,
26 FSB) or had revoked any pretense of authorization for MERS III to act as its agent as will be

1 shown to have been the case with New Century Mortgage Corporation (NCMC) below.

2 63. OLD REPUBLIC TITLE COMPANY OF NEVADA is a Nevada corporation which
3 represented New Century Mortgage Corporation (NCMC) in order to acquire HARKEY's Note
4 and Deed of Trust (collateral documents) in exchange for a purported mortgage loan on February
5 6, 2007.

6 64. NANCY BRODY (BRODY) is an adult resident of the State of Nevada and was an
7 employee of OLD REPUBLIC TITLE COMPANY OF NEVADA on February 6, 2007, when
8 she conducted the purported real estate closing of what HARKEY believed to be the re-financing
9 of the subject property on that date with New Century Mortgage Corporation (NCMC).

10 65. HARKEY questioned the language nominating Mortgage Electronic Registration
11 Systems, Inc. in the February 6, 2007 Deed of Trust presented to him for signing (Exhibit 10)
12 because he had executed a Deed of Trust in favor of New Century Mortgage Corporation for
13 another Las Vegas property in 2006, which did not contain the nomination of Mortgage
14 Electronic Registration Systems, Inc.

15 66. BRODY provided HARKEY with the attached Exhibit 11 titled "Disclosure
16 Statement About MERS."

17 67. Exhibit 11 is a false explanation of the identity and function of Mortgage Electronic
18 Registration Systems, Inc. (MERS III) which is identified as "MERS."

19 68. BRODY provided Exhibit 11 to HARKEY to clarify the role of "MERS" in the
20 Deed of Trust (Exhibit 10) which he signed concurrently with the "Disclosure Statement About
21 MERS" on February 6, 2007.

22 69. HARKEY reasonably believed that BRODY was authorized to make the
23 representations contained in Exhibit 11 as the closing agent for the "Lender."

24 70. Exhibit 11 contains the following materially false representations:

25 a. Mortgage Electronic Registration Systems, Inc. is abbreviated as "MERS," but the
26 only "MERS" in existence on February 6, 2007 was the "bankruptcy-remote," name-only, shell
27

1 corporation designated herein as MERS III.

2 b. NCMC contracted with MERSCORP, which was the original “MERS,” for
3 participation in the MERS® System.

4 c. MERS III does not operate an electronic tracking system for mortgage rights;
5 MERSCORP does.

6 d. MERS III does not provide an alternative to registering the mortgage lien in the public
7 records; the mortgage lien is recorded in the public records in the name of Mortgage Electronic
8 Registration Systems, Inc. and that name is used by MERSCORP “members” to conceal the
9 numerous transactions in the unregistered securities transaction from the homeowners, their
10 counsel, the public and the courts of this nation.

11 e. NCMC did not elect to name “MERS” as mortgagee in a “‘nominee’ capacity” to
12 protect “its” lien against HARKEY’s property.

13 f. NCMC, which had become a “member” of MERSCORP Holdings, Inc. upon its
14 application dated April 10, 2006 (Exhibit 12) was required by Exhibit 13 (identified as MERS
15 Terms and Conditions at its heading) “to cause MERS to appear in the appropriate public records
16 as the mortgagee of record with respect to each mortgage loan that the “member” registers on the
17 MERS® System.”

18 g. The purpose of the nomination of MERS III was not to protect the lien of NCMC,
19 which would have been fully protected by the recording of HARKEY’s Deed of Trust in the
20 public records.

21 h. The purpose of the nomination of MERS III was to conceal the fact that NCMC was
22 not the mortgage lender, but was acting as the purchaser of HARKEY’s Note and Deed of Trust
23 (collateral documents) for sale to DLJMC, which was sponsoring an unregistered securities
24 offering to third parties, so that DLJMC could sell the collateral documents to CSFBMSC for
25 deposit into the “CSMC Mortgage-Backed Trust,” which had not yet been created by the time
26 the Prospectus Supplement (Exhibit 2) was published under Rule 424(b)(5) of the Securities and
27

1 Exchange Act of 1933, as collateral to back the sale of certificates by CREDIT SUISSE to
2 investors.

3 71. BRODY, intentionally, recklessly or negligently represented the purpose of the
4 nomination of Mortgage Electronic Registration Systems, Inc. to PLAINTIFF in order to obtain
5 his signature on the Note and Deed of Trust purporting to re-finance the subject real estate on
6 otherwise purportedly conventional mortgage terms.

7 72. Had PLAINTIFF known the actual purpose of the nomination of Mortgage Electronic
8 Registration Systems, Inc., which was to obtain his signature on the Note and Deed of Trust so
9 that NCMC would sell the Note and Deed of Trust as collateral for an undisclosed, unregistered
10 securities offering, he would not have signed the documents.

11 73. Defendant QUALITY LOAN SERVICE CORPORATION (hereinafter QLSC) is a
12 corporation organized under the laws of the State of California and is registered to do business in
13 the State of Nevada.

14 74. QLSC purports to operate as a “trustee” of Deeds of Trust for purposes of foreclosing
15 on real estate for the benefit of purported “members” of MERSCORP and uses the services of
16 LPS and its affiliated entities to create documents using LPS Desktop® and similar software.

17 75. QLSC uses employees of LPS and LPS’ affiliated entities to execute documents
18 under false claims of authority.

19 76. QLSC acts in the interests of itself and the purported beneficiaries of Deeds of Trust
20 without regard to the interests of the grantors of Deeds of Trust in several states, including, but
21 not limited to, the states of California, Washington, Oregon, Arizona, and Nevada.

22 77. QLSC acted in concert with the MERS®-LPS RACKETEERING ENTERPRISE to
23 order the creation of documents by which it arranged to have itself appointed Substitute Trustee.

24 78. In Nevada, the party who has the rights to receive payments under the Note is the
25 party entitled to seek the remedy of non-judicial foreclosure in the event of a claimed default
26 under the terms of the Notes and/or Deeds of Trust and the Note and Mortgage or Deed of Trust
27

1 must be “reunited” prior to the initiation of nonjudicial foreclosure under the Nevada statutory
2 provisions therefor, *Edelstein v. Bank of New York Mellon*, 286 P. 3d 249 (2012).

3 79. By using the MERS®-LPS RACKETEERING ENTERPRISE, QLSC conceals the
4 identities of the beneficiaries from the grantors by using an indecipherable series of claimed
5 agents, assignees, successors in interest and “Attorneys in Fact” in the documents it orders from
6 LPS and its affiliated enterprises.

7 80. In PLAINTIFF’s case, the language in the Notice of Breach and Default and Election
8 to Cause Sale of Real Property Under Deed of Trust (hereinafter Notice of Default or NOD)
9 exemplifies this practice by QLSC and LPS and its affiliated entities in the MERS®-LPS
10 RACKETEERING ENTERPRISE.

11 81. The NOD created, signed and notarized on July 1, 2008 with in the instant case
12 reads:

13 *That Quality Loan Service Corp. is either the original trustee, the duly appointed*
14 *substituted trustee, or acting as agent for the trustee or beneficiary* under a Deed of Trust
15 dated 2/6/2007, executed by MICHAEL HARKEY, A SINGLE MAN, as Trustor, to
16 secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION
17 SYSTEMS, INC. AS NOMINEE FOR NEW CENTURY MORTGAGE
18 CORPORATION, as beneficiary . . . securing, among other obligations including 1
NOTE(S) FOR THE ORIGINAL sum of \$960,000.00, that the beneficial interest under
such Deed of Trust and the obligations secured thereby are presently held by the
undersigned; that a breach of, and default in, the obligations for which such Deed of Trust
is security has occurred in that payment has not been made . . . (Emphasis added.)

19 82. The NOD is signed by JESSE BEWLEY in the purported capacity of “Quality Loan
20 Service Corp., as Agent for Beneficiary by FIS Default Solutions, as Agent.” (See Exhibit 14.)

21 83. Exhibit 14 was notarized by JOSEPH NOEL, an employee of LPS or one of its
22 affiliated entities on July 1, 2008, who had printed the document transmitted by wire via LPS
23 Desktop® or similar software and had presented it to BEWLEY for his signature.

24 84. BEWLEY, the “undersigned” was not in possession of the collateral documents
25 QLSC pretended to hold, nor was QLSC in possession of the Note, nor was QLSC the original
26 trustee, duly appointed trustee and QLSC was not acting as agent for the trustee (which then was
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1 First American Title Company) or the beneficiary, NCMC, which was then and there in Chapter
2 11 proceedings in the United States District Court for the District of Delaware in *In re New*
3 *Century TSR, Inc.* (consolidated lead Case No. 07-10416).

4 85. Defendant KEVIN R. MCCARTHY (hereinafter MCCARTHY) is the Director and
5 former President of QLSC is one of the founding partners of McCarthy & Holthus, LLP, a law
6 firm which represents QLSC in litigation brought by homeowners for relief from the tortious
7 conduct and breaches of duty by QLSC and its sister corporation, Quality Loan Services
8 Corporation of Washington, in an effort to minimize the exposure of QLSC to liability for its
9 misconduct in interstate schemes to foreclose on real estate for the benefit of MERSCORP
10 “members” and the benefit of the QLSC entities and McCarthy’s personal gain.

11 86. McCarthy & Holthus, LLP litigates in opposition to homeowners when they claim
12 that their foreclosures were based on falsely created, executed and recorded documents or were
13 otherwise tortiously injured by the conduct of the QLSC entities, thereby avoiding review of the
14 alleged tortious misconduct of the QLSC entities by independent attorneys who are bound by
15 their state’s Codes of Professional Conduct and not under the control of McCarthy and the QLSC
16 entities.²

17 87. Upon information and belief, MCCARTHY has caused the QLSC entities to enter
18 into contracts with LPS by personally signing contracts or directing others at QLSC entities to
19 sign contracts with LPS in order to use LPS Desktop® software and similar software programs to
20 create, execute and record false documents in the public land records purporting to initiate,
21 continue and consummate non-judicial foreclosure cases in certain states, including, but not
22 limited to, the states of California, Washington, Oregon, Arizona, and Nevada to increase the
23 profits of the QLSC entities for his own personal gain.

24
25 ² The McCarthy Holthus, LLP lawyers are also, of course, bound by the Codes of Professional
26 Conduct of the Supreme Courts to which they are admitted, but do not appear, in fact, to function
27 independently of the interests of the firm, its founding partner and their exclusive clients, the QLSC
28 entities.

1 88. Defendant BLACK KNIGHT FINANCIAL SERVICES, LLC, formerly known as
2 LENDER PROCESSING SERVICES, INC. (hereinafter LPS), is a Delaware corporation.

3 89. LPS is a subsidiary of FIDELITY NATIONAL FINANCIAL, INC. (hereinafter
4 FIDELITY NATIONAL FINANCIAL), a Delaware corporation.

5 90. LPS was not registered to do business in the State of Nevada at the time of
6 commencement of this action and is, therefore, not entitled to the benefit of the Nevada Statutes
7 of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

8 91. LPS owns, operates and licenses LPS Desktop® software, which is designed to
9 create false documents to be executed by LPS employees and others for recording in the Offices
10 of the Nevada County Recorders and in public land records offices throughout the nation.

11 92. Defendant FIDELITY NATIONAL TITLE INSURANCE COMPANY, hereinafter
12 FNTIC, is a California corporation and is a subsidiary of FIDELITY NATIONAL FINANCIAL,
13 INC.

14 93. FNTIC was not registered to do business in the State of Nevada at the time of
15 commencement of this action.

16 94. FNTIC is not entitled to the benefit of the Nevada Statutes of Limitation as to any
17 state law cause of action pleaded herein pursuant to NRS 80.090.

18 95. FIDELITY INFORMATION SYSTEMS, LLC (FIS) is an Arkansas limited liability
19 company which was formerly known as FIDELITY INFORMATION SYSTEMS, INC. (FIS), an
20 Arkansas corporation.

21 96. FIS is a subsidiary of FIDELITY NATIONAL FINANCIAL and is an affiliated
22 enterprise of LPS.

23 97. FIS is a member of MERSCORP. (Exhibit 3.)

24 98. FIS was not registered to do business in the State of Nevada at the time of
25 commencement of this action and, is, therefore, not entitled to the benefit of the Nevada Statutes
26 of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

99. Defendant LSI TITLE AGENCY, INC., hereinafter LSI, is, upon information and belief, a subsidiary of Defendant FIDELITY NATIONAL FINANCIAL, INC. hereinafter FIDELITY NATIONAL FINANCIAL) and its state of incorporation is presently unknown.

100. LSI was not registered to do business in the State of Nevada at the time of commencement of this action.

101. LSI is not entitled to the benefit of the Nevada Statutes of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

102. Defendant FIDELITY NATIONAL FINANCIAL, INC. (FIDELITY NATIONAL FINANCIAL), is a Delaware corporation of which, upon information and belief, FIS DEFAULT SOLUTIONS, is a division.

103. FIDELITY NATIONAL FINANCIAL was not registered to do business in the State of Nevada at the time of commencement of this action and is, therefore, not entitled to the benefit of the Nevada Statutes of Limitation as to any state law cause of action pleaded herein pursuant to NRS 80.090.

104. FIDELITY NATIONAL FINANCIAL knows that LPS employees were used to falsely create, sign and execute documents purporting to convey interests in real estate in the State of Nevada.

105. Employees of FIDELITY NATIONAL FINANCIAL subsidiaries LPS, FIS and affiliated enterprises created, executed and recorded false documents in the Offices of the County Recorders in the State of Nevada and throughout the nation.

106. FIDELITY NATIONAL FINANCIAL permitted its subsidiaries to use their various names as aliases to conceal the scheme false document creation, execution and recordation scheme in the State of Nevada and throughout the nation.

107. FIDELITY NATIONAL FINANCIAL profits from the MERS®-LPS RACKETEERING ENTERPRISE described herein through the device of LPS Desktop® software and similar software programs which provides the vehicle for creating, executing and

1 recording false documents in the public land records as set forth below and by which the creation
2 of false documents and their execution and recordation is made possible.

3 108. FIDELITY NATIONAL FINANCIAL and its subsidiaries then profit from issuing
4 title insurance policies, knowing that the titles they are insuring are hopelessly clouded by the
5 operation of the MERS®-LPS RACKETEERING ENTERPRISE, in which their employees are
6 instructed to participate.

7 109. On the rare occasion that FIDELITY NATIONAL FINANCIAL might have to pay
8 out on a claim on a title insurance policy because a homeowner might be able to prove that the
9 false documents created, executed and recorded by FIDELITY NATIONAL FINANCIAL's
10 subsidiaries, it arranges to defend against the claims, rather than pay the claim, in order to
11 conceal the flaws in the title which were created by its own subsidiaries.

12 110. As more thoroughly described herein, because MERS III does not have any
13 employees and is, therefore, incapable of acting as agent for any entity (agency requires human
14 intelligence).

15 111. MERS III is a "bankruptcy-remote," name-only, shell corporation created by
16 MERSCORP to conceal the undisclosed and unregistered securities deals and trades of its
17 "members."

18 112. Because the MERSCORP "membership" scheme, more thoroughly described
19 herein, conceals the identities of the real parties in interest entitled to receive payments on Notes
20 in which neither MERSCORP nor MERS III has any interest, the MERS®-LPS
21 RACKETEERING ENTERPRISE necessitates the creation of false documents in order for
22 documents to be executed for filing in the public land title records.

23 113. The false documents created by MERSCORP members using LPS Desktop® and
24 compatible software programs in order to liquidate the collateral purportedly backing the
25 unregistered securities purchased, sold and traded behind the curtain of MERSCORP in
26 furtherance of the operations of the ENTERPRISE.

114. It is necessary to liquidate the collateral once the counterparties to mortgage insurance policies and credit default swaps have paid the maximum recoverable sums in the event of a claimed default because the investors in the unregistered securities transactions will be prevented from discovering that the defaulted loan was never lawfully conveyed to the REMIC Trust.

115. Defendant JESSE BEWLEY (hereinafter BEWLEY) was, at all times relevant to the acts complained of herein, an adult resident of the State of Nevada, who was employed by LENDER PROCESSING SERVICES, INC. (hereinafter LPS) or one of its affiliated enterprises, all of which are subsidiaries of FIDELITY NATIONAL FINANCIAL.

116. BEWLEY signed the Notice of Default (NOD) on July 1, 2008 (attached hereto as Exhibit 14) as “Agent” for FIS DEFAULT SOLUTIONS, believed to be a division of FIDELITY NATIONAL FINANCIAL.

117. BEWLEY did not know for whom he was executing the NOD or by what authority he was signing the NOD.

118. BEWLEY did not know whether or not HARKEY was in default at the time he signed the NOD or whether the conditions precedent to the creation, filing, service and recordation of the NOD had been met, in violation of NRS 205.377 and NRS 205.395.

119. BEWLEY signed the NOD as an employee of LPS or one of its affiliated entities in furtherance of the scheme to defraud HARKEY, his counsel, the public and the courts of and in the State of Nevada.

120. Defendant JOSEPH NOEL (hereinafter NOEL) was, at all times relevant to the acts complained of herein, an adult resident of the State of Nevada, who was employed by LPS or one of its affiliated entities and notarized documents for LPS or its affiliated entities.

121. NOEL was instructed by LPS or one of its affiliates to print documents from a central computer database believed to be LPS Desktop® software and caused the documents to be signed by BEWLEY and others.

122. NOEL then notarized the documents and caused them to be filed in the Clark County Recorder's Office at the behest of who he was told were LPS "customers," without knowing who, other than LPS or one of its affiliated enterprises authorized the creation, execution and filing of the documents.

123. NOEL notarized BEWLEY's signature on Exhibit 14 on July 1, 2008 and caused it to be filed in violation of NRS 205.377 and NRS 205.395, in furtherance of the scheme to defraud HARKEY, his counsel, the public and the courts of and in the State of Nevada.

124. BEWLEY and NOEL knew that the collateral documents were not in BEWLEY's possession.

125. BEWLY and NOEL knew that BEWLEY was not the Agent of QLSC.

126. BEWLEY and NOEL knew and should have known that neither QLSC nor FIS
DEFAULT SOLUTIONS were the Agent for the beneficiary, NCMC.

127. BEWLEY and NOEL are sued in their capacity as employees of LPS and/or its affiliated enterprises.

128. Defendant CHRISTINA ALLEN, now known as CHRISTINA SCHWARTING (hereinafter ALLEN) is an adult resident of the State of Minnesota, who was employed by LPS or one of its affiliated enterprises, then operating under an assumed name registered by FNTIC in the State of Minnesota as FIDELITY NATIONAL FORECLOSURE AND BANKRUPTCY SERVICES.

129. ALLEN was employed to sign documents, including but not limited to Exhibit 15, which purport to convey interests in real estate regardless of the true chain of title to those interests, without personal knowledge of the essential facts required for the execution of such documents.

130. The LPS (and affiliated enterprises) office in Mendota Heights, Minnesota obtained documents transmitted by wire using LPS Desktop® or similar software and the documents were printed and provided to employees of LPS or its affiliates at the Mendota Heights, Minnesota

1 location to be signed and notarized.

2 131. ALLEN signed Exhibit 15 on July 1, 2008 pretending to be a “duly appointed
3 officer” of “U.S. Bank National Association, as trustee, on behalf of the holders of the CSMC
4 Mortgage-Backed Pass-Through Certificates, Series 2007-6 by Select Portfolio Servicing, Inc.,
5 its Attorney in Fact,” twenty-seven (27) days before BILL KOCH of SPS pretended to be
6 Assistant Secretary of “MERS” for the purpose of purporting to have the authority to assign a
7 Corporate Assignment of Deed of Trust on July 28, 2008.

8 132. There was no conveyance of record prior to the execution of the Substitution of
9 Trustee to establish the rights of “U.S. Bank National Association, as trustee, on behalf of the
10 holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6 by Select
11 Portfolio Servicing, Inc., its Attorney in Fact,” when ALLEN signed the Substitution of Trustee,
12 appointing QLSC as Trustee.

13 133. The Substitution of Trustee is a false document, made to order by QLSC, as a
14 customer of LPS and its affiliated enterprises, in violation of NRS 205.377 and NRS 205.395.

15 134. The Substitution of Trustee was created and signed by ALLEN and in furtherance
16 of the scheme to defraud HARKEY, his counsel, the public and the courts of and in the State of
17 Nevada.

18 135. Defendant SHOUA MOUA (hereinafter MOUA) is an adult resident of the State of
19 Minnesota and was employed by LPS or one of its affiliated entities, operating under an assumed
20 name registered by FNTIC in the State of Minnesota as FIDELITY NATIONAL
21 FORECLOSURE AND BANKRUPTCY SERVICES, to execute documents as a notary public,
22 pretending to have verified the capacity of the signers of documents, such as ALLEN, on
23 documents such as Exhibit 15, when MOUA knew or should have known that ALLEN was
24 employed by LPS or one of its affiliated entities and was not employed by SPS as “Attorney in
25 Fact” for “U.S. Bank National Association, as trustee, on behalf of the holders of the CSMC
26 Mortgage-Backed Pass-Through Certificates, Series 2007-6,” which does not exist.

1 136. MOUA notarized the Substitution of Trustee in furtherance of the scheme to
2 defraud HARKEY, his counsel, the public and the courts of and in the State of Nevada, in
3 violation of NRS 205.377 and NRS 205.395 on July 7, 2008.

4 137. Diligent research and investigation has shown that there is no de jure entity of
5 which US BANK, N.A. is Trustee which has the identity of “the holders of the CSMC Mortgage-
6 Backed Pass-Through Certificates, Series 2007-6;” under the laws of the State of Nevada, real
7 estate may not be held in the name of an unincorporated association, e.g. “the holders of
8 certificates.”

9 138. The holders of the certificates must be named in their capacity as natural persons,
10 domestic or foreign corporations or limited liability companies and partnerships, or by a Trustee
11 of a declared Trust.

12 139. Upon information and belief, the “holders” of the certificates are not United States
13 persons, but are undisclosed off-shore entities.

14 140. US BANK, N.A. may only claim title to Nevada real estate in its capacity as
15 Trustee of the Trust to be declared under New York law under the Prospectus Supplement dated
16 October 1, 2007 (Exhibit 2) which is identified by the name of the CSMC Mortgage-Backed
17 Trust 2007-6.

18 141. The TRUST purports to have been lawfully declared, according to the October 15,
19 2007 SEC filing for the CSMC Mortgage-Backed Trust 2007-6.

20 142. There is no Trust of which US BANK, N.A. is Trustee denominated as “the holders
21 of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6” and, therefore,
22 ALLEN purported to be acting as the duly appointed officer of a nonexistent entity.

23 143. One of the problems with LPS Desktop® software (and all software programs) is
24 that once an error is placed into the database, the error will repeat ad infinitum until human
25 intelligence discovers and corrects the error.

26 144. All persons using the LPS Desktop® software and similar software to create
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1 documents for the purpose of transmitting the documents, printing them, signing them, notarizing
2 them and filing them in the public records will contain the same original error until it is
3 corrected.

4 145. In this case, not only did LPS employee ALLEN claim authority to sign a
5 Substitution of Trustee on behalf of a nonexistent entity and MOUA notarized ALLEN's false
6 claim of authority six (6) days later on the document, when MOUA knew or should have known
7 that ALLEN was not acting as Attorney in Fact for US Bank as Trustee of anything, because they
8 were both LPS employees.

9 146. SPS employee KOCH, signed the Corporate Assignment of Deed of Trust on behalf
10 of a nonexistent entity as Assistant Secretary of "MERS," authenticated by SPS employee
11 CLARK. (Exhibit 16.)

12 147. QLSC employee GONZALES claimed that the subject real estate was sold to a
13 nonexistent entity, authenticated by QLSC employee NYUGEN. (Exhibit 17.)

14 148. Not only are all of the documents executed on behalf of a nonexistent entity invalid
15 for the purpose of conveying interests in Nevada real estate, but SPS' attorney in this action has
16 appeared for and is representing a nonexistent entity.

17 149. In addition to Exhibit 15 having been signed by ALLEN in a false capacity for a
18 nonexistent entity on July 1, 2008 and having been notarized by MOUA on July 7, 2008 to give
19 the appearance of lawful authority (without which notarization Exhibit 15 would not have been
20 accepted for recording by the Clark County Recorder), Exhibit 15 was notarized by MOUA six
21 (6) days after it was purportedly signed by ALLEN, claiming that she was a duly appointed
22 officer of SPS, as Attorney in Fact for US BANK, N.A., as Trustee for the holders of the CSMC
23 Mortgage-Backed Pass-Through Certificates, Series 2007-6, an entity which does not exist.

24 150. Exhibit 15 falsely represents that US BANK as Trustee of a nonexistent entity,
25 through SPS, Attorney in Fact for a nonexistent entity, had the authority to substitute QLSC as
26 trustee under the Deed of Trust twenty-one (21) days before SPS employee BILL KOCH signed
27

1 Exhibit 16.

2 151. ALLEN and MOUA are sued in their capacity as employees of LPS and/or its
3 affiliated enterprises.

4 152. Defendant BILL KOCH (hereinafter KOCH) is, upon information and belief, an
5 adult resident of the State of Utah, who was employed by SPS when he executed the “Corporate
6 Assignment of Deed of Trust” (attached Exhibit 16, dated July 28, 2008, purportedly signed on
7 July 28, 2008 in the presence of notary KIMBERLY CLARK).

8 153. KOCH knew or should have known that he was not authorized to act as Assistant
9 Secretary of MERS (MERS III), being an employee in fact of SPS, because SPS was the agent
10 for the purported assignee, US BANK, N.A. as Trustee (of the nonexistent entity) and the agent
11 of an assignee cannot assign the interest of a third party to its principal.

12 154. There are two parties to an assignment: an assignor and an assignee.

13 155. The Corporate Assignment of Deed of Trust exemplifies the fraud which emanates
14 from the MERS®-LPS RACKETEERING ENTERPRISE, as will be described herein.

15 156. If KOCH were actually an Assistant Secretary of “MERS” and if “MERS” were
16 actually a viable entity acting responsibly on reliable information, he would have known that the
17 purported assignor, New Century Mortgage Corporation (NCMC), had been in bankruptcy
18 proceedings since April 2, 2007 in the United States District Court for the District of Delaware in
19 Case No. 07-10419, consolidated in main case caption *In re New Century TR Holdings, Inc.*,
20 Case No. 07-10416, filed on April 2, 2007 .)

21 157. KOCH would have known that if MERS III ever had any capacity to assign real
22 estate interests between “members” of MERSCORP, MERSIII was incapable of alienating the
23 assets of NCMC or acting as agent for NCMC because NCMC’s “membership” in MERSCORP
24 had been specifically terminated by NCMC’s rejection of executory contract in *In re New*
25 *Century TR Holdings, Inc.* before the United States Bankruptcy Court for the District of
26 Delaware in Case No. 07-10416 on March 19, 2008 (Exhibit 18).

158. KOCH signed the Corporate Assignment of Deed of Trust to “US BANK as Trustee on behalf of the holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6” in furtherance of the scheme to defraud HARKEY, his counsel, the public and the courts of and in the State of Nevada violation of NRS 205.377 and NRS 205.395.

159. KOCH has a history of executing false documents in multiple false capacities while in the employ of SPS.

160. On July 28, 2008, when KOCH signed Exhibit 16, claiming to be acting as Assistant Secretary of “MERS” (MERS III) in order to appear to convey the beneficial interest in HARKEY’s Deed of Trust by a falsely created Corporate Assignment of Deed of Trust to US BANK as Trustee of the non-existent entity from New Century Mortgage Corporation (NCMC), NCMC had rejected its “membership” in MERSCORP and terminated the purported agency of MERS III on March 19, 2008.

161. Defendant KIMBERLY CLARK (hereinafter CLARK) is an adult resident of the State of Utah and was employed by SPS when she notarized the “Corporation Assignment of Deed of Trust.”

162. CLARK she knew or should have known that KOCH was not an Assistant Secretary of MERS, since both CLARK and KOCH were employed by SPS, when she notarized Exhibit 16.

163. SPS caused CLARK to notarize the Corporate Assignment of Deed of Trust so that it would be accepted for recording by the Clark County Recorder in furtherance of the scheme to defraud HARKEY, his counsel, the public and the courts of and in the State of Nevada violation of NRS 205.377 and NRS 205.395.

164. CLARK filed for Chapter 13 bankruptcy protection in the United States Bankruptcy Court for the District of Utah in Case No. 14-28914 on August 26, 2014 and she has not been personally served with process in this action because of the intervening automatic stay in her Chapter 13 proceedings.

1 165. SPS purported to enter an appearance through its counsel in this action on behalf of
2 CLARK, prior to her bankruptcy filing and before she was served with process in this action.

3 166. CLARK is not believed to have authorized counsel for SPS to represent her in this
4 action, but CLARK's bankruptcy attorney was notified that an appearance has been made on her
5 behalf by counsel for SPS and CLARK has not repudiated what appears to have been an
6 unauthorized appearance on her behalf by counsel for SPS, so HARKEY now considers CLARK
7 to be properly joined in this action as an employee of SPS.

8 167. KOCH and CLARK are sued in their capacity as employees of SPS.

9 168. Defendant VANESSA GONZALES (hereinafter GONZALES) was an adult
10 resident of the State of California and was employed by QLSC when she signed Exhibit 17, the
11 Trustee's Deed Upon Sale on January 13, 2009, in her capacity as purported Assistant Secretary
12 of QLSC.

13 169. Upon information and belief, GONZALES was not employed as "Assistant
14 Secretary of QLSC," nor was she appointed in that capacity by the Board of Directors of QLSC.

15 170. GONZALES knew or should have known that QLSC was not authorized to issue
16 the Trustee's Deed Upon Sale because QLSC was not lawfully substituted as Trustee of the
17 DOT.

18 171. GONZALES had no personal knowledge of that the Trustee's sale had been even
19 been conducted, let alone lawfully conducted on January 12, 2014.

20 172. HARKEY had filed for Chapter 13 protection on the day of the sale, January 12,
21 2009, in *In re Michael Harkey*, Western District of Washington Bankruptcy Case No. 09-10180-
22 TTG. (See Exhibit 19.)

23 173. GONZALES did not have personal knowledge that QLSC had lawfully complied
24 with the Nevada statutes for judicial foreclosure and her representation of such compliance
25 was falsely made under oath.

26 174. GONZALES signed Exhibit 17 purporting to convey the subject real estate to "US
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1 BANK, N.A. as Trustee on behalf of the holders of the CSMC Mortgage-Backed Pass-Through
2 Certificates, Series 2007-6,” a nonexistent entity, in furtherance of the scheme to defraud
3 HARKEY, his former counsel, the public and the courts of and in the State of Nevada in
4 violation of NRS 205.377 and NRS 205.395.

5 175. Defendant MICHELLE NGUYEN (hereinafter NGUYEN), was an adult resident of
6 the State of California and was employed by QLSC when she notarized the signature of
7 GONZALES on Exhibit 17 (the Trustee’s Deed Upon Sale), purporting to validate the capacity
8 in which GONZALES signed the conveyance as purported Assistant Secretary of QLSC, thereby
9 authenticating the validity of the false representations of GONZALES.

10 176. NYUGEN knowingly, recklessly or negligently notarized GONZALES’ signature
11 on the Trustee’s Deed Upon Sale, Exhibit 17, on January 14, 2009, knowing that the notarization
12 was required for the document to be accepted for filing with the Clark County Recorder and did
13 so in furtherance of the scheme to defraud HARKEY, his counsel, the public and the courts of
14 and in the State of Nevada violation of NRS 205.377 and NRS 205.395.

15 177. GONZALES and NYUGEN are sued in their capacity as employees of QLSC and in
16 their individual capacities in Counts Four and Five.

17 178. COOPER CASTLE, LLP (COOPER CASTLE) is a Nevada limited partnership
18 which acted in furtherance of the scheme to oust HARKEY from seizen in the subject real estate
19 by having one of its attorneys, Caleb J. Langsdale (hereinafter Langsdale) verify the facts set
20 forth in a Complaint for Unlawful Detainer. (Exhibit 20.)

21 179. The unlawful detainer action was brought on January 27, 2009 only in the name of
22 “US BANK, N.A., as Trustee,” without identifying any Trust for which US BANK, N.A. was
23 purporting to act as Trustee and without any personal knowledge of the facts upon which the
24 “verification” was made.

25 180. On August 3, 2009, Stephanie Cooper Herdman (hereinafter Herdman), an attorney
26 employed by COOPER CASTLE, appeared before Justice Court Judge David S.Gibson, Sr. in
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1 Henderson Township, Clark County, Nevada and obtained a Writ of Restitution in the name of
2 the nonexistent entity, US BANK, N.A. as Trustee, based upon the Trustee's Deed Upon Sale
3 created by QLSC, signed by QLSC employee GONZALES on January 13, 2009 and notarized by
4 QLSC employee NYUGEN on January 14, 2009, while the automatic stay in PLAINTIFF's
5 Chapter 13 was in effect from his January 12, 2009 filing *In re Michael Harkey*, Western District
6 of Washington Bankruptcy Case No. 09-10180-TTG. (Exhibit 21.)

7 181. COOPER CASTLE's Complaint verified by Langsdale (Exhibit 20), prosecuted a
8 Writ of Restitution by Herdman (Exhibit 21) and purportedly recorded as an Eviction on
9 February 17, 2010 in the Henderson County Justice Court were based on the series of false
10 documents filed in the Office of the Clark County Recorder purporting to establish a public
11 record extinguishing PLAINTIFF's seizen in the subject property, in which the Court relied upon
12 the false Trustee's Deed Upon Sale (Exhibit 17) which was attached thereto as Exhibit 1.

13 182. SAFEGUARD PROPERTIES, LLC (hereinafter SAFEGUARD) is a limited
14 liability company organized under the laws of the State of Delaware and is registered to do
15 business in the State of Nevada; it operates a scheme to "trash out" residences which have
16 purportedly been foreclosed on behalf of MERSCORP "members."

17 183. SAFEGUARD uses unreliable persons as its agents to engage in the "trash out"
18 projects and to break and enter into residences which are still occupied, thereby intimidating
19 homeowners who are defending against foreclosures.

20 184. SAFEGUARD's agents have even been known to have broken into and entered into
21 residences which are not in foreclosure.

22 185. SAFEGUARD's unreliable contractors and subcontractors are known to take the
23 personal property of persons from their residences with the intent to deprive them permanently of
24 possession of their personal property.

25 186. SAFEGUARD's agents took HARKEY's valuable personal property and removed
26 his belongings from his home no earlier than March 18, 2010.

187. Upon learning that SAFEGUARD had removed his belongings from the subject real estate, HARKEY contacted SAFEGUARD and spoke with its employee Susan Morgan.

189. When the list of property was prepared and submitted, through HARKEY's counsel, another employee at SAFEGUARD then claimed that it had no person named Susan Morgan working for SAFEGUARD.

191. Upon information and belief, Susan Morgan was terminated from SAFEGUARD for trying to help homeowners recover their personal possessions which had been “trashed out” by SAFEGUARD’s agents.

193. HARKEY knows that his personal property, which consisted of valuable furnishings, art work and collectibles, as well as important papers and family memorabilia was not all taken to the city dump.

195. It is believed that the name “SAFEGUARD, INC.” on the list of members of MERSCORP should be read to mean SAFEGUARD PROPERTIES, LLC, a Delaware limited liability company, and “SAFEGUARD PROPERTIES-PPC” is believed to be a “doing business as” name. (See Exhibit 3.)

196. Only SAFEGUARD PROPERTIES, LLC is registered to do business in the State of Nevada.

197. ADAM FENN (hereinafter FENN) is an adult resident of the State of Nevada, who is, upon information and belief, a licensed Nevada real estate agent acted as the selling agent SPS purporting to be the servicer for US BANK, as Trustee for the holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6, a nonexistent entity, after QLSC purported to convey title to HARKEY's real estate to the nonexistent entity upon the series of fabricated documents starting with the unauthorized NOD described above.

198. Upon information and belief, FENN was instructed by SPS, pretending to be the agent for US BANK as Trustee of the nonexistent entity, to obtain the services of SAFEGUARD to remove HARKEY's personal property from the subject premises.

199. FENN engaged the services of SAFEGUARD in conscious disregard of HARKEY's property rights, when he knew or should have known that HARKEY had the right to the personal property which was located on the subject premises in order to obtain a commission for the fraudulent re-sale of the subject premises.

200. Upon information and belief, EARL and EVE BEUTLER (hereinafter the BEUTLERS) purchased the subject premises for less than fair value and knew or should have known that HARKEY had a claim to title to the subject premises.

201. Upon information and belief, the BEUTLERS caused title thereto to be conveyed to the EARL AND EVE BEUTLER FAMILY TRUST of which they are Trustees and to their son, BRYCE D. BEUTLER, as tenants in common.

202. The BEUTLERS are, therefore, not bona fide purchasers, in good faith and for value, and took the pretended title to the subject real estate with notice of HARKEY's claimed ownership.

203. The EARL AND EVE BEUTLER FAMILY TRUST, hereinafter BEUTLER TRUST, is believed to be a private and not publicly declared common law trust of which Earl

1 Beutler and Eve Beutler hold themselves out to be Co-Trustees.

2 204. The BEUTLER TRUST will be served on its Co-Trustees, Earl Beutler and Eve
3 Beutler at their address of record in the Office of the Clark County Recorder, 1060 Wiegand
4 Street, Encinitas, California 92024.

5 205. BRYCE D. BEUTLER, hereinafter BRYCE, is an adult, who is believed to reside at
6 1060 Wiegand Street, Encinitas, California 92024.

7 206. The BEUTLER TRUST and BRYCE D. BEUTLER claim title to 2220 Village
8 Walk Drive, Unit 3315, Henderson, Nevada 89052 under the Grant, Bargain and Sale Deed
9 attached hereto as Exhibit 22, as tenants in common, purportedly granted by “U.S. Bank,
10 National Association, as Trustee on behalf of the holders of the CSMC Mortgage-Backed
11 Pass-Through Certificates, Series 2007-6,” an entity which does not exist.

12 207. Upon information and belief, FIDELITY NATIONAL TITLE INSURANCE
13 COMPANY or another subsidiary of FIDELITY NATIONAL FINANCIAL, INC. provided title
14 insurance to assure that the BEUTLERS, the BEUTLER TRUST and BRYCE D. BEUTLER
15 were insured against the risk of loss from the falsely created documents upon which the title to
16 the subject real estate is based.

17 208. FIDELITY NATIONAL FINANCIAL knows or should know that the documents
18 created by LPS employees and its affiliated enterprises and “members” of MERSCORP are flaws
19 in the chain of title on real estate taken in statutorily defective foreclosures.

20 209. FIDELITY NATIONAL FINANCIAL and its subsidiaries profit from the sale of
21 title insurance to purchasers of real estate foreclosed using documents falsely created using LPS
22 Desktop® software and other similar software insuring against the flaws in title they themselves
23 created.

24 210. On October 26, 2010, Defendant PATRICK PITTMAN, hereinafter PITTMAN,
25 purports to have executed the Grant, Bargain and Sale Deed, attached hereto as Exhibit 22, in his
26 capacity as “Doc. Control Officer” by Select Portfolio Servicing, Inc. as “Attorney in Fact” for
27

1 “U.S. Bank, National Association, as Trustee, on behalf of the holders of the CSMC
2 Mortgage-Backed Pass-Through Certificates, Series 2007-6,” an entity which does not exist.

3 211. No Power of Attorney was recorded with the Office of the Clark County Recorder
4 which would authorize the execution of the Grant, Bargain and Sale Deed by PITTMAN on
5 behalf of the nonexistent entity.

6 212. While the “holders of the CSMC Mortgage-Backed Pass-Through Certificates,
7 Series 2007-6” may individually exist as natural persons or de jure entities, the incorporated
8 association thus identified cannot enter into contracts, sue or be sued or own an interest in
9 Nevada lands without forming a common association under the law of some jurisdiction, which
10 they have not done.

11 213. Only the CSMC Mortgage-Backed Trust 2007-6 is believed to exist and US BANK
12 is only authorized to be Trustee of the CSMC Mortgage-Backed Trust 2007-6 and is not the
13 Trustee of the nonexistent entity identified in the Clark County Recorder’s Office as the “holders
14 of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6.”

15 214. Defendant JULEE METTERS, hereinafter METTERS, was the notary public for
16 the State of Utah before whom the Grant, Bargain and Sale Deed purports to have been executed
17 by PITTMAN on October 4, 2010, but the date of the instrument purports to be October 26,
18 2010, twenty-two (22) days later, rendering the notarization invalid and ineffective.

19 215. The execution of the Grant, Bargain and Sale Deed (Doc. 21) by PITTMAN, an
20 employee of SPS, twenty-two (22) days after it was notarized by METTERS, an employee of
21 SPS, was ineffective to convey title to the subject real estate by US BANK, N.A. as Trustee of an
22 existing entity, which the “holders of the CSMC Mortgage-Backed Pass-Through Certificates,
23 Series 2007-6” are not.

24 216. The Grant, Bargain and Sale Deed (Exhibit 22) purports to convey an interest in the
25 subject real estate to the BEUTLER TRUST and BRYCE D. BEUTLER from a nonexistent
26 entity.

1 217. Both LSI and FNTIC requested the recording of Exhibit 22, when they knew or
2 should have known that the Notice of Default (NOD) and the Substitution of Trustee (SOT),
3 were falsely created and executed by employees of LPS or its affiliates, none of whom had
4 authority to execute the NOD or the SOT by any lawful authority.

5 218. As subsidiaries of FIDELITY NATIONAL FINANCIAL, LSI and FNTIC knew or
6 should have known that LPS employees or employees of the affiliated entities did not have the
7 authority to execute the NOD and the SOT prior to the lawful execution of a Corporate
8 Assignment of Deed of Trust, which never occurred in this case.

9 219. The execution of the Grant, Bargain and Sale Deed to the BEUTLER TRUST and
10 BRYCE D. BEUTLER was made by SPS employee PITTMAN, who had no knowledge of the
11 identity of the entity from which the conveyance was to be made.

12 220. FIDELITY NATIONAL FINANCIAL, through its subsidiaries, issued a policy of
13 title insurance to the BEUTLER TRUST and BRYCE D. BEUTLER and now purports to defend
14 the operations of the ENTERPRISE through its in-house counsel, Fidelity National Law Group,
15 just as QLSC and its associated law firm, McCarthy & Holthus, LLP, defends against
16 homeowners' claims against QLSC throughout the states of California, Washington, Oregon,
17 Arizona and Nevada.

18 221. DOES I-XX are individuals whose identities are yet to be discovered and who
19 participated in the acts complained of herein and are jointly and severally liable with the named
20 Defendants as to some or all of the causes of action set forth herein.

21 222. ROE CORPORATIONS I-XX are entities formed under the laws of any of the
22 several states the identities of which are yet to be discovered and which participated in the acts
23 complained of herein.

24 223. MICHAEL HARKEY is presently unable to identify certain additional participants
25 in the acts complained of herein so as to join them in their true names and capacities and
26 presently identifies such unknown Defendants to be sued herein as DOES I through XX, and
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1 ROE CORPORATIONS I through XX, inclusive, and therefore sues these Defendants by such
2 fictitious names.

3 224. PLAINTIFF is further informed and believes that one or more of the parties which
4 may be responsible for some portion of the damages being sought by PLAINTIFF may include
5 persons, partnerships, corporations and/or other entities, the identities of which have not yet been
6 determined and because such names are currently unknown, PLAINTIFF has listed them
7 collectively as DOE Defendants and ROE CORPORATION Defendants and will seek leave of
8 Court to join such persons and entities in this action by their true names and capacities when they
9 have been identified.

10 225. PLAINTIFF is informed and believes, and thereon alleges, that each of the unnamed
11 individuals and entities presently joined under fictitious names as Defendants herein may be
12 responsible in some manner for the occurrences described herein and that his damages were
13 proximately caused by such conduct and that such presently unidentified individuals and entities
14 may be jointly and severally liable with named Defendants for the PLAINTIFF's damages.

15 226. Where individuals are named as employees of corporations and limited liability
16 companies, those companies are liable for the acts of their employees by virtue of the doctrine of
17 respondeat superior.

18 227. Where corporations and limited liability companies are named as subsidiaries of
19 named parent companies, PLAINTIFF alleges that the parent companies have profited from the
20 use of the subsidiaries in the schemes to defraud alleged herein, exercised control over the
21 conduct of the subsidiaries in the fraudulent activities, are vertically integrated with the
22 subsidiaries, and have directed and/or profited from the frauds of the subsidiaries which requires
23 that the corporate veils be pierced to establish joint and several liability among the entities.

24 228. Specifically as to FIDELITY NATIONAL FINANCIAL, it is alleged, upon
25 information and belief, that when its subsidiary, FIS, spun off its LPS division as a separate
26 entity for a public stock offering in 2008, FIS retained management and control over LPS though
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1 the former officers of FIS who became officers of LPS and that when the FIDELITY
2 NATIONAL FINANCIAL re-acquired LPS in 2014, it did so knowing the frauds which had been
3 committed by LPS, which were a matter of public record at Exhibits 23 and 24, and, therefore,
4 FIDELITY NATIONAL FINANCIAL assumed liability for the fraudulent, reckless or negligent
5 practices of LPS, its affiliated enterprises and their employees.

6 **RESERVATION OF RIGHTS TO AMEND AND/OR SUPPLEMENT**

7 229. This is a complex case, based on the extent of the alleged MERS®-LPS
8 RACKETEERING ENTERPRISE and the numerous parties, known and unknown, involved in
9 the ENTERPRISE. PLAINTIFF reserves his right to amend this Second Complaint and/or
10 supplement this Second Amended Complaint upon the discovery of new evidence and additional
11 parties in this action. Furthermore, PLAINTIFF reserves his right to amend his pleadings to
12 conform to the proofs at trial.

13 **ADDITIONAL FACTS COMMON TO ALL COUNTS**

14 230. Mortgage Electronic Registration Systems, Inc. (hereinafter MERS III) is a
15 “bankruptcy-remote” entity which was created on January 1, 1999 by MERSCORP, its sole
16 shareholder, solely for the purpose being named as the nominee of the “Lender” on Mortgages
17 (and Deeds of Trust).

18 231. MERS III also purports to be the mortgagee of record or beneficiary of Deeds of
19 Trust, merging its role as nominee (agent) for the “Lender” and the principal entitled to the
20 enforcement of rights granted by homeowners in Mortgages and Deeds of Trust.

21 232. MERSCORP owns and operates a private, proprietary, electronic database for the
22 benefit of the entities which pay a fee for “membership” to MERSCORP.

23 233. The private, proprietary, electronic database is identified by the service mark
24 MERS® which is registered to MERSCORP and is exclusively owned by MERSCORP.

25 234. MERSCORP identifies the combined operations of MERSCORP, MERS III and
26 MERS® as the MERS® System.

1 235. MERSCORP allows its “members” to conceal their identities from the public
2 records by purporting to allow the electronic database it owns and operates to act as a private
3 registry of interests in real estate which cannot be identified by recourse to the public land
4 records.

5 236. By its Membership Agreement, MERSCORP requires that its “members” to use the
6 name of Mortgage Electronic Registration Systems, Inc. (identified as MERS III, above) as the
7 “nominee” of “lenders” or as “mortgagee” of Mortgages or “beneficiary” of Deeds of Trust
8 recorded in the public land records throughout the nation.

9 237. The entities who initially register the Mortgages or Deeds of Trust in the MERS®
10 System are named on the Notes and in the Mortgages or Deeds of Trust as “Lenders,” but are
11 actually referred to as “loan originators” within the MERS® System.

12 238. The entities whose names appear on the collateral documents (Notes and Deeds of
13 Trust) as “Lenders” were usually named to conceal the essential fact of the transactions that the
14 purpose of the “real estate closing” involving the nomination of MERS III by the “loan
15 originator” was to procure the Notes and Deeds of Trust as collateral for unregistered securities
16 offerings, a fact which was never disclosed to the homeowners, who believed that they were
17 obtaining a conventional mortgage loan from a “Lender.”

18 239. Plaintiff’s title under the Grant, Bargain and Sale Deed attached hereto as Exhibit 1
19 is superior to that of the Defendants BEUTLER TRUST and BRYCE, who obtained a Grant,
20 Bargain and Sale Deed, attached hereto as Exhibit 22 because:

21 a. Exhibit 22 purports to convey title from “U.S. Bank, National Association, as trustee
22 “on behalf of the holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series
23 2007-6,” a nonexistent entity; and

24 b. Each and every document upon which the nonjudicial foreclosure sale of the subject
25 property was initiated and completed was falsely created, is void and is a nullity.

26 240. The Note and Deed of Trust were obtained from HARKEY by the affirmative
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1 misrepresentation at the purported real estate closing (collateral document acquisition) that
2 Mortgage Electronic Registration Systems, Inc. (identified as MERS in Exhibit 11: the
3 “Disclosure Statement about ‘MERS’” and denominated as MERS III herein) is merely an
4 electronic document registry, when MERS III is not a an electronic document registry; MERS®,
5 owned and operated by MERSCORP is the electronic document registry.

6 241. MERS III is a “bankruptcy remote,” shell corporation which exists in name only by
7 which “members” of MERSCORP conceal the identities of the real parties in interest to the
8 purchases and sales of securities (collateral documents) under the false pretense that the “loan
9 originator” (unlicensed securities dealer) was the Lender in a real estate mortgage transaction.

10 242. Had HARKEY known that an essential element of the transaction represented as a
11 “real estate closing” was for NANCY BRODY to take his Note and Deed of Trust and deliver it
12 to NCMC so that NCMC could sell the signed documents to DLJMC as collateral for an
13 unregistered securities offering in which the name of Mortgage Electronic Registration Systems,
14 Inc. (MERS III) would be used to conceal multiple sales of the collateral documents in the
15 securitization process which MERSCORP was designed to obfuscate, he would not have signed
16 the Note and Deed of Trust.

17 243. HARKEY already held title to the subject real estate before he entered into the
18 falsely represented contract by signing the Note and Deed of Trust in favor of NCMC for what
19 was represented to be a mortgage re-finance transaction, but was actually an undisclosed
20 securities purchase by a unlicensed securities dealer, NCMC.

21 244. Plaintiff is last owner of record of the subject property located at: 2220 Village
22 Walk Drive, Unit 315, Henderson, Nevada before he was tricked and deceived into an
23 undisclosed, unregulated securities acquisition by signing a Deed of Trust (DOT) dated February
24 6, 2007 in favor of Defendant New Century Mortgage Corporation (NCMC), purporting to
25 nominate Mortgage Electronic Registration Systems, Inc. (MERS III) as “beneficiary” of the
26 Deed of Trust granted to NCMC which was recorded with the Clark County Recorder on
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1 February 15, 2007.

2 245. On April 2, 2007, NCMC filed for Bankruptcy protection in the United States
3 Bankruptcy Court for the District of Delaware in Case No. 07-10419(KJC), which was
4 administratively consolidated into the lead case filed by New Century TR Holdings as Delaware
5 Bankruptcy Case No. 07-10416(KJC).

6 246. HARKEY requests that this Court take judicial notice of the bankruptcy filing of
7 NCMC on April 2, 2007 as Case No. 07-10419, its consolidation into Case No. 07-10416 and
8 Judge Carey's Order Confirming the Second Amended Plan of Reorganization *In re: New*
9 *Century TR Holdings Inc.* (and its affiliates, including NCMC) Case No. 07-10416(KJC) (Docs.
10 8596, 8956-1 and 8956-2 in those proceedings) by which all assets of NCMC were deemed to
11 have been transferred and conveyed into the New Century Liquidating Trust effective July 15,
12 2008 and the decision of this Court in *Hymas v. Deutsche Bank National Trust Company, N.A.*,
13 in Case No. 2:2013-cv-01869, dated October 14, 2013.

14 247. On July 28, 2008, KOCH, an employee of SPS, purported to substitute QLSC as
15 Trustee of HARKEY's DOT, which CLARK notarized as verifying KOCH's authority as
16 Assistant Secretary of "MERS as nominee for NEW CENTURY MORTGAGE
17 CORPORATION," when NCMC could not, on July 28, 2008, have held any interest in the DOT,
18 all of its assets having been conveyed to the New Century Liquidating Trust on July 15, 2008 and
19 all assets having been conveyed to the Chapter 11 estate on April 2, 2007 by operation of law.
20 See *Hymas*, supra.

21 248. Moreover, NCMC rejected the executory contract by which it was a "member" of
22 MERSCORP and under an agreement with which the name Mortgage Electronic Registration
23 Systems, Inc. had been placed in NCMC Mortgages and Deeds of Trust as "nominee" and/or
24 beneficiary on March 19, 2008. (See Exhibit 18.)

25 249. HARKEY was affirmatively misled by the "Disclosure Statement About MERS,"
26 provided to him at the securities purchase transaction masquerading as a conventional real estate
27

1 loan closing (Exhibit 11) which tricked and deceived him into signing the DOT upon the
2 affirmative misrepresentation that “MERS” operated an electronic tracking system which was
3 merely “an alternative means of registering the mortgage lien in the public records.”

4 250. The presence of a MERS III nomination in a Mortgage or Deed of Trust is now
5 known to mean that the nature of and parties to the transaction pretending to be a mortgage loan
6 is actually an undisclosed purchase of securities (collateral documents) for re-sale to undisclosed
7 third parties and the entity purporting to be a Lender is an unlicensed securities dealer falsely
8 denominated as a Lender.

9 251. MERSCORP is the entity which owns and operates the MERS® System computer
10 database and instructs its fee-paying “members” to put the name of MERS III as nominee of
11 Lender into Mortgages and Deeds of Trust.

12 252. The use of the acronym “MERS” is intended to confuse homeowners, courts and the
13 public because it is MERSCORP which contracts with members, operates the database, collects
14 the fees from members and makes the rules under which the MERS® System purports to operate.

15 253. In MERSCORP’s 2006 Rules (Exhibit 25, Rule 1, page 2), the acronym “MERS”
16 applies to MERSCORP and the bankruptcy-remote, shell corporation known as Mortgage
17 Electronic Registration Systems, Inc. (MERS III herein) is identified by its proper name,
18 Mortgage Electronic Registration Systems, Inc.

19 254. MERSCORP Rule 1 (2006) reads:

20 RULE 1
21 MEMBERSHIP

22 Section 1. **MERSCORP, Inc. (“MERS”)** shall make the services of *its*
23 *mortgage electronic registration system* (the “MERS® System”) available to any Member of
24 MERS. A Member is defined as an organization or natural person who has signed a Membership
25 Agreement and is not more than 60 days past due as to the payment of any fees due and owing to
26 MERS.

255. MERS III, whose name is used in the Mortgages and Deeds of Trust, is not identified as MERS in MERSCORP's Rules, has no members and does not operate the database known as MERS®.

256. All claims made by members of MERSCORP in hundreds of cases throughout the nation that MERS III is the nominee of the Lender, or the mortgagee or beneficiary of the Deeds of Trust have been false.

257. MERSCORP purported to authorize entities which paid a fee to be “members” of MERSCORP to use the name of its subsidiary, Mortgage Electronic Registration Systems, Inc., on Mortgages and Deeds of Trust (DOTs), established and published policies which changed from authorizing foreclosures nationwide to be conducted in the name of Mortgage Electronic Registration Systems, Inc. (MERSCORP Rule 8 in effect from 2002-2006).

258. MERSCORP changed Rule 8 in 2006 to restrict the use of the name Mortgage Electronic Registration Systems, Inc. in Florida (MERSCORP Rule 8 in effect in 2006) until July, 2011, when MERSCORP then instructed that only the Note holder or its servicer should commence foreclosures (MERSCORP Rule 8, effective in July, 2011).

259. MERSCORP, a private corporation, purports to advise mortgage servicers how to foreclose in all 50 states in the nation in which the name of MERS III has been used in Mortgages and Deeds of Trust.

260. The July, 2011 instructions concerning who was “authorized” by MERSCORP to commence and continue foreclosure was changed to require only the Note holder or the servicer for the Note holder to initiate foreclosure proceedings and the same instructions were given in the February, 2012 version of MERCORP’s Rule 8.

261. After the March 15, 2012 oral argument before the Washington Supreme Court on certified questions from the United States District Court for the Western District of Washington in *Bain v. Metropolitan Mortgage Group, Inc., et al.*, Case No. No. 86206-1, consolidated with No. 86207-9, for which HARKEY seeks Judicial Notice and which may be viewed at

1 http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012030003A, MERSCORP
2 withdrew public access to its Rules from its website.

3 263. The March 15, 2012 oral argument by counsel, Robert Pratte of Minnesota, pro hac
4 vice, who purported to represent Mortgage Electronic Registration Systems, Inc. before the
5 Washington Supreme Court at the oral argument in *Bain*, supra, revealed the MERS® System
6 operations for their true purpose and result: the deliberate concealment of the identity of the
7 entities which hold the Notes secured by mortgages and DOTs from the homeowners, their
8 counsel, and the Courts of the real parties.

9 264. Attorney Pratte argued that homeowners need only know who services their
10 mortgages and argued that Mortgage Electronic Registration Systems, Inc.³ should be allowed to
11 seek nonjudicial foreclosure in its own name.

12 265. The Washington Supreme Court did not accept the position taken by Attorney Pratte
13 and held, on August 16, 2012, in *Bain v. Metropolitan Mortgage Group, Inc., et al.*, 175 Wn.2d
14 83, 285 P.3d 34 (2012) that only the Note holder may pursue the remedy of nonjudicial
15 foreclosure in the State of Washington.

16 266. While MERSCORP's (private) Rules have no longer been available on the website
17 published and maintained by MERSCORP⁴ since circa March, 2012, the Rules have been located
18 on the internet again in a new, updated format on March 18, 2013, which again purports to
19 instruct its "members" on the how to handle foreclosures involving documents in which the name
20 Mortgage Electronic Registration Systems, Inc. (MERS III) appears in all 50 states in its current
21 Rule 8.

22 267. MERSCORP's 2006 version of its Rule 8 which purports to be applicable to the

23
24 ³ Attorney Pratte was presumably unaware that Mortgage Electronic Registration Systems, Inc.
25 (MERS III herein) is a "bankruptcy remote," shell corporation which exists in name only, has no
26 employees and has no "members." PLAINTIFF assumes that Attorney Pratte was retained by
MERSCORP and did not understand the history of the entities known as Mortgage Electronic
Registration Systems, Inc. described in paragraph 51, above, and detailed in Exhibit 8 attached hereto.

27 ⁴ The MERSCORP website is located at <https://www.mersinc.org/>

1 HARKEY statutorily defective foreclosure documents is attached hereto as Exhibit 25 (produced
2 by counsel for MERSCORP in In re New Century TSR Holding, Inc., supra, as Doc. 5050-5, at
3 page 27) and provides, in part:

4 RULE 8
FORECLOSURE

5 Section 1. (a)

6 With respect to each mortgage loan for which Mortgage Electronic Registration Systems,
7 Inc. is the mortgagee of record, the beneficial owner of such mortgage loan or its servicer shall
8 determine whether foreclosure proceedings with respect to such mortgage loan shall be
9 conducted in the name of Mortgage Electronic Registration Systems, Inc., the name of the
10 servicer, or the name of a different party to be designated by the beneficial owner.

11 (b) The Member servicing a mortgage loan registered on the MERS® System shall be
12 responsible for processing foreclosures in accordance with the applicable agreements between
13 such Member and the beneficial owner of such mortgage loan.

14 . . .

15 268. MERSCORP, which owns the private computer data base known as MERS®
16 System, fails to verify the continuing existence of entities, who are named as it “members,” and
17 who are permitted to choose to pursue foreclosure in the name of Mortgage Electronic
18 Registration Systems, Inc., the name of the mortgage servicer or “the name of a different party to
19 be designated by the beneficial owner” makes the fraudulent creation, execution and recording of
20 documents assigned without authority from nonexistent and bankrupt entities, which have no
21 existence or authority to assign mortgages and DOTs necessary, as occurred in the instant case.

22 269. MERSCORP instructs the creation and recording of fictitious documents which
23 LPS and its affiliated enterprises, SPS, and QLSC created, executed and recorded, resulting in
24 thousands of Nevada homeowners, their counsel, the Court and the public records being misled
25 because the offices of the Nevada County Recorders are flooded with documents prepared,
26 signed and falsely notarized by persons pretending to have the authority to sign the documents

1 essential to the integrity of the public records system and required to be authentic for purposes of
2 nonjudicial foreclosure, but which were in most cases never authorized by the purported
3 “Lenders” of record.

4 270. MERS III had no power or authority to alienate the assets of NCMC effective April
5 2, 2007, without leave of the United States Bankruptcy Court for the District of Delaware, which
6 would have required NCMC to obtain an Order of the Bankruptcy Court which was never
7 sought.

8 271. Moreover, as of March 19, 2008, NCMC had rejected its executory contract with
9 MERSCORP and its subsidiary MERS III, so whether or not there was ever any “signing
10 authority” lawfully granted to any of the thousands of natural persons purportedly appointed as
11 officers of MERS III, none had any authority to sign documents on behalf of NCMC effective on
12 that date. (Exhibit 18.)

13 272. The NCMC rejection of the contracts with MERSCORP and MERS III
14 demonstrated the essential unreliability of the MERS® System because none of the falsely
15 created signing officers for MERS III were ever informed that their authority to sign documents
16 on behalf of their employers in the name of MERS III on assignments of Mortgages or Deeds of
17 Trust in which NCMC was identified as the “Lender” had terminated as of March 19, 2008.

18 273. LPS Desktop® and similar software was not reprogrammed to reflect the
19 termination of signing authority on behalf of NCMC, which was no longer a “member” of
20 MERSCORP effective after March 19, 2008.

21 274. LPS and its affiliated enterprises, their employees and agents BEWLEY, NOEL,
22 ALLEN and MOUA, SPS and its employee KOCH, pretending to be an Assistant Secretary of
23 “MERS,” which capacity CLARK authenticated, and QLSC, which is believed to have ordered
24 the creation of the false documents used in this case all used LPS Desktop® and similar software
25 to create false documents under cover of the MERS-LPS® RACKETEERING ENTERPRISE
26 starting on July 1, 2008.

1 275. The Nevada Supreme Court held in *Edelstein v. Bank of New York Mellon*, 286 P.
2 3d 249 (2012) that the party seeking the remedy of nonjudicial foreclosure must hold both the
3 Note and be the beneficiary of the DOT at the time of foreclosure and concluded on the legal
4 arguments in that case (excluding arguments not made in the trial court) that Mortgage Electronic
5 Registration Systems, Inc. (described herein as MERS III) was a valid beneficiary of Edelstein's
6 DOT, based contractual language in Edelstein's DOT.⁵

7 276. The language in the HARKEY's DOT was modified by a contemporaneous writing
8 which purported to clarify that Mortgage Electronic Registration Systems, Inc. (identified as
9 MERS, contrary to the definitions of terms in MERSCORP's Rules, Exhibit 25, which uses the
10 acronym MERS for MERSCORP) was being named merely for the purpose of recording the
11 DOT in the name of Mortgage Electronic Registrations Systems, Inc. (MERS III).

12 277. HARKEY did not agree that MERS III would be the beneficiary of the DOT for any
13 purpose other than recording the DOT naming MERS III as the recording agent and was induced
14 to sign the DOT by the clarifying language contained in the "Disclosure Statement About
15 MERS" (Exhibit 11).

16 278. The concealment of the true nature of the transaction described at length herein was
17 concealed from HARKEY, which constitutes fraud in the factum, rendering the DOT void *ab*
18 *initio*.

19 279. The use of the name Mortgage Electronic Registration Systems, Inc. (MERS III) in
20 HARKEY's DOT for any purpose other than the clarified purpose contained in the Disclosure
21 Statement about MERS fraudulently induced HARKEY to sign the Deed of Trust (Exhibit 10.)

22 280. HARKEY seeks rescission and restitution of all payments made to the unidentified
23 entity for whose benefit the purported contract was made.

24
25 ⁵ Edelstein was deemed to have waived any arguments pertaining to the validity of the
26 nomination of Mortgage Electronic Registration Systems, Inc. (MERS III) not raised in the district court
27 proceedings, which involved the 2011 Nevada foreclosure mediation statute, inapplicable to the
28 nonjudicial foreclosure proceedings on the subject real estate.

1 281. The MERS® System functions to conceal the identities of the holder of the Note by
2 claiming that MERS is nominee of beneficiaries of DOTs and grantees of mortgages, until a
3 party to the MERS®-LPS RACKETEERING ENTERPRISE seeks to liquidate the real property
4 purportedly encumbered by a lien to secure the payment of alleged debts, at which time,
5 documents must be falsely created to make it appear that the party claiming the right to the
6 judicial or nonjudicial foreclosure remedy is the lawful claimant.

7 282. Because MERS III is a “bankruptcy-remote,” shell corporation, has no employees
8 and exists only as a name recorded in millions of Mortgages and Deeds of Trust throughout the
9 nation, and which, upon information and belief, never passed a resolution of its Board of
10 Directors appointing officers to execute assignments of Mortgages or Deeds of Trust, it is
11 necessary for there to be corresponding document fabrication service create assignments of
12 Mortgages and Deeds of Trust which in which the name of Mortgage Electronic Registration
13 Systems, Inc. (MERS III) appears from MERS III to the mortgage servicer on behalf of its
14 purported principal.

15 283. The operation of the MERS®-LPS RACKETEERING ENTERPRISE fills the
16 document creation needs of the “members” of MERSCORP by automating the processing of
17 documents through LPS Desktop® software and by provides employees from LPS and its
18 affiliated enterprises to the means to create, execute and notarize documents to make it appear
19 that MERS III lawfully assigned the Mortgages or Deeds of Trust, so that mortgage servicers and
20 their principals can commence foreclosure proceedings.

21 284. MERSCORP not only allowed but actually instructed its “members” to initiate
22 foreclosure actions in the name of Mortgage Electronic Registration Systems, Inc. (MERS III),
23 the name of the mortgage servicer on behalf of an unidentified principal or in whatever name the
24 unidentified principal might “choose.” (Exhibit 25, page 27.)

25 285. In Nevada, the *Edelstein*, supra, requirement to “reunite” the Note and Deed of
26 Trust in which the name of MERS III appears as nominee and/or beneficiary requires that
27
28

1 Corporate Assignment of Deed of Trust be signed by a human hand and authenticated as having
2 been signed in the presence of a notary public prior to the document being accepted for
3 recording.

4 286. MERSCORP and its “members” attempted to solve the problem that MERS III has
5 no employees and, therefore, has no human hands to sign or human intelligence to affirm the
6 validity of the signature by having MERSCORP appoint Signing Officers (SOs), formerly called
7 Certifying Officers through an on-line application process by which the appointment of signing
8 officers is automated and never approved by the Board of Directors of MERS III. (See Exhibit
9 26.)

10 287. MERSCORP purports to appoint the Signing Officers for MERS III, , a separate
11 corporation from the bankruptcy-remote, name only, shell corporation, by offering MERSCORP
12 “members” the opportunity to apply to be Signing Officers of MERS III, for a fee.

13 288. The membership fees do not create income for MERS III because the fees are paid
14 to MERSCORP.

15 289. As of April 7, 2010, the original resolution of the MERSCORP Board of Directors
16 which permitted William C. Hultman to appoint Signing Officers for MERS III could not be
17 located and, upon information and belief, it will not be located, because on the date of the
18 corporate resolution (April 9, 1998), MERCORP was MERS I and was the originally-named
19 Mortgage Electronic Registration Systems, Inc. and the resolution could not prospectively
20 authorize the appointment of officers for a corporation which did not yet exist and did not come
21 into existence until January 1, 1999.

22 290. Upon information and belief, the copy of the MERS I corporate resolution dated
23 December 20, 2002 was produced in connection with Hultman’s deposition on April 7, 2010 at
24 his deposition in a New Jersey foreclosure case, which would demonstrate the MERSCORP is
25 pretending to act as if it is Mortgage Electronic Registration Systems, Inc. (MERS III) by using
26 resolutions of the MERS I Board of Directors to authorize acts it takes in the name of MERS III.

1 (Exhibit 7, Deposition of William Hultman, T. 38:2-7).

2 291. By April 7, 2010, thousands of natural persons were signing documents as officers
3 of MERS III. (Exhibit 7, Deposition of William Hultman, T. 71:13-24.)

4 292. The April 7, 2010 Hultman Deposition exposes the fact that MERS III Signing
5 Officers (then designated as Certifying Officers) were not appointed as officers by MERS III.

6 293. Moreover, it appears that the "Certifying Officers" acting on behalf of MERS III
7 were appointed by MERS II, which is now MERSCORP, and the original corporate resolution
8 allowing Hultman, as Secretary of MERS I, to appoint Signing or Certifying Officers of MERS
9 III is a legal impossibility because MERS III did not exist at the time Hultman claimed to have
10 been given that authority by the Board of Directors of MERS I, which no longer exists or MERS
11 II which is now MERSCORP.

12 294. Millions of documents created by mortgage servicer employees assigning
13 Mortgages and Deeds of Trust from MERS III to their purported principals are legally impossible
14 assignee-to-assignee assignments because the on-line appointments of Signing or Certifying
15 Officers are granted by MERSCORP to employees and third party agents of the mortgage
16 servicers who are its members, who then assign the Mortgages and Deeds of Trust to their
17 principals, who are the assignees in the pretended assignments.

18 295. The on-line authorities given by MERSCORP to employees and third party agents
19 of the mortgage servicers are additionally invalid for the second reason that the Signing or
20 Certifying Officers were never authorized to act on behalf of MERS III (although the later reason
21 could be cured by ratification, the first reason for invalidity, the assignee-to-assignee assignments
22 cannot be cured.)

23 296. In Nevada, the MERS®-LPS RACKETEERING ENTERPRISE operates to provide
24 the modality for the signing and notarization of a series of documents by human beings
25 purporting to have the authority to sign on behalf of the MERS III in order to make it appear that
26 there has been substantial compliance with the statutory requirements for nonjudicial foreclosure
27

1 by creating the false appearance that MERS III is the assignor, when the signer of the assignment
2 is an agent of the assignee, falsely claiming to be an agent of the assignor, a shell corporation
3 with nothing to assign.

4 297. LPS Desktop® software and similar software programs are essential to the
5 operation of the MERS®-LPS RACKETEERING ENTERPRISE in Nevada because the
6 software program generates documents which are then printed and caused to be signed by
7 employees and third party agents of those participating in the ENTERPRISE solely for the
8 purpose of making it appear that some entity purporting to be the trustee or beneficiary of the
9 Deed of Trust has complied with the Nevada statutes governing nonjudicial foreclosures.

10 298. The business plan of MERSCORP purports to allow its “members” and others to
11 transfer beneficial interests in mortgages and DOTs without requiring those interests to be
12 assigned in writing and recorded with the Nevada County Recorders (or in the public records
13 offices in any state of the United States).

14 299. The MERS® System evolved into the MERS®-LPS RACKETEERING
15 ENTERPRISE of which HARKEY now complains because the MERS® System created the need
16 for the creation, execution and recordation of false documents.

17 300. The ENTERPRISE was used by CREDIT SUISSE and its subsidiaries to conceal
18 the true nature of the securities purchases and sales masquerading as mortgage loans (Notes and
19 Mortgages or Deeds of Trust) which were taken as collateral for the unregistered securities
20 offerings which, upon information and belief, were conducted entirely outside the United States
21 of America.

22 301. The unregistered securities offered by CREDIT SUISSE, as underwriter of the
23 offering, were never collateralized by the Notes and Mortgages and Deeds of Trust as required by
24 Section 2.01 of the Pooling and Servicing Agreement attached hereto as Exhibit 28, but were
25 transferred in imaged format only to the Document Custodians, which are identified as “LaSalle
26
27
28

1 Bank National Association,⁶ Deutsche Bank National Trust Company and Wells Fargo Bank,
2 N.A., each of which shall act as agent on behalf of the Trustee, and shall be compensated by the
3 Trust Administrator or as otherwise specified therein.” (See Exhibit 28A.)

4 302. HARKEY never gave his affirmative or express consent for his signature to be
5 transmitted in imaged format or for his documents and records to be transferred electronically as
6 required by e-Sign [15 USC sec. 7001(c)(1)] and UETA [NRS 719.330(1)(b)].

7 303. By selling the securities which were never backed by Notes and Mortgages and
8 Deeds of Trust lawfully conveyed as required by Section 2.01 of the Pooling and Servicing
9 Agreement outside the United States, CREDIT SUISSE, CSFBMSC, DLJMC, SPS and WELLS
10 FARGO as Master Servicer and Trust Administrator were able to avoid regulation of the
11 transactions by the SEC.

12 304. WELLS FARGO acted as the undisclosed securities intermediary in the
13 unregistered securities offering, to the detriment and damage of the PLAINTIFF.

14 305. CREDIT SUISSE used the collateral documents to obtain investment funds from
15 unidentified third parties, identified as “holders of the CSMC Mortgage-Backed Pass Through
16 Certificates Series 2007-6,” who are not the holders of HARKEY’s Note nor beneficiaries of his
17 Deed of Trust and, moreover, neither is the TRUST of which US BANK is Trustee because the
18 documents falsely created in this case do not convey the collateral to the TRUST as required by
19 Section 2.01 of the Pooling and Servicing Agreement (PSA) for the TRUST.

20 306. The undisclosed securities transactions, in which HARKEY was made an unwitting
21 participant, required his Note and DOT as collateral for a securities sale by CREDIT SUISSE to
22 yet undisclosed third parties.

23 307. CREDIT SUISSE sold securities to the undisclosed investors to be administered
24

25 ⁶ Both entities having the name “LaSalle Bank, National Association” were acquired by Bank of
26 America, N.A. on October 17, 2008. See
27 [http://research.fdic.gov/bankfind/results.html?name=LASALLE+BANK+NATIONAL+ASSOCIATION](http://research.fdic.gov/bankfind/results.html?name=LASALLE+BANK+NATIONAL+ASSOCIATION&fdic=&address=&city=&state=&zip=)
&fdic=&address=&city=&state=&zip=

1 under a Pooling & Servicing Agreement (PSA), which required that the collateral documents had
2 to be transferred into the named Trust, CSMC Mortgage-Backed Trust 2007-6, within three (3)
3 months of the September 28, 2007 closing date for funding of the TRUST under the PSA and
4 could no longer be conveyed on July 28, 2008 when Exhibit 16 was signed and notarized by
5 KOCH and CLARK.

6 308. The Mortgages and DOTs granting MERS III the legal status as nominee for
7 “Lenders” furthered the unlicensed and unregulated purchase and sale of securities, which is the
8 main purpose of MERSCORP.⁷ because the entities designated as “Lenders” did not loan money
9 to the homeowners but were acting as unlicensed securities dealers to obtain the Notes and
10 mortgages or DOTs as collateral for undisclosed securities transactions whereby Notes and
11 mortgages or DOTs were sold to undisclosed third parties for resale to REMIC trusts or
12 government sponsored entities (GSEs) which were frequently, as believed to be so in this case,
13 sold to entities outside the United States of America to avoid regulation by the SEC and
14 compliance with the laws of the United States and the 50 states thereof. (See Exhibit 28B, page
15 21.)

16 309. The “MERS as nominee” scheme is the core of the ENTERPRISE which is intended
17 to conceal the fact that what appeared to be a loan contract between homeowners and the
18 purported “Lenders” was actually the sale of the homeowners’ Notes [securities specifically
19 defined at 15 USC sec. 77b(1)(a)] and Mortgages or DOTs [evidence of indebtedness at 15 USC
20 sec. 77b(1)(a)] to an unlicensed securities dealer (designated as “Lender” in the Notes and
21

22 ⁷ Although MERSCORP promoted the MERS® System to its members as a means for avoiding
23 recording fees payable to County Recorders and Registers of Deeds throughout the nation, it was willing
24 to admit that “purpose” for its existence. The purposeful concealment of the unregistered securities
25 trades its business model promotes has now been discovered. When an operation publicly admits to what
26 might be seen as an illegal purpose for its existence (see *Montgomery County Recorder of Deeds, by and*
27 *through Nancy J. Becker in her official capacity as Recorder of Deeds of Montgomery County,*
Pennsylvania v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc., before the United
28 States District Court for the Eastern District of Pennsylvania as Civil Action No. 11-6968), examination
as to what other purposes it also serves which might be illegal and are not publicly admitted is warranted.

1 Mortgages or DOTs, which are deceptively referred to as the “loan originator” in order to conceal
2 the true nature of the transactions.)

3 310. HARKEY’s “mortgage loan” was an undisclosed securities transaction in which the
4 “loan originator,” NCMC was an unlicensed securities dealers and purchased the securities
5 (HARKEY’s Note and DOT) for resale to DLJMC.

6 31. NCMC used “funds” transmitted by undisclosed third parties to acquire HARKEY’s
7 Note and Deed of Trust and thereafter the retained “servicing rights” for the purpose of taking
8 payments from HARKEY, who was the unwitting seller of the securities (his Notes and DOT) as
9 collateral for an undisclosed securities offering.

10 312. In the actual transaction, NCMC was the unlicensed purchaser and seller of
11 securities pretending to be a “Lender,” falsely characterized as a “loan originator,” who sold
12 HARKEY’s Note and DOT to undisclosed third party, DLJMC, which were never deposited by
13 CSFBMSC.

14 313. CREDIT SUISSE and its subsidiaries promised that payments made on account of
15 their acquisition of HARKEY’s Note and Deed of Trust would be distributed to the securities
16 holders, who had been promised earnings on their investment under the Prospectus Supplement,
17 underwritten by CREDIT SUISSE (Exhibit 2.)

18 314. MERSCORP, CREDIT SUISSE, CSFBMS, DLJMC, SPS, QLSC, McCARTHY,
19 LPS, FIS FNTIC, FIDELITY NATIONAL FINANCIAL, WELLS FARGO, and US BANK as
20 Trustee of a TRUST to which collateral was never conveyed all profited from the use of LPS
21 Desktop® and compatible software programs and the actions of the employees of LPS and its
22 affiliated enterprises and the employees of QLSC and SPS, acting as “human interface devices,”
23 which are described above.

24 315. COOPER CASTLE profited from the use of the falsely created, executed and
25 recorded Trustee’s Deed Upon Sale, by taking a fee for the unlawful detainer action against
26 HARKEY, in which they knowingly or recklessly claimed that US BANK was their client, when
27

1 they were actually retained by SPS, as servicer for US BANK, as Trustee of a nonexistent entity.

2 316. SAFEGUARD made its services available to “trash out” HARKEY’s residence,
3 profiting therefrom, and its agents profited from the confiscation of HARKEY’s belongings,
4 which, in turn, benefitted the ENTERPRISE by terminating HARKEY’s seizen in the subject real
5 estate, so that the undisclosed, unregulated and unlawful securities transactions could be
6 concealed by false documents in the public records, by fraud on HARKEY, his counsel and the
7 courts and eventually by operation of the Statute of Limitations, were HARKEY unable to
8 unravel the scheme in time to plead his causes of action, as he has been able to do herein.

9 317. All named corporate and individual parties were key participants in the MERS®-
10 LPS RACKETEERING ENTERPRISE which caused the injury HARKEY by depriving him of
11 his real and personal property so that the real scheme, securities fraud and identity theft, could be
12 concealed.

13 318. The MERS®-LPS RACKETEERING ENTERPRISE operates to conceal the true
14 nature of the “mortgage loans” which were not conventional mortgage loans, as HARKEY was
15 fraudulently led to believe, but were actually the undisclosed purchases of his Note and DOT and
16 the Notes and Mortgages or DOTs of hundreds of other homeowners, valued by CREDIT
17 SUISSE itself in the amount of \$674,230,000.00 for purposes of the Prospectus Supplement
18 (Exhibit 2) based on the collateral taken for the undisclosed securities offerings purchased and
19 sold by unlicensed securities dealers (the “loan originators”) for a commission and were
20 thereafter sold to investors in certificates by CREDIT SUISSE.

21 319. The MERS®-LPS RACKETEERING ENTERPRISE operates as a network of
22 entities which employ document signers who have no personal knowledge of the facts asserted in
23 the documents they sign and are low level employees acting, without knowledge of the scheme to
24 defraud homeowners, their counsel, the public, and the Courts of this nation to accomplish the
25 goals of the ENTERPRISE:

26 a. Conversion of real estate interests into collateral for unregistered securities offerings;
27
28

b. Destruction of this nation's land title records by flooding the deed registries with fictitious documents to replace the public deed registries with a private, electronic recording system under the control of the ENTERPRISE and its benefactors, which is necessary to conceal the securities frauds.

c. Ultimate fraudulent foreclosure of the real estate interests of the real owners of the real estate assets to conceal the securities frauds after the maximum profitability has been exhausted collection of all secondary payments made possible by the claim of default on the false claim of ownership made to conceal the unregulated trading of the fraudulently procured collateral documents.⁸

320. Some of the deleterious effects of the ENTERPRISE are

a. Preventing the affected homeowners from knowing the identity of the real parties in interest who are making claims against them, precluding them from exercising their rights to defend their homes and recover their damages by affirmative claims to which they are entitled;

b. Fraudulent confiscation of the real estate interests for the benefit of the “mortgage servicers” for excess payment gained subsequent to the collection of the secondary source payments;

c. Loss of local tax revenues;⁹

d. Destabilization of families and communities;

e. Human suffering victims of the ENTERPRISE who have been denied recourse for

⁸ It should be observed that the Notes which have been traded in imaged format for which no express consent was ever provided under e-Sign and UETA are almost never returned to the makers after payment in full, bankruptcy discharge or foreclosure, leaving the Notes in circulation, contrary to the Uniform Commercial Code adopted by all states of this nation. Although SPS and QLSC pretend to have foreclosed on HARKEY, his Note has never been returned to him marked PAID IN FULL, DISCHARGED OR SATISFIED and is believed to still be in circulation.

⁹ See *Montgomery County Recorder of Deeds, by and through Nancy J. Becker in her official capacity as Recorder of Deeds of Montgomery County, Pennsylvania v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc.*, before the United States District Court for the Eastern District of Pennsylvania as Civil Action No. 11-6968.

1 their losses.

2 321. The MERS®-LPS RACKETEERING ENTERPRISE relies upon the creation of
3 fictitious documents to make it appear that the Notes and DOTs were lawfully conveyed into the
4 various trusts such as the TRUST at issue in these proceedings, when the collateral was not
5 conveyed as required under New York Trust Law, the terms of the PSA and 26 USC sec. 860D,
6 both of which required strict compliance with the requirements of the PSA in order to fund the
7 TRUST as a static entity within three (3) months of the TRUST closing date, subject to the loss
8 of the TRUST's income tax exemption.

9 322. In this case, many of the ENTERPRISE co-conspirators do not even know the
10 name of the TRUST to which the collateral documents were required to be conveyed.

11 323. Nevada allows the Note and the DOT to travel along different paths, but the Note
12 and DOT must be held by a single entity at the time a foreclosure action is initiated which
13 requires, in the first instance, that the entity must actually exist.

14 324. The record filings in this case are fictitious documents, created without any
15 connection to true facts upon which the claimed right to foreclose by any existing entity must be
16 founded.

17 325. The Notice of Default (NOD) in the instant case, dated July 1, 2008, was falsely
18 created by LPS employees BEWLEY and NOEL and purported "That Quality Loan Service
19 Corp. is either the original trustee, the duly appointed substituted trustee, or acting as
20 agent for the trustee or beneficiary under a Deed of Trust dated 2/6/2007, executed by
21 MICHAEL HARKEY, A SINGLE MAN, as Trustor, to secure certain obligations in favor of
22 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR NEW
23 CENTURY MORTGAGE CORPORATION" (Emphasis added).

24 326. Defendant QLSC was not, on July 1, 2008, the original trustee, the duly appointed
25 substituted trustee and, upon information and belief, was not the authorized agent for the trustee,
26 which was First American Title Insurance Company, and could not have been the "beneficiary"

1 of the DOT, which was NCMC.

2 327. Furthermore, no authority could lawfully have been given to QLSC by the
3 “BENEFICIARY” (NCMC, then and there in bankruptcy proceedings) or from QLSC to “FIS
4 DEFAULT SOLUTIONS,” or to QLSC by First American Title Insurance Company, the Trustee.

5 328. QLSC was never lawfully substituted as the Trustee of the DOT by NCMC or
6 MERS III, its purported nominee, the authority of which, if any, terminated on March 19, 2008.

7 329. BEWLEY had no authority to sign the NOD on July 1, 2008 and neither he nor
8 NOEL knew by what authority BEWLEY was purportedly authorized to sign the NOD.

9 330. BEWLEY had no personal knowledge of the identity of the party for which he was
10 signing the NOD or that a default in payments on the Note had occurred.

11 331. BEWLEY, who sat in the same room as NOEL, was not required to prove any
12 authority for his signing of the NOD in any capacity whatsoever, because NOEL retrieved the
13 NOD from LPS Desktop® or similar software and handed the document to BEWLEY for him to
14 sign, in the same way that hundreds of NODs were retrieved, printed, signed and notarized by
15 employees of LPS and its affiliated enterprises without ever verifying the authority in which they
16 were pretending to sign or the truth of any other statement in the documents they sign, execute,
17 notarize and submit for recording.

18 332. BEWLEY and NOEL would assure that the NODs processed in the manner
19 described above were recorded at the Office of the Clark County Recorder and were, in fact, so
20 efficient in the document production and recording process that the NOD (being unauthorized by
21 any party in the chain of title) was recorded before the purported Substitution of Trustee naming
22 QLSC was processed in a similarly unauthorized manner at the LPS offices in Mendota Heights,
23 Minnesota and purportedly signed by ALLEN on July 1, 2008, but which was not notarized by
24 MOUA until July 7, 2008, a week later, and then it took nearly a month to create the false
25 Corporate Assignment of Deed of Trust, also created using LPS Desktop® or similar software at
26 the Utah offices of SPS by KOCH in the name of MERS III, which was plainly no longer

1 authorized as agent for NCMC.

2 333. The NOD is a fictitious document, created by LPS employee BEWLEY, who was
3 not employed by any party with an interest in the Note and DOT.

4 334. Although QLSC could not, on July 1, 2008, pretend to have been named as Trustee
5 of the DOT, but is believed to have ordered the services of LPS to have itself substituted as
6 Trustee of the HARKEY DOT.

7 335. BEWLEY could not have known of his own personal knowledge whether or not a
8 default had occurred and, by the incomprehensible language contained in the NOD, BEWLEY
9 did not know to what entity the payments on the Note were required to be made have been made
10 because the NOD purports to give notice on behalf of a variety of possible parties as set forth
11 above.

12 336. The Trustee of record on the DOT on July 1, 2008 was First American Title
13 Insurance Company, not QLSC, and BEWLEY was not employed by any party with a lawful
14 interest in the Note or DOT.

15 337. The “Lender” of record on the DOT on July 1, 2008 was NCMC which had rejected
16 the agency of MERSCORP and MERS III on March 19, 2008 in its Chapter 11 bankruptcy
17 proceedings.

18 338. Even if NCMC had not rejected its contract with MERSCORP on March 19, 2008,
19 MERS, as nominee for NCMC, could not convey an interest in any property which its principal,
20 NCMC, no longer had the power to convey its interest in the DOT on the subject property on
21 July 28, 2008. See *Hymas*, supra.

22 339. Paragraph 22 of the HARKEY DOT provides for HARKEY’s rights under the DOT
23 when the “Lender” makes an allegation of a default and provides:

24 22. Acceleration; Remedies. Lender shall give notice to Borrower prior to
25 acceleration following Borrower’s breach of any covenant or agreement in this
26 Security Instrument (but not prior to acceleration under Section 18 unless
27 Applicable Law provides otherwise). The notice shall specify: (a) the default;
28 (b) the action required to cure the default; (c) a date, not less than 30 days from the
date the notice is given to Borrower, by which the default must be cured; and

(d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

340. HARKEY was not provided with the notice and information required by Paragraph 22 of the DOT, which voids all subsequent actions under NRS 107.080.

341. Contrary to paragraph 22 of the DOT, employees of LPS or its affiliated enterprises, who had no personal knowledge whether or not a default occurred or whether HARKEY had been provided with his rights under paragraph 22 of the DOT, prepared and recorded the fictitious NOD, in the name of various alternative entities, none of which are identified by name except QLSC, which was not the Trustee or the Lender.

342. The NOD was created, signed, notarized and recorded by employees of LPS or its affiliated, before the notices required under paragraph 22 were provided (and the notices never were provided.)

343. Paragraph 22 of the DOT does not permit that filing of an NOD before the rights

1 under paragraph 22 are provided and further does not authorize the NOD to be prepared and
2 recorded by any party other than the Trustee or Lender.

3 344. QLSC was not the Trustee on July 1, 2008; First American Title Company was the
4 Trustee of record and the Lender of record was NCMC, which was in no way involved in the
5 noticing process required by paragraph 22.

6 345. LPS employees BEWLEY and NOEL signed and notarized the NOD and Fidelity
7 National Default Solutions caused the NOD to be recorded contrary to paragraph 22 of the DOT
8 and instructed the NOD instructed the Clark County Recorder to return the NOD to QLSC,
9 which was neither the Trustee or the Lender under the DOT.

10 346. On July 1, 2008, LPS employee ALLEN signed a purported Substitution of Trustee
11 (SOT) in the pretended capacity of "U.S. Bank National Association, as trustee, on behalf of the
12 holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6 by Select
13 Portfolio Servicing, Inc., its Attorney in Fact," which was purportedly notarized by LPS
14 employee MOUA on July 7, 2008, and recorded on July 11, 2008.

15 347. The SOT was created using LPS Desktop ® or by access through compatible
16 software.

17 348. ALLEN was not an officer or employee of SPS, but was an employee of LPS or an
18 affiliated entity and MOUA was a captive notary employed by LPS or an affiliate operating at the
19 same location in Mendota Heights, Minnesota, who did not notarize the SOT falsely signed by
20 ALLEN on the same date as the date upon which ALLEN purports to have signed the document.

21 349. On July 28, 2008, Defendant KOCH, who actually was an employee of SPS, falsely
22 signed a Corporate Assignment of Deed of Trust in the pretended capacity of Assistant Secretary
23 of "MERS AS NOMINEE FOR NEW CENTURY MORTGAGE CORPORATION, which, as
24 stated above, had no lawful interest in the DOT on that date.

25 350. On July 28, 2008, Defendant CLARK, notarized the signature of KOCH, stating,
26 "On July 28, 2008, before me, KIMBERLY CLARK, a Notary Public in and for Salt Lake in the
27

1 State of Utah, personally appeared Bill Koch, Assistant Secretary, MERS AS NOMINEE FOR
2 NEW CENTURY MORTGAGE CORPORATION personally known to me (or proved to me on
3 the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
4 within instrument and acknowledged to me that he/she/they executed the same in his/her/their
5 authorized capacity, and that by his/her/their signature on the instrument the person(s), or the
6 entity upon behalf of which the person(s) acted, executed the instrument,” which gave the false
7 appearance that MERS III had NCMC’s authority to assign the DOT.

8 351. CLARK knew that KOCH was an employee of SPS and was not an Assistant
9 Secretary of MERS and the notarization of the Corporate Assignment of Deed of Trust by
10 CLARK was intentionally, recklessly or negligently false.

11 352. The Corporate Assignment of Deed of Trust was created using LPS Desktop® or
12 similar software, based on data which was recklessly or negligently entered into the LPS
13 Desktop® database, containing data recklessly or negligently maintained in the MERS® data
14 base.

15 353. The falsely signed and notarized Corporate Assignment of Deed of Trust was
16 recorded on August 6, 2008 with the Clark County Recorder, and purports to create a legal
17 interest in the DOT in favor of U.S. Bank National Association, as Trustee, “on behalf of the
18 Holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6,” a
19 nonexistent entity.

20 354. On January 12, 2009, HARKEY filed for bankruptcy protection in the United States
21 District Court for the Western District of Washington in Case No. 09-10180(TTG). (Exhibit 19)

22 355. On January 12, 2009, sale of the subject property was purportedly conducted by the
23 unlawfully substituted QLSC as Trustee without lawful Notice as required by paragraph 22 of the
24 DOT, on a falsely created NOD, a premature and, therefore, falsely created SOT, and the
25 Corporate Assignment of Deed of Trust to a nonexistent entity after MERS III’s pretended
26 agency had been terminated.

1 356. A purported credit bid in the amount of \$1,063,633.71 was purportedly made by
2 U.S. Bank National Association, as Trustee, on behalf of the Holders of the CSMC Mortgage-
3 Backed Pass-Through Certificates, Series 2007-6, an entity which does not exist.

4 357. While the automatic stay was in effect in HARKEY's bankruptcy, on January 13,
5 2009, a Trustee's Deed Upon Sale was signed by QLSC employee, Defendant GONZALES, and
6 notarized the following day, on January 14, 2009 by Defendant NGUYEN, who stated, under
7 penalty of perjury:

8 On 1/14/2009, before me, Michelle Nguyen a notary public, personally
9 appeared Vanessa Gonzales, who proved to me on the basis of satisfactory
10 evidence to be the person(s) whose name(s) is/are subscribed to the within
11 instrument and acknowledged to me that he/she/they executed the same in
12 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
13 instrument the person(s), or the entity upon behalf of which the person(s) acted,
14 executed the instrument.

15 I certify under PENALTY OF PERJURY under the laws of the State of
16 California that the foregoing paragraph is true and correct.

17 359. Upon information and belief, GONZALES did not appear and sign the Trustee's
18 Deed Upon Sale before NGUYEN on January 14, 2009 because the Trustee's Deed Upon Sale
19 was signed by GONZALES on January 13, 2009.

20 360. On January 16, 2009, the falsely created and acknowledged Trustee's Deed Upon
21 Sale, purporting to grant and convey the property to US BANK as Trustee of a nonexistent entity
22 was recorded with the Clark County Recorder by "Fidelity National Default So."

23 361. The Clark County Recorder was instructed to return the document to "U.S. Bank,
24 National Association" at 3815 S.W. Temple, Salt Lake City, UT 84115-4412, which is the
25 address of SPS, having been transmitted by wire from QLSC's offices in San Diego, California
26 to the offices of LPS and its affiliated enterprises in Las Vegas, Nevada, via LPS Desktop®
27 software, to be printed and recorded at the Clark County Recorder's Office.

28 362. SPS is a subsidiary of CREDIT SUISSE, two other subsidiaries of which,
29 Defendants CSFBMS and DLJMC, are the depositor and sponsor, respectively, of a securities
30 offering, which was the true purpose of the transaction, undisclosed to HARKEY, in which the

1 collateral consisting of HARKEY's Note and DOT were purchased by NCMC on February 6,
2 2007 for resale as collateral for the sale of Certificates in the Defendant CSMC Trust 2006-7, the
3 essential facts of the purported loan transaction were concealed from HARKEY, which is the
4 primary function of the MERS® System.

5 363. Although MERSCORP boldly advertises that the MERS® System is designed to
6 save its "members" the recording fees which would be paid to local land title records offices, the
7 unacknowledged purpose of the MERS® System, which includes its instructions to its members
8 that they need not record assignments of Mortgages and Deeds of Trust is to enable the purchase
9 and sale of Notes, Mortgages and Deeds of Trust as collateral for an undisclosed securities
10 offering.

11 364. The MERS® system operated by MERSCORP is believed to exist for the purpose of
12 allowing the name "Mortgage Electronic Registration Systems, Inc." to appear on DOTs in order
13 to conceal the true nature of the transactions masquerading as mortgage loan transactions, but
14 which are actually concealed securities purchases and sales and to facilitate the unlawful
15 foreclosures of real estate assets which were never lawfully conveyed into the various REMIC
16 trusts for the benefit of MERSCORP "members" and their associated entities in the MERS®-
17 LPS RACKETEERING ENTERPRISE.

18 365. MERSCORP owns and operates the MERS® System through the sale of access to a
19 private, proprietary use computer database program which functions to allow its "members" to
20 conceal the "securitization" process which registers "mortgage loan" transactions which are
21 concealed, undisclosed and unregulated securities deals and trades.

22 366. MERSCORP has designed a pretended alternative land recording system so that its
23 "members" can avoid regulation and detection of what is a nation-wide racketeering enterprise,
24 using wire fraud, mail fraud and identity theft, designed to defraud homeowners into
25 participating in the undisclosed sale of their Notes, Mortgages and Deeds of Trust (collateral
26 documents) and to defraud the purchasers of the securities represented as being backed by
27
28

1 collateral documents but which are, in fact, not backed by Notes, Mortgages and DOTs by lawful
2 conveyances made to the REMIC Trusts prior to the closing dates of the trusts, as represented by
3 the Prospectuses, mandated by the individual trusts' PSAs and required by 26 USC 860D.

4 367. Many of the REMIC Trusts operating behind the veil of the MERS® System do not
5 own the collateral documents because the Notes, Mortgage or Deeds of Trust were never
6 conveyed to the various REMIC Trusts.

7 368. Because MERSCORP authorizes its "members" to have their "members"
8 employees and agents sign documents in the name of MERS III purporting to assign real estate
9 interests to their principals by assignee-to-assignee assignments using LPS Desktop® and
10 compatible software, MERSCORP "members" and their principals are able to take the proceeds
11 of falsely initiated and consummated foreclosure sales to resell the real estate and keep the
12 proceeds of the sale for themselves.

13 369. SPS negligently, recklessly or intentionally directed PITTMAN to execute Exhibit
14 22, when it did not know whether or not HARKEY's Note had been negotiated in favor of U.S.
15 BANK as Trustee of the CSMC Mortgage-Backed Trust 2006-7.

16 370. SPS knew or should have known that the Corporate Assignment of Deed of Trust
17 had been falsely created by SPS, executed by SPS employee Bill Koch and falsely notarized by
18 SPS employee Kimberly Clark, all of whom knew or should have known that Bill Koch was not
19 an Assistant Secretary of "MERS" and that MERS III had no authority or capacity to assign
20 HARKEY's Deed of Trust on behalf of New Century Mortgage Corporation on July 28, 2008
21 because New Century Mortgage Corporation had ceased to operate its business no later than July
22 15, 2008, when the Second Amended Chapter 11 Plan of Reorganization of New Century TSR
23 Holdings was confirmed by the United States Bankruptcy Court for the District of Delaware in
24 Case No. 07-10416 on July 15, 2008 and because NCMC had terminated its "membership" in
25 MERSCORP and the associated purported nomination of MERS III as its agent on March 19,
26 2008.

371. PITTMAN negligently, recklessly or intentionally executed Exhibit 22, when he knew or should have known that the Corporate Assignment of Deed of Trust executed by KOCH and notarized by CLARK was void as without lawful authority or simply had no idea what the requirements for the execution of the document were, having been inadequately trained for his position by SPS.

372. Upon information and belief, PITTMAN falsely claimed to be acting as Attorney in Fact for U.S. BANK under a Power of Attorney, which U.S. Bank never had authority to grant, the underlying collateral (Note and Deeds of Trust) having never been lawfully conveyed to U.S. BANK as Trustee of the CSMC Mortgage-Backed Trust 2007-6, and it is now known the entity from which SPS claimed to have obtained a Power of Attorney does not exist.

373. METTERS negligently, recklessly or intentionally notarized Exhibit 22, to make it appear that PITTMAN was authorized to execute the Grant, Bargain and Sale Deed, without requiring the production of the Power of Attorney or requiring PITTMAN to identify the authority and capacity by which he executed the document, acknowledging his individual identity only.

374. U.S. BANK negligently, recklessly or intentionally allowed its name to be used as Trustee of the CSMC Mortgage-Backed Trust 2007-6 and never verified whether the certificates representing beneficial interests in the purported Trust are backed by any assets whatsoever, presumably for some form of financial consideration.

375. Upon information and belief, Plaintiff's Note was never negotiated in favor of U.S. BANK as Trustee of the CSMC Mortgage-Backed Trust 2007-6 as require by Section 2.01 of the PSA dated September 1, 2007, as represented by the Prospectus Supplement (Exhibit 2) either by endorsement in blank or by transfer of possession from NCMC or any other party in the concealed securities transaction, but even if the Note had been lawfully endorsed and negotiated, none of the employees of LPS and its affiliated entities, SPS or QLSC had any knowledge of that fact and acted negligently or recklessly, without the requisite knowledge and authority as

1 described above.

2 376. Upon information and belief, U.S. BANK as Trustee of the CSMC Mortgage-
3 Backed Trust 2007-6 was never the holder of the Plaintiff's Note and entitled to enforce it, but
4 even it was, none of the employees of LPS and its affiliated entities, SPS or QLSC had any
5 knowledge of that fact and acted negligently or recklessly, without the requisite knowledge and
6 authority as described above and, moreover, the entity for which the SOT (Exhibit 15), the
7 Trustee's Deed Upon Sale (Exhibit 17) and the Grant Bargain and Sale Deed (Exhibit 22) is not
8 the CSMC Mortgage-Backed Trust 2007-6, but is a nonexistent entity.

9 377. Plaintiff's Deed of Trust executed in favor of New Century Mortgage Corporation
10 was never lawfully assigned to U.S. Bank as Trustee of the CSMC Mortgage-Backed Trust
11 2007-6.

12 378. The Corporate Assignment of Deed of Trust executed by SPS employee KOCH and
13 notarized by SPS employee CLARK is void as a fraudulent document prepared for the purpose of
14 deceiving HARKEY and the public into believing that U.S. BANK, as Trustee of the nonexistent
15 entity was the lawful assignee of the beneficial interest in HARKEY's Deed of Trust.

16 378. Mortgage Electronic Registration Systems, Inc. (MERS III) did not have the
17 authority to assign Harkey's Deed of Trust to U.S. Bank as Trustee of the CSMC Mortgage-
18 Backed Trust 2007-6 because it did not hold HARKEY's Note and its nomination to act on
19 behalf of the unlicensed securities dealer, New Century Mortgage Corporation (NCMC), had
20 terminated on March 19, 2008 by NCMC's rejection of its contract with MERSCORP, which
21 purported to allow NCMC and its successors and assigns to use the name of MERS III as
22 nominal beneficiary in the Clark County land records, terminated on that date.

23 379. SPS employee KOCH was not lawfully appointed to act as an officer of MERS III
24 because MERS III never appointed any officers to sign on behalf of the corporation.

25 380. None of the documents required to have been lawfully executed prior to the
26 purported foreclosure of HARKEY's title arising under Exhibit 1 were executed with lawful
27

1 authority, upon actual knowledge of the persons signing the requisite documents, from the NOD
2 signed by BEWLEY and notarized by NOEL, through the SOT executed in Minnesota by LPS
3 employee ALLEN pretending to be duly authorized by U.S. Bank as Trustee on behalf of the
4 “holders of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6” on July 1,
5 2008 (when the falsely made Corporate Assignment of Deed of Trust was not executed until July
6 28, 2008 by Koch in a falsely claimed capacity and without authority) through the false sale by
7 the falsely appointed substitute trustee, Quality Loan Services Corporation, up to and including
8 the falsely created and executed Exhibit 22 under which the BEUTLER TRUST and BEUTLER
9 claim title to HARKEY’s real estate located in Henderson, Clark County, Nevada, which is the
10 subject of this action.

11 381. Exhibits 2, 27, 28, 28A, and 28B were transmitted by wire to the SEC so that
12 CREDIT SUISSE, DLJMC, CSFBMC, WELLS FARGO and SPS, along with the other corporate
13 Defendants and others not yet identified, would profit from the sale and re-sale of the Notes and
14 Mortgages or Deeds of Trust and the personal identities of homeowners like HARKEY, in
15 imaged format, without their affirmative consent, transmitted by electronically (by wire)
16 throughout the world.

17 382. Exhibits 14, 16, 16, 17, 20, 21 and 22 were transmitted by wire and mail in order to
18 defraud HARKEY, his former counsel, the courts and the public to effectuate the foreclosure of
19 HARKEY’s real estate by the use of false documents created using LPS Desktop® software and
20 compatible software programs, signed by employees of LPS and its affiliates, SPS and QLSC,
21 who were employed for the purpose of executing false documents for the purpose of confiscating
22 and liquidating HARKEY’s real and personal assets in violation of the United States and the
23 State of Nevada.

24 383. CREDIT SUISSE, believed to be the parent company of CSFBMS, DLJMC and
25 SPS, served on the US Dollar LIBOR Panel in 2007-2008 and the US Dollar LIBOR Panel
26 manipulated the interest rates upon which financial instruments were calculated.

1 384. The US Dollar LIBOR Panel interest rate manipulations were instrumental in the
2 collapse of the real estate market in the United States in 2008, leading to the opportunity for the
3 members of the LIBOR Panel to claim default on the collateral documents which they falsely
4 claimed were conveyed to the REMIC Trusts and GSEs as a static transaction, but continuously
5 traded for maximum profit in imaged form.

6 385. It was necessary to create the appearance of the collapse to generate the secondary
7 payments upon the engineered defaults resulting in massive foreclosures throughout the United
8 States of America.

9 386. The collapse of the United States real estate market conveniently concealed, for a
10 time, the fact that the securities offerings underwritten by CREDIT SUISSE, such as the
11 certificates offered pursuant to the Prospectus Supplement (Exhibit 2), valued by CREDIT
12 SUISSE, the underwriter thereof, at approximately \$674,230,000.00 (more than two-thirds of a
13 Billion Dollars represented by a single offering) had not been lawfully transacted.

14 387. The securities offered for sale under the Prospectus Supplement do not appear to
15 have ever been collateralized by the Notes and Mortgages and Deeds of Trust, as represented to
16 the investors, and CREDIT SUISSE may have sold “nothing-backed” securities to persons and
17 entities both within and outside the United States of America¹⁰ and may have retained some or all
18 of the securities it underwrote for itself.

19 388. As homeowners and their counsel began to examine the nature of the transactions
20 involving the MERS® System, the underlying process of “securitizing mortgage loans” began to
21 emerge, the explanation of which was made far more difficult by the use of the name Mortgage
22 Electronic Registration Systems, Inc. as an agent for the “Lender, its successors and assigns.”

23 389. Nevada enacted new laws to require evidence that the party seeking the remedy of
24 nonjudicial foreclosure be produced in the newly enacted mediation process in 2011.

25
26 ¹⁰ It is believed that the securities offering based on the collateral documents never lawfully
27 conveyed to the CSMC Mortgage-Backed Trust 2007-6 were entirely sold outside the United States of
28 America.

1 390. Nonjudicial foreclosures in the name of Mortgage Electronic Registration Systems,
2 Inc. without evidence that MERS III is the holder of the Note are no longer possible in the State
3 of Nevada as the 2011 amendments to NRS 107.080, until the expiration of the Act, presently set
4 for July 1, 2017.

5 391. As of July, 2011, MERSCORP Rule 8 terminated its purported authorization to
6 MERSCORP “members” to foreclose in the name of Mortgage Electronic Registration Systems,
7 Inc.

8 392. Attorneys purporting to represent Mortgage Electronic Registration Systems, Inc.
9 (MERS III), who were actually representing mortgage servicers or parties claiming to own the
10 beneficial interest in “securitized mortgage loans” at the direction of MERSCORP, have made a
11 variety of false claims throughout the nation, upon which courts, counsel for homeowners and
12 homeowners have relied and which have been infused into the case law of various states in this
13 nation and constitute false conclusions of law, based on the false arguments made by counsel
14 acting at the direction of MERSCORP.

15 393. A short summary of some of the false claims made by counsel purporting to
16 represent MERS III in foreclosure actions appear in the Plaintiff’s Brief in Opposition to the
17 Motion for Summary Judgment and in Support of Partial Summary Judgment in *Montgomery*
18 *County Recorder of Deeds, by and through Nancy J. Becker in her official capacity as Recorder*
19 *of Deeds of Montgomery County, Pennsylvania v. MERSCORP, Inc. and Mortgage Electronic*
20 *Registration Systems, Inc.*, before the United States District Court for the Eastern District of
21 Pennsylvania as Civil Action No. 11-6968, filed on November 5, 2013, as Doc. 81, at pages 29-
22 30:

23 Defendants also want the Court to think that they have been complete outsiders
24 when it comes to the notes that are handled by their members (who number in the
25 thousands). For example, they argue that the Court should not order them to record
26 mortgage assignments because they “do not hold and never have held promissory notes or
27 debt secured by mortgages in Montgomery County, Pennsylvania....” Def. Br. p. 45
(citing Hultman Decl. ¶¶ 5, 12). But Mr. Hultman’s Declaration does not say that. Indeed,
28 prior to July 2011, MERS allowed its members to foreclose in MERS’ name, with MERS
as holder of the note. *In re Marron*, 455 B.R. 1, 4 n.5 (Bankr. D. Mass. 2011) (“a MERS

1 member may conduct a foreclosure in MERS' name, in which case MERS may be
2 identified as the 'note-holder'"); *In re Martinez*, 444 B.R. 192, 204 (Bankr. D. Kan.
3 2011) (under MERS procedures, "Countrywide could assign the Note to MERS, and
4 MERS (as the new holder of the Note) could bring the foreclosure action on
Countrywide's behalf"). See Hillwig Decl. Exh. 15 (MERS Rule 8 Section 2(a), 2009
version) at MERS-669.

5 R.K. Arnold (the Defendants' former President and CEO) and Mr. Hultman
6 (Defendants' declarant herein) have both testified in other cases that *MERS was the*
7 *holder* of notes when foreclosures were conducted in MERS name. According to their
8 testimony, notes were negotiated to MERS when foreclosures were conducted in MERS'
9 name, and MERS became the holder of and possessed the notes. Hillwig Decl. Exh. 16
10 (R.K. Arnold 2006 Trent Dep. excerpt) at 67:12-17; 76:6-77:14; 78:3-6; (testifying
11 concerning MERS' practice of becoming a holder of the note at the time of foreclosure);
12 *Id.* at 81:11-21 ("ultimately during the foreclosure [MERS] become[s] the owner and
13 holder of the note for purposes of the foreclosure."); MERS "gain[s] possession of [the
14 note] for the purpose of foreclosure...."); *Id.* at 82:15-18 (MERS "ha[s] to have
15 possession of the note so we can move forward with [foreclosure]."); *Id.* at 87:17-22
16 ("We are actually the holder and owner of the mortgage and note proceeding forward
17 with the litigation...."); *Id.* at 106:19-107:1; *Id.* at 110:6-8 ("We ultimately would [get
18 physical possession of the note]...."); *Id.* at 113:4-10; Hillwig Decl. Exh. 17 (Hultman
2009 *Henderson* Dep. excerpt) at 63:1-16 (MERS became the "holder," had physical
possession, and could enforce the note and be paid); *Id.* at 108:9-12; *Id.* at 109:19-110:1
(MERS Rules provide that MERS holds the promissory note with a blank endorsement
when foreclosing); *Id.* at 112:1-6 (the note is "negotiated" to MERS for the purpose of
conducting the foreclosure).

19 Indeed, MERS routinely asserts that it assigns the notes and beneficial rights
20 along with MERS mortgages regarding property located in Montgomery County,
21 Pennsylvania, including assignments from and to itself. See *supra*, p. 9 (quoting Hillwig
22 Decl. Exh. 4-6). MERS will even record assignments of both the note and mortgage to
23 itself as the nominee for a new member. Hillwig Decl. Exh. at 15, 19-20. MERS' actions
24 in this regard speak far more persuasively than Defendants' conveniently shifting
25 litigation positions in various courts.

26 394. The characterization in the Brief of Montgomery County Recorder Nancy J. Becker
27 by which the County Recorder was awarded Partial Summary Judgment and defeated the
28 Summary Judgment of MERSCORP and MERS III by Memorandum Opinion and Order in
Montgomery County Recorder of Deeds, by and through Nancy J. Becker in her official capacity
as Recorder of Deeds of Montgomery County, Pennsylvania v. MERSCORP, Inc. and Mortgage
Electronic Registration Systems, Inc., before the United States District Court for the Eastern
District of Pennsylvania as Civil Action No. 11-6968, Doc. 118, filed on July 1, 2014, used the

1 false arguments of MERSCORP members in bankruptcy cases against it.¹¹

2 395. The MERS®-LPS RACKETEERING ENTERPRISE operates within the judicial
3 system in plain sight, making whatever argument suits the purpose of the co-conspirators in any
4 given case and the co-conspirators are not troubled by their inconsistencies, so confident are they
5 that their scheme cannot be unraveled because they have obtained false conclusions of law, based
6 on false statements of fact in numerous cases, knowing that judges and other lawyers will rely on
7 the false conclusion in subsequent proceedings, heaping confusion upon confusion, until the
8 courts have recourse to actual facts, which are finally available in this case.

9 396. The actual facts of the MERSCORP-MERS®-MERS III operations consist of
10 admissions of the MERS® aspect of the MERS®-LPS RACKETEERING ENTERPRISE in
11 MERSCORP's own contracts and Rules, its published statements and the truthful statements of
12 MERSCORP's officers, under oath in other forums.

13 397. Unlike the Montgomery County Recorder's argument that MERSCORP has
14 "admitted" that MERS III holds the Notes in cases in which foreclosures were brought in the
15 name of MERS III, HARKEY alleges and offers to prove that MERS III has never held any
16 Notes, Mortgages or Deeds of Trust, that MERSCORP instructed its members to file bankruptcy
17 claims in the name of MERS III throughout the nation until July, 2011, in violation of 18 USC
18 sec. 152(4) and has instructed numerous false declarations in bankruptcy cases in violation of 18
19 USC sec. 152(3).

20 398. It is part of the *modus operandi* of the MERS®-LPS RACKETEERING
21

22 ¹¹ HARKEY informs the Court that the Memorandum Opinion and Order of Judge Joyner is not a
23 final decision and is yet subject to appeal. HARKEY further contends that the MERS III as holder of the
24 Note argument has been repudiated by MERSCORP itself and that present repudiation is believed to be
25 accurate. There is no evidence that MERS III holds any assets whatsoever or ever did. There is also no
26 evidence that MERSCORP ever held any Notes, Mortgages or Deeds of Trust. MERSCORP, its
27 members and their co-conspirators only pretended that MERS III was the beneficiary of Mortgages and
28 Deeds of Trust to enable the liquidation of real estate assets in foreclosure and bankruptcy proceedings
until July, 2011.

1 ENTERPRISE to have attorneys representing mortgage servicers offer false arguments, based on
2 verifications of false facts and on falsely created, executed and recorded documents, as was done
3 by COOPER CASTLE as to HARKEY's unlawful detainer action on January 27, 2008 by Caleb
4 Langsdale, in violation of NRS 207.370(28).

5 399. The core of the MERS®-LPS RACKETEERING ENTERPRISE is the creation of
6 fraudulent documents, which in the nonjudicial foreclosure on the subject real estate, amounts to
7 five (5) documents, from the NOD (Exhibit 14), to the SOT (Exhibit 15), to the Corporate
8 Assignment of Deed of Trust (Exhibit 16), to the Trustee's Deed Upon Sale (Exhibit 17), through
9 the Grant, Bargain and Sale Deed (Exhibit 22).

10 400. There is not one authentic and lawfully authorized transaction in the entire document
11 creation scheme, starting with the falsely created NOD, because the MERS®-LPS
12 RACKETEERING ENTERPRISE exists for the purpose of concealing the identities of the real
13 parties in interest in the securitization scheme, of which the homeowners and investors are
14 intended by the racketeering conspirators to be kept ignorant.

15 401. The use of the name Mortgage Electronic Registration Systems, Inc. by the
16 participants in the MERS®-LPS RACKETEERING ENTERPRISE conceals the true nature of
17 the transaction in which the homeowners' signatures, credit-worthiness, and property rights are
18 sold into the securitization process in violation of 18 USC sec. 1028, by use of mail and wire, in
19 violations of 18 USC secs. 1341 and 1343 and NRS 205.377.

20 402. The ENTERPRISE conceals the failure of the participants in the securitization
21 scheme to lawfully and timely convey the assets (which are represented to be the collateral for
22 the securities offering) when the collateral has not been lawfully conveyed in the manner and
23 time-frame represented in the Prospectus, Prospectus Supplement and Pooling and Servicing
24 Agreement in hundreds of Real Estate Investment Mortgage Conduit (REMIC) Trusts.

25 403. In furtherance of the scheme on behalf of its "members," MERSCORP intentionally
26 authorizes the creation of fictitious documents for recording in the public land title records and
27
28

1 intentionally authorizes the creation and transmission of the falsely created documents by mail
2 and wire in violation of 18 USC secs. 1341 and 1343, to the detriment and damage of
3 homeowners, like HARKEY.

4 404. Alternatively, in furtherance of the scheme on behalf of its “members,”
5 MERSCORP recklessly purports to authorize the creation of the fictitious documents for
6 recording in the public land title records and recklessly instructs the creation and transmission of
7 the documents by wire and mail in violation of 18 USC secs. 1341 and 1343 to the detriment and
8 damage of homeowners, like HARKEY.

9 405. Alternatively, MERSCORP negligently instructs its “members” to create fictitious
10 documents for recording in the public record without any mechanism for quality control of the
11 use of the name of its subsidiary, MERS III, as the purported assignee of property rights which
12 MERS III never possessed to the detriment and damage of homeowners, like HARKEY.

13 406. The MERS® System, owned and operated by MERSCORP, authorizes and instructs
14 the creation of the fictitious documents for recording in the public record and permits the creation
15 and transmission of the documents in the name of its wholly owned subsidiary, MERS III, as
16 assignor, signed by employees and agents of the purported assignees, when MERS III has no
17 property interest to assign, but is actually being named by the purported assignee of the property
18 interest to conceal the fact that the assignment is being executed by the employee or agent of the
19 assignee for the benefit of the assignee, creating documents which represent a legally impossible
20 assignee-to-assignee assignment.

21 407. It is the identity of homeowners, such as HARKEY, which are fraudulently taken at
22 the purported mortgage loan closings (securities collateral purchases) by which participants in the
23 ENTERPRISE purport to collateralize the securities offerings, without the knowledge and
24 consent of the person whose identity is taken to be sold in the securities offering, in violation of
25 18 USC sec. 1028.

26 408. The scheme of the ENTERPRISE unravels at the point at which there is an alleged
27
28

1 default in payments under the Note and the fictitious document fabrication process then
2 begins and fabricated documents are transmitted by wire and mail to the public records offices in
3 order to give the appearance of substantial compliance with nonjudicial foreclosure processes.

4 409. HARKEY and his former counsel relied upon the validity of the fictitious
5 documents in evaluating his claims and defenses in 2008 and 2009.

6 410. HARKEY did not begin to suspect that the documents of record were fictitious and
7 that the NOD and the Substitution of Trustee had been prepared by employees of LPS until
8 December 5, 2011, when the Attorney General for the State of Nevada issued a press release after
9 the Grand Jury Testimony was completed in the LPS investigation and HARKEY recognized the
10 name of NOEL, who had notarized the fictitious NOD in the instant case.

11 411. This action was commenced within three (3) years of the date upon which
12 HARKEY suspected the fraudulent filings and was on constructive notice thereof.

13 **COUNT ONE**

14 **Racketeering in Violation of NRS 207.470 (Nevada State RICO)**
15 **As to the Corporate Defendants, their named employees in their capacities as employees,**
16 **McCarthy and Fenn, but excluding Brody, Old Republic Title of Nevada and the Beutlers**

17 412. HARKEY realleges paragraph 1-411 as if fully set forth therein.

18 413. HARKEY alleges that the acts complained of herein have the same or similar
19 pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
20 interrelated by distinguishing characteristics and are not isolated incidents within 5 years and in
21 which the aggregate loss or intended loss is more than \$650 in violation of NRS 205.377, which
22 are predicate acts under NRS 207.470 and HARKEY specifically alleges:

23 a. The pattern is the use of the MERS® System to conceal the true nature of the
24 underlying transaction, which is not a mortgage loan contract, but was the purchase and sale by
25 unlicensed persons of HARKEY's Note and DOT and thousands of others for use as collateral
26 for undisclosed securities transactions.

27 b. The participants are those who engaged in undisclosed, unregulated sale of
28 unregistered securities which are intended to remain secret while the goal of trading real estate

1 collateral documents for the benefit of the “members” of MERSCORP and other who participate
2 in the MERS RACKETEERING ENTERPRISE is accomplished for the maximum profit of its
3 participants.

4 c. The intent of the ENTERPRISE is to conceal the true nature of the securities
5 transaction by which the Notes and DOTs are purchased and sold without the knowledge
6 and consent of the homeowners; to destroy the integrity of the public land title recording system
7 in the United States in order to conceal the securities frauds; to establish its methods of
8 confiscating homes and disposing of them on re-sale for benefit of the ultimate false claimants to
9 the real estate assets, which are purported to be REMIC trusts or GSEs, but which are actually
10 the national banking associations and foreign banking corporations, who have conspired to use
11 the MERS® System to increase their profits by trading homeowners Notes and DOTs as a false
12 currency internationally; to increase their profits from trading on the assets of homeowners by
13 insurance devices such as mortgage insurances, credit default swaps and derivative trades by in
14 which they profit from the trading in electronic images of Notes, Mortgages and Deeds of Trust,
15 which were obtained by false pretenses from the homeowners; and to liquidate the real estate
16 interests of the homeowners whose identities and collateral documents were taken for sale to and
17 by undisclosed third parties when the maximum profitability had been achieved.

18 d. US BANK, WELLS FARGO, CREDIT SUISSE and their subsidiaries, as well as other
19 national and alien banking associations and their subsidiaries or unlicensed securities dealers
20 who act as “loan originators” and “mortgage servicers,” used the device of promising to create
21 REMIC Trusts, such as the CSMC Mortgage-Backed Trust 2007-6, which are supposed to be
22 collateralized with the assets of homeowners like HARKEY, in order to sell certificates to
23 investors under the false pretense that the certificates are backed by the collateral represented in
24 the Prospectuses and then failed to lawfully convey the collateral to the REMIC Trusts.

25 e. On September 28, 2007, the CSMC Mortgage-Backed Trust 2007-6, as the issuer of
26 securities, caused a Free Writing Prospectus to be filed with the Securities and Exchange
27
28

1 Commission. (Exhibit 28.)

2 f. On October 1, 2007, the CREDIT SUISSE, as underwriter of the securities offering,
3 filed the Prospectus Supplement with the SEC. (Exhibit 2)

4 g. On October 15, 2007, the Pooling and Servicing Agreement (PSA) was filed with the
5 SEC as an Exhibit attached to the Form 8-K filed with the SEC. (Exhibit 28 and 28A)

6 h. On January 25, 2008, CSFBMC filed a Suspension of Duty to Report (Form 15-15D),
7 “depositor” of the collateral taken from homeowners at the “real estate closings,” which were
8 actually purchases of securities (Notes and Mortgages or Deeds of Trust and the identities of the
9 homeowners signing the collateral documents) for re-sale by unlicensed securities dealers, such
10 as NCMC, declaring that there were less than 300 “holders” of the certificates sold by CREDIT
11 SUISSE on that date. (Exhibit 29.)

12 i. The certificates were reported to the SEC as all having been sold outside the United
13 States of America. (Exhibit 28A, page 21.)

14 j. The unlicensed securities dealer, NCMC, had filed for Chapter 11 Bankruptcy in the
15 United States Bankruptcy Court for the District of Delaware in Case No. 07-10419 (consolidated
16 with Case No. 07-10416) on April 2, 2007 and terminated its “membership” in MERSCORP on
17 March 19, 2008.

18 k. After the profit from trading in the securities derived therefrom has been maximized,
19 in order to conceal the operations of the ENTERPRISE for the benefit of the participants using
20 the MERS® System, participants in the ENTERPRISE used LPS and their own in-house
21 document fabrication operations to create false documents to confiscate real estate assets in
22 which they had no lawful interest, following the pattern alleged in the instant case.

23 l. The fabrication, execution and recordation of fictitious documents with the intent to
24 defraud HARKEY and others similarly situated by depriving them of the possession, use and
25 enjoyment of his real estate is the method of commission of the ENTERPRISE goals, which are
26 the results intended.

1 m. The results sought and obtained by the violations of NRS 205.377 and NRS
2 205.395 (reserved for supplemental pleadings on behalf of the putative class of injured Nevada
3 homeowners) is the destruction of the integrity of public land title records throughout Nevada
4 and the electronic trading of instruments representing real estate assets for the benefit of
5 undisclosed parties, the confiscation of real estate on falsified documents to conceal the securities
6 fraud.

7 n. The accomplices are the co-conspirators named herein who use their employees of the
8 entities named herein, employees of other entities engaged in the same business plan operating
9 under the MERS® System and other entities which engage in similar practices by which one
10 entity will sponsor a securities offering, purchase and sell the Notes and Mortgages or DOTs into
11 a REMIC trust of which another entity acts as trustee, all concealing the interrelationship
12 between the entities participating in the global scheme from the public, the courts and the victims
13 of their fraudulent securities offerings and homeowners whose real estate is confiscated through
14 the document creation and recordation processes, to conceal the underlying securities frauds.

15 414. The victims of the fictitious document creation and recordation scheme are the
16 property owners, such as HARKEY, who are deceived into believing that the fictitious
17 documents are authentic and authorized and who cannot discern the real parties in interest against
18 whom they can make valid claims; the public, which cannot access accurate documents in the
19 land title records; the state and federal courts in the State of Nevada, which believe they may rely
20 on fictitious documents and are deceived by the MERS® System's operations which conceals the
21 identities of the real parties in interest in the ENTERPRISE.

22 415. The operations of the ENTERPRISE are interrelated and have the distinguishing
23 characteristics of MERSCORP purporting to authorize the creation of fictitious documents
24 falsely signed without lawful authority in the name of MERS III, which are then falsely notarized
25 without proof of the authority of the signer (and knowing the signer does not have the authority
26 claimed) by employees of the co-conspirators.

416. The acts specified herein constitute more than two predicate acts in violation of NRS 205.377 consisting of the fraudulent misrepresentation of the transaction characterized as mortgage financing, which is, in actuality, the unlicensed and unregulated purchase and sale of Notes and DOTs.

417. Exhibit 1 was taken by fraudulent misrepresentation on February 6, 2007 and continued to be used through January 16, 2009 by DLJMC, CSFBMC, subsidiaries of CREDIT SUISSE, CREDIT SUISSE as underwriter of the securities offering for the TRUST as issuer, WELLS FARGO as “Master Servicer and Trust Administrator” which received a fee for the use of its name, SPS pretending to be the “Attorney in Fact” for US BANK as Trustee of a nonexistent entity, and QLSC, which caused a false Trustee’s Deed Upon Sale to a nonexistent entity.

418. The false documents remain in the public land records of the Clark County Recorder to this day.

419. The false documents described in detail herein and attached hereto and incorporated by reference herein as Exhibits 14, 15, 16, 17 and 22 were created, signed, notarized and recorded in the land records pertaining to the subject property, in the course of the operation of the ENTERPRISE, using LPS Desktop® and compatible software under the purported authority of MERSCORP Rule 8 (2006) authorizing its members to commence, continue and consummate foreclosures under Deeds of Trust in which MERS III is named as the nominee or beneficiary.

420. MERSCORP created a system which allows and instructs the creation, execution and recordation of falsified documents in the public land records, of which each and every document filed at the Office of the Clark County Recorder pertaining to the subject real estate identified herein are examples:

a. Exhibit 14: the NOD created, executed and recorded on July 1, 2008 by employees of LPS or its affiliated enterprises using LPS Desktop® software, directed by FIS, a subsidiary of FIDELITY NATIONAL FINANCIAL, in conspiracy with QLSC, DJMC, CSFBMC, SPS,

1 WELLS FARGO, US BANK, the TRUST and MERSCORP.

2 b. Exhibit 15: the SOT recorded on July 11, 2008, having been created and executed on
3 July 1, 2008 and July 7, 2008 by employees of LPS or its affiliated enterprises using LPS
4 Desktop® software, directed by FIS, a subsidiary of FIDELITY NATIONAL FINANCIAL, in
5 conspiracy with CREDIT SUISSE, QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US
6 BANK, the TRUST and MERSCORP. by LPS, directed by FIDELITY NATIONAL
7 FINANCIAL, in conspiracy with QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK,
8 the TRUST and MERSCORP;

9 c. Exhibit 16: the Corporate Assignment of Deed of Trust recorded on August 6, 2008,
10 having been created and executed on July 28, 2008 by employees of SPS using LPS Desktop®
11 software, directed by FIS, a subsidiary of FIDELITY NATIONAL FINANCIAL, in conspiracy
12 with CREDIT SUISSE, QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK, the
13 TRUST and MERSCORP. by LPS, directed by FIDELITY NATIONAL FINANCIAL, in
14 conspiracy with QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK, the TRUST and
15 MERSCORP;

16 d. Exhibit 17: the Trustee's Deed Upon Sale recorded on January 16, 2009, having been
17 created and executed on January 13, 2009 and January 14, 2009 by employees of SPS using LPS
18 Desktop® software, directed by FIS, a subsidiary of FIDELITY NATIONAL FINANCIAL, in
19 conspiracy with CREDIT SUISSE, QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US
20 BANK, the TRUST and MERSCORP. by LPS, directed by FIDELITY NATIONAL
21 FINANCIAL, in conspiracy with QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK,
22 the TRUST and MERSCORP;

23 e. Exhibit 22: the Grant, Bargain and Sale Deed recorded on October 27, 2010, having
24 been created and executed on October 26, 2010 (signed) and October 4, 2010 (notarized) by
25 employees of SPS using LPS Desktop® software, directed by FIS, a subsidiary of FIDELITY
26 NATIONAL FINANCIAL, in conspiracy with CREDIT SUISSE, QLSC, DJMC, CSFBMC,

SPS, WELLS FARGO, US BANK, the TRUST and MERSCORP. by LPS, directed by FIDELITY NATIONAL FINANCIAL, in conspiracy with QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK, the TRUST and MERSCORP.

421. COOPER CASTLE caused the Henderson County Justice Court to rely on the false Exhibit 17 when it commenced unlawful detainer action in the name of US BANK as Trustee (without identifying the Trust for which US Bank was Trustee).

422. The Complaint filed by COOPER CASTLE purported to be supported by the Langsdale verification, causing the Court, PLAINTIFF and his counsel to rely on the false Exhibit 17, which had been created using LPS Desktop® software, directed by FIS, a subsidiary of FIDELITY NATIONAL FINANCIAL, in conspiracy with CREDIT SUISSE, QLSC, DJMC, CSFBMC, SPS, WELLS FARGO, US BANK, the TRUST and MERSCORP, as if it were a lawful, genuine and authentic document.

423. The essential participants in the fraudulent document scheme are CREDIT SUISSE, DLJMC, CSFBMC, MERSCORP, FIDELITY NATIONAL FINANCIAL, FIS, FNTIC, LPS and its employees and agents and of its affiliates, WELLS FARGO, US BANK, SPS and its employees and agents, and QLSC and McCarthy.

424. The ENTERPRISE commenced its operation against HARKEY on February 6, 2007, operated through the creation of Exhibits 14, 15, 16 and 17, persisted through the August 3, 2009, when the Writ of Restitution was entered by Judge David S. Gibson, Sr. in Clark County, Nevada Justice Court in Case No. 09-CH-00168, through o February 17, 2010 when the Writ of Restitution was returned “executed,” until SAFEGUARD “trashed out” HARKEY’s home on or about March 18, 2010, while SAFEGUARD continued to withhold HARKEY’s belongings from him or compensation therefor, through the Grant, Bargain and Sale Deed issued by SPS to the BEUTLER FAMILY TRUST and BRYCE D. BEUTLER, executed by SPS employees PITTMAN and METTERS.

425. The ENTERPRISE continues to this day because the false documents (Exhibits 14, 15, 16 17, 21, and 22) remain of record and uncorrected.

1 426. Others who joined the ENTERPRISE include FENN, who hired SAFEGUARD to
2 “trash out” the subject real estate by removing HARKEY’s personal possessions, as agent for
3 SPS and the yet unidentified subsidiary of FIDELITY NATIONAL FINANCIAL, which insured
4 the inferior title granted to the BEUTLER FAMILY TRUST and BRYCE D. BEUTLER TITLE,
5 to assure that the subject real estate would appear to be sold to a third party.

6 427. The ENTERPRISE continues to this day because HARKEY still remains excluded
7 from possession, use and occupancy of his lawful seizen.

8 428. HARKEY’s February 6, 2007 Note and DOT and his personal identifying
9 information were taken under false pretenses for the undisclosed purpose of purchasing and
10 selling the collateral documents and PLAINTIFF’s personal identity for profit and used by
11 undisclosed entities now known to include, but are not limited to, DLJMC, CSFBMC, CREDIT
12 SUISSE and SPS, and the subsequently created fictitious documents purporting to establish
13 rights to dispose of HARKEY’s real and personal property were transmitted by wire and mail by
14 and between the Defendants and their agents, in violation of 18 USC secs. 1341 and 1343 and
15 NRS 205.377.

16 429. The fictitious documents were intentionally filed in the Clark County Recorder’s
17 Office with the intent that HARKEY, his counsel, the courts and the public would rely upon the
18 recorded documents as valid and take action or refrain from taking action in reliance thereon.

19 430. HARKEY and his former counsel did rely on the false documents complained of
20 and in reliance thereon did not seek to enjoin the Trustee’s sale, although HARKEY sought
21 bankruptcy protection in the United States District Court for the Western District of Washington
22 in an effort to reorganize the claimed indebtedness which he did not then know was not owed to
23 the parties then proceeding against him.

24 431. QLSC violated the automatic stay and conducted a foreclosure sale, accepting a
25 credit bid from a nonexistent party. (Exhibits 17 and 19.)

26 432. On the basis of the theft of HARKEY’s identity, which included his credit score,
27 social security number and the address of and title to his property, CREDIT SUISSE, CSFBMS,

1 DLJMC, SPS and WELLS FARGO profited from the re-sale of his collateral documents and
2 personal identity, without his consent, and must be required to account for and disgorge their
3 profits from the undisclosed securities trades made using his identity and collateral.

4 433. The subsequent creation of fictitious documents, transmitted by mail and wire, by
5 which his property interests were pretended to have been liquidated, HARKEY was damaged
6 and continues to be damaged in his property rights this day.

7 434. As detailed above, the incidents were not isolated and have spanned more than five
8 (5) years, from the date of the fraudulent taking of the February 6, 2007 DOT, through all of the
9 false documents being created, executed, used and relied upon to create the appearance of a
10 nonjudicial foreclosure and continuing while HARKEY has been unlawfully excluded from his
11 lawful and superior seizen in the subject real estate.

12 435. With respect to the participation of McCARTHY as Director of QLSC and QLSC,
13 he has entered into an agreement to participate in the MERS®-LPS RACKETEERING
14 ENTERPRISE in the states of California, Oregon, Washington, Arizona and Nevada.

15 436. McCARTHY created the apparent legal structure for the operations of QLSC, QLSC
16 of Washington and McCarthy Holthus, LLP, which defends, without independent judgment, the
17 actions of the QLSC entities.

18 437. Quality Loan Service Corporation of Washington, a sister company to QLSC in this
19 case, has been determined by the Supreme Court of the State to have violated both Washington
20 and California notary laws (constituting crimes in both states) in the execution of documents to
21 accomplish nonjudicial foreclosures in the State of Washington. See *Klem v. Washington Mutual*
22 *Bank, et al.* 176 Wash.2d 771, 295 P.3d 1179 (Wash., 2013).

23 **WHEREFORE**, PLAINTIFF requests treble the amount of his actual damages in an
24 amount to be determined at trial, along with his attorney's fees and costs.

1 **COUNT TWO**

2 **Racketeering in Violation of 18 USC sec. 1961, et seq. (Federal RICO)**

3 **As to the Corporate Defendants, their named employees in their capacities as employees,**
4 **McCarthy and Fenn, but excluding Brody, Old Republic Title of Nevada and the Beutlers**

5 438. HARKEY realleges paragraphs 1-437 as if fully set forth herein.

6 439. The acts specified herein constitute more than two predicate acts in violation of 18
7 USC sec. 1961, et seq., consisting of identity theft by CREDIT SUISSE, DLJMC, CSFBMC,
8 WELLS FARGO, US BANK, SPS, and MERSCORP and mail fraud and/ or wire fraud (in
9 violation of 18 USC sec. 1341 and 1343) for transmission of Exhibits 14, 15, 16, 17, 20, 21, and
10 22.

11 440. The fictitious documents remain recorded in the Clark County Recorder's Office and
12 are relied upon as valid public documents to this day.

13 441. On the basis of the theft of his identity and the subsequent creation of fictitious
14 documents, transmitted by mail and wire, HARKEY continues to be damaged in his property
15 rights as described above and below to this day.

16 442. HARKEY has been excluded by the frauds committed by the Defendants (excluding
17 the BEUTLERS) and by threats and intimidation from the possession, use and enjoyment of his
18 property since March 18, 2010, when his personal belongings were "trashed out" by agents of
19 SAFEGUARD, at the request of FENN, as agent of SPS.

20 443. The subject real estate was valued in excess of \$960,000.00 on the date of the
21 identity theft, on February 6, 2007, and is now valued in excess of \$500,000.00 and has a
22 monthly rental value of no less than \$4,000.00, exclusive of costs of maintaining the residence
23 but including all amenities attendant to the property.

24 444. SAFEGUARD participates in the ENTERPRISE by receiving referrals from the
25 national banking associations which work in concert to conceal the real parties in interest in the
26 MERS® system by contributing the "trash out" services to the ENTERPRISE, by which
27 homeowners are intimidated by the breaking and entering into their homes and are thereby
28 destabilized, distracted and intimidated in their efforts to resist unlawful foreclosures.

1 444. Upon information and belief, FENN, as agent for US BANK, brought the
2 SAFEGUARD “trash out” services into the instant case and participated in the ENTERPRISE
3 procedure of destabilizing, distracting and intimidating HARKEY, who lost all of his personal
4 possessions which were taken and not returned to him by SAFEGUARD agents no earlier than
5 March 18, 2010.

6 445. FENN, as a licensed real estate agent, knew that personal property of persons in
7 possession of real estate is to be stored for a reasonable period of time, with notice to the person
8 who was in residence, to permit the recovery of the property removed, even if that party was no
9 longer entitled to possession of the real estate, which HARKEY was and still is.

10 446. SAFEGUARD served the ENTERPRISE’s purposes of destabilizing, distracting
11 and intimidating HARKEY when its agent, Susan Morgan, first agreed to return HARKEY’s
12 personal belongings and then SAFEGUARD repudiated the existence of Susan Morgan and
13 advised HARKEY’s counsel that the HARKEY’s personal property had been hauled to the city
14 dump, when it knew or should have known that the valuable personal property had been taken
15 by its agents with the intent to permanently deprive HARKEY of its possession .

16 447. HARKEY was thereafter invited to make a claim against SAFEGUARD, which
17 SAFEGUARD fraudulently promised to review, but instead waited until it believed that the
18 Statute of Limitations on conversion had expired, failing to recognize the alternative theory of
19 liability asserted here is that of a co-conspirator under the federal RICO statutes, because it
20 acts to destabilize, distract and intimidate the victims of the ENTERPRISE by confiscating the
21 victims’ personal property in the course of illegal foreclosure proceedings undertaken on
22 fictitious documents.

23 448. Under 18 USC sec. 1964, HARKEY is entitled to treble his damages, for the loss of
24 his valuable personal property with an estimated replacement value in excess of \$100,000.00,
25 amounting to in excess of \$300,000.00, along with his actual attorneys fees and costs of this
26 action, for the Defendants’ violations of 18 USC sec. 1961, et seq.

27 449. Under 18 USC sec. 1964, HARKEY is entitled to treble his damages, including his
28

1 loss of enjoyment of the subject premises, rental value in the amount of no less than \$216,000.00
2 amounting to \$648,000.00, along with his actual attorneys fees and costs of this action, for the
3 Defendants' violations of 18 USC sec. 1961, et seq.

4 450. Along with the collateral documents, PLAINTIFF's social security number, FICO
5 scores other personal identifying information was taken without his consent in violation of 18
6 USC sec. 1028.

7 **WHEREFORE**, PLAINTIFF requests treble the amount of his actual damages in an
8 amount to be determined at trial, along with his attorney's fees and costs.

9 **COUNT THREE**
10 **A. Violations of NRS 205.395 as Proposed Limited Class Action Under F. R. Civ. P. 23**

11 451. HARKEY realleges paragraphs 1-450 as if fully set forth herein.

12 452. The fraudulent documents used to confiscate HARKEY's real estate created by
13 MERS®-LPS RACKETEERING ENTERPRISE on LPS Desktop® software and compatible
14 software programs designed to interface therewith violate NRS 205.395.

15 453. HARKEY is a suitable lead class Plaintiff because he intends to expend his
16 resources to effect justice for those less fortunate who have been injured by the combined
17 actions of MERS®-LPS RACKETEERING ENTERPRISE in the State of Nevada.

18 454. Counsel for HARKEY is qualified to represent the class of victims of the The
19 MERS®-LPS RACKETEERING ENTERPRISE document fabrication and recordation scheme
20 in the State of Nevada, if this action is certified as a Class Action under F.R. Civ. P. 23.

21 455. The relief sought for the Class will not involve damages and will be limited to the
22 required correction and removal of fraudulent documents recorded in the offices of the Nevada
23 County Recorders, under NRS 205.395, plus reasonable attorney's fees and costs of pursuing
24 relief for the Class.

25 456. LPS had already acknowledged that it is substantively required to comply with
26 NRS 205.395 by the terms of the JOINT STIPULATION TO ENTRY OF FINAL JUDGMENT
27 (the Stipulation) between Lender Processing Services, Inc., its subsidiary DOCX, and the
28

1 nonexistent LPS Default Solutions, Inc. (believed to be FIS or a division thereof) and the
2 Attorney General for the State of Connecticut and the Attorneys General of forty-five (45) other
3 states and the District of Columbia, executed on January 30, 2013 attached hereto as Exhibit 24.

4 457. The conviction of Lorraine Brown, former CEO of DOCX, a subsidiary of LPS
5 (Exhibit 30) admits that over One Million false documents were created, executed and
6 transmitted to the public land records of this nation.

7 458. On April 13, 2011, Lender Processing Services, Inc., its subsidiary DOCX, and the
8 nonexistent LPS Default Solutions, Inc. (believed to be FIS or a division thereof) entered into a
9 Consent Order with the Board of Governors of the Federal Reserve Board, the Office of the
10 Comptroller of Currency, the Federal Deposit Insurance Corporation and the Office of Thrift
11 acknowledging some of the conduct complained of herein.

12 459. The interests of justice require that all false documents created by LPS and its
13 affiliated enterprises recorded in the Nevada County Records Offices be identified, so that
14 persons whose real estate rights and land titles have been affected may be notified so that such
15 persons can request that the documents be corrected.

16 460. The interests of justice require that all false documents executed by “members” of
17 MERSCORP and its “members” (having their employees pretend to be officers of the
18 bankruptcy-remote, shell corporation with the name Mortgage Electronic Registration Systems,
19 Inc.) recorded in the Nevada County Records Offices be identified, so that persons whose real
20 estate rights and land titles have been affected may be notified so that such persons may request
21 that the documents be corrected.

22 461. The interests of justice require that MERSCORP and LPS pay the costs of
23 identifying the effected parcels of real estate and the owners of the affected parcels, as well as the
24 costs of notification of their rights to have the false documents corrected under NRS 205.395.

25 462. The relief requested under this Count Three includes a request for the appointment
26 of a special master to administer the identification and notification process requested herein.

27 **WHEREFORE**, PLAINTIFF requests that this Court enter the appropriate Orders for
28

1 relief under paragraphs 459-462 above, including the appointment of a special master to
2 supervise the notification and correction process, along with his attorney's fees and costs
3 pursuant to NRS 205.395 and 28 USC secs. 2201 and 2202.

4
5 **COUNT FOUR**
Common Law Fraud

6 **As to the Corporate Defendants, their named employees in their individual capacities and**
7 **as employees of the Corporate Defendants, McCarthy and Fenn, but excluding Brody, Old**
8 **Republic Title of Nevada and the Beutlers**

9 463. HARKEY realleges paragraphs 1-462 as if fully set forth herein.

10 464. The acts complained of in which all named Defendants engaged constitutes common
11 law fraud and conspiracy to defraud HARKEY for the purpose of confiscating his real and
12 personal property and the benefit of the use, enjoyment and profit from the same, in which each
13 Defendant, sought to profit and benefit at HARKEY's expense.

14 465. HARKEY is entitled to his actual damages from each of the Defendants, jointly and
15 severally, in an amount to be proved at trial.

16 466. HARKEY is entitled to restitution for the loss of his personal property from QLSC,
17 US BANK, the TRUST, SAFEGUARD and FENN which was fraudulently taken from him
18 under the pretense that he was not entitled to the continuing use and occupancy of the subject real
19 estate.

20 467. HARKEY is entitled to the disgorgement of all profits made from the sale of
21 his Note and DOT from CREDIT SUISSE, DLJMC, CSFBMS, WELLS FARGO, US BANK
22 and the TRUST.

23 468. HARKEY is entitled to his damages from the confiscation of his real property from
24 which he has been excluded from occupancy, use and possession.

25 469. HARKEY has suffered mental anguish and continues to suffer mental anguish from
26 the fraudulent conduct of the Defendants, by whose frauds he has been excluded from the
27 possession, use, occupancy and enjoyment of the subject premises.

28 **WHEREFORE**, PLAINTIFF requests his actual damages in an amount to be determined
at trial, along with his attorney's fees and costs. For further and additional relief, he seeks

1 exemplary damages as allowed by NRS 42.005.

2 **COUNT FIVE**

3 **Negligent Misrepresentation**

4 **As to Brody, Old Republic Title Company of Nevada, Bewley, Noel, Allen, Moua, Koch,**
5 **Clark, Gonzales, Nyugen, Pittman, and Metters, individually and as employees of their**
6 **respective employers and and principals,**
7 **MERSCORP, SPS and LPS, and the affiliated enterprises**

8 470. HARKEY realleges paragraphs 1-469 as if fully set forth herein.

9 471. This Count Five is pleaded in the alternative to Counts One and Two as to all
10 Defendants therein and is the only Count pleaded as to BRODY and OLD REPUBLIC TITLE
11 COMPANY OF NEVADA (OLD REPUBLIC.)

12 472. On February 6, 2007, BRODY, while in the employ of OLD REPUBLIC, presented
13 HARKEY with Exhibit 11, the Disclosure Statement About MERS.

14 473. As a result of the representations in the Disclosure Statement About MERS,
15 HARKEY, believing its contents, signed the DOT (Exhibit 10) on that date.

16 474. The Disclosure Statement About MERS was materially false and BRODY did not
17 know whether the statements about "MERS" contained therein were true or false.

18 475. Even if BRODY believed the statements about "MERS" in Exhibit 11 were true,
19 she had no reason to believe that the statements were true.

20 476. BRODY was negligent in presenting HARKEY with the false Disclosure Statement.

21 477. OLD REPUBLIC TITLE COMPANY OF NEVADA is liable for PLAINTIFF's
22 damages resulting from the negligent misrepresentation of BRODY, which include all of his
23 losses from being induced into the MERS®-LPS RACKETEERING ENTERPRISE.

24 478. BEWLEY, NOEL, ALLEN, MOUA, KOCH, CLARK, GONZALES, NYUGEN,
25 PITTMAN, and METTERS, while in the employ of their respective employers and acting in the
26 scope of their employment, negligently executed false documents which they knew or should
27 have known were intended to be recorded to affect HARKEY's title to the subject real estate.

28 479. Their respective employers are liable for the acts of BEWLEY, NOEL, ALLEN,
MOUA, KOCH, CLARK, GONZALES, NYUGEN, PITTMAN, and METTERS in their

1 employment capacity.

2 480. BEWLEY, NOEL, ALLEN, MOUA, KOCH, CLARK, GONZALES, NYUGEN,
3 PITTMAN, and METTERS are liable for PLAINTIFF's losses as the result of the false
4 documents negligently executed by them.

5 **WHEREFORE**, Plaintiff request an award of his actual damages in an amount to be
6 determined at trial, along with his attorney's fees and costs and if any Defendant named herein
7 shall be found to have committed fraud or oppression, for the further and additional relief of
8 exemplary damages as allowed by NRS 42.005

9 **COUNT SIX**
10 **Rescission**

11 **As to the unidentified real party in interest holding the Note and Deed of Trust**
12 **executed on February 6, 2007**

13 481. HARKEY realleges paragraphs 1-480 as if fully set forth herein.

14 482. The misrepresentation as to the nature of the transaction and the role of "MERS" in
15 the transaction fraudulently induced PLAINTIFF into signing the falsely represented loan
16 contract which was actually an undisclosed purchase of his Note and Deed of Trust for re-sale to
17 an unidentified third party.

18 483. PLAINTIFF seeks the remedy of rescission of the contract by which his the Note
19 and Deed of Trust were taken by fraud and deceit and he will address the equities of rescission
20 when an injured party appears and identifies itself in these proceedings.

21 **WHEREFORE**, HARKEY requests the remedy of rescission based on the fraudulent
22 inducement into the contract by the withholding of the essential information of the nature of the
23 contract through the misrepresentation of the purpose of the nominated of Mortgage Electronic
24 Registration Systems, Inc. (MERS III) by which his identity, Note and Deed of Trust were taken
25 by NCMC for undisclosed sale to DLJMC and used for an unregistered securities offering by
26 CREDIT SUISSE and its subsidiaries, for their benefit, and for such relief as may be just and
27 equitable in these premises.

COUNT SEVEN
Unjust Enrichment

As to the Beutler Defendants and SPS, CREDIT SUISSE, CSFBMC, DLJMC, QLSC, US BANK, WELLS FARGO, LPS and its affiliated entities identified herein, SAFEGUARD, FENN, QLSC, McCarthy and all other unidentified persons or entities who profited from the use of Plaintiff's assets and identity

484. HARKEY re-alleges the facts set forth in paragraphs 1-466 above by reference, as if fully set forth herein.

485. SPS sold the subject premises in the name of a nonexistent entity of which US BANK was the purported Trustee and caused the recording of the inferior title on October 27, 2010 to the BEUTLERS for the BEUTLER TRUST and BRYCE D. BEUTLER, as tenants in common, for the price of \$168,500.00 .

486. The price paid for the subject real estate far below market value and, therefore, the BEUTLERS, the BEUTLER TRUST and BRYCE D. BEUTLER are not bona fide purchasers for value.

487. Because the purported title flowed from a recorded nonjudicial foreclosure the BEUTLERS had prior notice of HARKEY's claim.

488. The BEUTLERS or the BEUTLER FAMILY TRUST and BRYCE D. BEUTLER have been renting the subject premises for \$2,500.00 per month since they took possession of the subject premises in or around October, 2010 and have profited from the rental receipts of the premises to the detriment and damage of HARKEY.

489. The claim of title of the BEUTLER FAMILY TRUST and BRYCE D. BEUTLER to the subject premises is founded upon a void foreclosure commenced by QLSC using the LPS Desktop® software to order the creation of the incomprehensible NOD in Nevada under the authority of multiple unidentified entities, followed by the creation of the SOT in Minnesota, the void Corporate Assignment of Trustee by which SPS employee KOCH pretended to be authorized by MERS III to appoint QLSC, followed by the statutorily defective foreclosure sale conducted by QLSC notwithstanding the automatic stay in HARKEY's Chapter 13 bankruptcy in which QLSC sold the subject premises on a credit bid to a nonexistent entity which SPS then

1 purported to convey to BEUTLER FAMILY TRUST and BRYCE D. BEUTLER as “Attorney in
2 Fact” for a nonexistent entity and is, therefore, inferior to the claim of HARKEY.

3 490. The BEUTLER TRUST and BEUTLER (collectively, “BEUTLERS”) benefitted
4 from the conspiracy described herein by taking inferior title to that of HARKEY, acquired for
5 \$168,500.00, an amount of money which was substantially less than the fair market value of the
6 property and less than 20% of its value at the time the Deed of Trust in favor of New Century
7 Mortgage was executed by HARKEY and were, therefore, on notice that the title to the real
8 estate was likely flawed in the same respect as it is an element of proof of the crime of receiving
9 stolen personal property that a person in possession of stolen property should know that the
10 property has been stolen when it is purchased for substantially less than fair market value.

11 491. The BEUTLERS’ claim to title is grounded entirely on falsely created, executed
12 and recorded documents, which they knew or should have known could not have been lawfully
13 executed and recorded simply by reason of the unreasonably low price they paid for the subject
14 real estate.

15 492. The BEUTLERS have been receiving rents in the amount of \$2,500.00 per month
16 on the subject premises for approximately 45 months, which, net of expenses, amounts to at least
17 \$1000.00 per month, which must be disgorged in the full amount to be proved at trial.

18 493. The BEUTLERS, BEUTLER FAMILY TRUST and BRYCE D. BEUTLER must
19 be required to disgorge their profits from the rental of the property to HARKEY and must be
20 required to surrender possession of the subject real estate to HARKEY.

21 494. In addition, HARKEY was defrauded into making payments in the approximate
22 amount of \$120,000.00 to SPS, which, upon information and belief, was never paid to U.S.
23 BANK as Trustee of the CSMC Mortgage-Backed Trust 2007-6 and must be disgorged by SPS
24 and returned to HARKEY

25 495. Finally, CREDIT SUISSE, DLJMC, CSFBMC, WELLS FARGO, US BANK,
26 SPS, QLSC, McCARTHY, LPS and its affiliated enterprises (FIS, FNTIC, LSI, FIDELITY
27 NATIONAL TITLE and others yet to be identified), COOPER CASTLE, SAFEGUARD, FENN

1 and others yet to be identified all profited from the MERS®-LPS RACKETEERING
2 ENTERPRISE described herein and must account for their profits and disgorge the profits to the
3 PLAINTIFF, after setting off the amount of any debt justly determined to be owed by
4 PLAINTIFF to any of the Defendants named in this paragraph.

5 **WHEREFORE**, PLAINTIFF seeks the disgorgement of all profits made by all parties to
6 the undisclosed, unregistered securities purchases, sales, trades and liquidation and use of his
7 assets and such other relief as may be just and appropriate herein.

8 **COUNT EIGHT**
9 **For Judgment Quieting Title in Favor of Plaintiff Pursuant to NRS 40.010**
10 **Request for Declaratory Judgment Quieting Title to**
11 **2220 Village Walk Drive, Unit 3315, Henderson, Nevada 89052**

12 496. Plaintiffs hereby reallege and incorporate each and every allegation set forth
13 above as if the same was more fully set forth herein.

14 497. Defendants QLSC, SPS and US BANK as Trustee for a nonexistent entity acted
15 outside the scope of NRS 107.080 and are not entitled to the protections thereof.

16 498. The sale of the subject real estate is void as having been procured upon documents
17 falsely created, executed and recorded.

18 499. No lawful foreclosure sale has occurred and superior title continues to reside in
19 PLAINTIFF.

20 500. Pursuant to NRS 30.030, NRS 40.010, and 28 USC § 2202, Plaintiff seeks a
21 declaration of rights between the HARKEY and the BEUTLER FAMILY TRUST and BRYCE
22 D. BEUTLER.

23 501. Pursuant to NRS 107.080(14)(b), “‘Trustee’ means the trustee of record.”

24 502. Pursuant to paragraph 22 of the Deed of Trust, the NOD must be filed by the
25 Trustee or the Lender as a condition precedent to sale.

26 503. QLSC, the purported trustee conducting the “Trustee’s Sale” was not the lawful
27 Trustee of Record and was never lawfully appointed.

28 504. Pursuant to the ruling in *Karl v. Quality Loan Service Corp.*, Case No. 3:10-cv-

1 00473-RCJ-VPC, Plaintiff herein seeks a ruling that “would neither discharge the debt nor
2 invalidate the security interest, but simply result in a ruling that unless and until foreclosure is
3 properly carried out, Plaintiff holds superior title to the Property as against one or more
4 Defendants.”

5 505. Plaintiff is, therefore, entitled to a declaratory judgment quieting the title to the
6 subject premises as against the Defendants herein, because his title is superior to all other
7 recorded claims after the recording of his DOT dated February 6, 2007 and recorded on February
8 15, 2007, until the party entitled to exercise the remedy of nonjudicial foreclosure lawfully
9 commences nonjudicial foreclosure in accordance with NRS 107.080 and the provisions of the
10 February 6, 2007 Deed of Trust.

11 506. HARKEY’s Grant, Bargain and Sale Deed vesting title to the subject real estate in
12 HARKEY, Exhibit 1, is the last true and valid title to the subject property and all fraudulent
13 documents created, executed and recorded thereafter are void, up to and including the
14 BEUTLERS’ Grant, Bargain and Sale Deed are void and must be ordered stricken from the
15 public record.

16 507. HARKEY must be forthwith restored to his lawful possession of the subject real
17 estate located at 2220 Village Walk Drive, Unit 3315, Henderson, Nevada 89052.

18 **WHEREFORE**, PLAINTIFF requests judgment declaring his title superior to that of the
19 BEUTLERS, striking their inferior Grant, Bargain and Sale Deed and restoring him to possession
20 of the subject real estate.

21 **REQUESTS FOR RELIEF**

22 **WHEREFORE**, PLAINTIFF requests the following relief:

23 1. Judgment on Count One for treble damages, along with his actual attorneys’ fees and
24 costs in this action.

25 2. Judgment on Count Two for treble damages, along with his actual attorneys’ fees and
26 costs in this action.

27 3. As to Count Three, the appropriate Orders for relief under paragraphs 459-462 above,
28

1 including the appointment of a special master to supervise the notification and correction
2 process, along with his attorney's fees and costs pursuant to NRS 205.395 and 28 USC secs.
3 2201 and 2202.

4 4. Judgment on Count Four for his actual damages in an amount to be determined at trial,
5 along with his attorney's fees and cost and for further and additional relief, he seeks exemplary
6 damages as allowed by NRS 42.005.

7 5. As to Count Five, for his actual damages in an amount to be determined at trial, along
8 with his attorney's fees and costs and if any Defendant named herein shall be found to have
9 committed fraud or oppression, for the further and additional relief of exemplary damages as
10 allowed by NRS 42.005.

11 6. As to Count Six, for the remedy of rescission based on the fraudulent inducement into
12 the contract by the withholding of the essential information of the nature of the contract through
13 the misrepresentation of the purpose of the nominated of Mortgage Electronic Registration
14 Systems, Inc. (MERS III) by which his identity, Note and Deed of Trust were taken by NCMC
15 for undisclosed sale to DLJMC and used for an unregistered securities offering by CREDIT
16 SUISSE and its subsidiaries, for their benefit, and for such relief as may be just and equitable in
17 these premises.

18 7. As to Count Seven, disgorgement of all profits made by all parties to the undisclosed,
19 unregistered securities purchases, sales, trades and liquidation and use of his assets and such
20 other relief as may be just and appropriate herein.

21 8. For Judgment on Count Nine declaring his title superior to that of the BEUTLERS,
22 striking their inferior Grant, Bargain and Sale Deed and restoring him to possession of the
23 subject real estate.

24 9. For his attorneys' fees and costs of this action.

25 10. For such other relief as may be just and appropriate in these premises.

1 DATED this 20th day of January, 2015.

2 */s/ Mitchell Posin*

3 Mitchell Posin, Esq., attorney for Plaintiff
4 LAW OFFICES OF MITCHELL POSIN, CHTD.
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6 Las Vegas, Nevada 89101
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8 mposin@gmail.com

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff demands a jury
11 trial to all issues triable to by a jury.

12 DATED this 20th day of January, 2015.

13 */s/ Mitchell Posin*

14 Mitchell Posin, Esq., attorney for Plaintiff

15 **VERIFICATION AS TO COUNT EIGHT**

16 Michael Harkey declares under penalty of perjury pursuant to 28 U.S.C. sec. 1746, that
17 the facts stated in Count Eight above are true and correct, to the best of his knowledge,
18 information and belief.

19 */s/ Michael Harkey*

20 Michael Harkey

21 **CERTIFICATE OF SERVICE**

22 I HEREBY CERTIFY that on the 20th day of January, 2015, I directed that the foregoing
23 document and the attachments thereto be filed with the Court in Support of the Motion for Leave
24 to File the Second Amended Complaint and thereby served on all parties and counsel as
25 identified on the Court-generated Notice of Electronic Filing.

26 */s/Mitchell Posin*

27 Mitchell Posin