

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____

Delaware County, Pennsylvania, Recorder of Deeds, By and Through Thomas J. Judge, Sr., in his official capacity as the Recorder of Deeds of Delaware County, Pennsylvania; Frederick C. Sheeler, in his official capacity as Recorder of Deeds in and for the County of Berks, Pennsylvania; The Office of the Recorder of Deeds in and for the County of Berks, Pennsylvania; The County of Berks, Pennsylvania; Joseph J. Szafran, in his official capacity as Recorder of Deeds in and for the County of Bucks, Pennsylvania; The Office of the Recorder of Deeds in and for the County of Bucks, Pennsylvania; The County of Bucks, Pennsylvania; Richard T. Loughery, in his official capacity as Recorder of Deeds in and for the County of Chester, Pennsylvania; The Office of the Recorder of Deeds in and for the County of Chester, Pennsylvania; and the County of Chester, Pennsylvania,

Plaintiffs-Petitioners,

v.

MERSCORP, Inc., n/k/a MERSCORP Holdings, Inc.; Mortgage Electronic Registration Systems, Inc.; Bank of America, N.A.; CitiMortgage, Inc.; Citibank, N.A.; Credit Suisse Financial Corporation; Everhome Mortgage Company; JP Morgan Chase Bank, N.A.; State Farm Bank F.S.B.; Wells Fargo Bank, N.A.; Sovereign Bank; HSBC Bank USA, N.A.; HSBC Finance Corporation; Gateway Funding Diversified Mortgage Services, L.P. n/k/a Finance of America Mortgage LLC; Customers Bancorp, Inc.; Customers Bank; The Bank of New York Mellon; The Bank of New York Mellon Trust Company, N.A.; Deutsche Bank National Trust Company; Deutsche Bank Trust Company Americas; Santander Bank, N.A. f/k/a Sovereign Bank, N.A.; and Trident Mortgage Company, L.P.,

Defendants-Respondents.

BRIEF IN SUPPORT OF PETITION FOR ALLOWANCE OF APPEAL OF AMICI CURIAE PENNSYLVANIA LEGAL AID NETWORK, LEGAL AID OF SOUTHEASTERN PENNSYLVANIA, MIDPENN LEGAL SERVICES, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, and THE CONSUMER CREDIT COUNSELING SERVICE OF DELAWARE VALLEY d/b/a CLARIFI

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I. STATEMENT OF IDENTITY AND INTEREST OF AMICI¹

The five Amici filing this brief are all organizations that work with and represent consumers and homeowners in Pennsylvania.

Pennsylvania Legal Aid Network

The Pennsylvania Legal Aid Network, Inc. (“PLAN”) is a client-centered organization that provides leadership, funding, and support to improve the availability and quality of civil legal aid and direct legal services for low-income people and victims of domestic violence in Pennsylvania. PLAN is the state’s coordinated system of organizations providing civil legal aid for those with nowhere else to turn. PLAN both provides funding to civil legal aid providers across the state and offers direct services itself.

The network of programs throughout the state that PLAN funds offers a continuum of critically needed legal information, legal advice, and legal services through direct representation for low-income individuals and families who face urgent civil legal problems, including mortgage foreclosure. This network provides direct representation to clients in every Pennsylvania county. The PLAN programs handle about 75,000 cases annually, with the largest share of their funding coming from PLAN.

¹Amici participated as amici in the Commonwealth Court proceeding, and they submit this brief under Pa.R.A.P. 531(b)(1)(ii). No one other than the Amici, their members, or their counsel paid for the preparation of this brief or authored this brief, in whole or in part.

PLAN administers state-appropriated funds and grants, including funds raised through the Pennsylvania Access to Justice Act and directed through the PA-IOLTA Board. PLAN then monitors performance, coordinates training and technology, and helps develop new resources and programs for the entire network. The funds collected through the Access to Justice Act include the fees for mortgage assignments collected by county recorders of deeds. The MERS system at issue in this case—which allows mortgagees to avoid fees for recording of mortgage assignments—significantly reduces the funds available to provide civil legal services to low-income Pennsylvanians, and it limits access to vital information that should be publicly accessible to clients of legal aid programs. Across Pennsylvania, the demand for legal representation for low-income homeowners facing mortgage foreclosure far outstrips the supply of legal services attorneys.

Legal Aid of Southeastern Pennsylvania

Legal Aid of Southeastern Pennsylvania (“LASP”) provides free, civil legal services to resolve legal problems that threaten clients’ access to basic necessities such as decent housing, medical care, food, income, personal safety, and family stability. LASP is the only agency providing a full range of free, civil legal services to residents of Bucks, Chester, Delaware, and Montgomery counties. LASP serves people living at or below 125% of the federal poverty level, victims

of domestic abuse and low-/moderate-income older adults. Designated funds allow LASP to help low-/moderate-income people facing the loss of a home to foreclosure. LASP has seven community offices and staffs outreach sites in five other communities in cooperation with partner agencies. A regional project provides access to a foreclosure expert for those who face losing their homes.

In FY2015-16, LASP advocates handled 8,104 cases. Major legal areas addressed by LASP advocates include:

- family law, including custody and protection from abuse;
- consumer law, including bankruptcy, harassment by creditors, and utility shut-offs;
- benefits law, including appeals;
- housing law, including landlord-tenant and foreclosure;
- employment law, including criminal record expungements; and
- elder law, including end-of-life issues.

Because many low-income families own homes in suburban Philadelphia, LASP's homeownership and mortgage foreclosure unit has spent significant resources supporting low-income homeowners in Bucks, Chester, Delaware, and Montgomery Counties, and the demand for those services has risen dramatically in recent years. In 2001 LASP created a full-time staff attorney position to address the need, yet still most residential mortgage foreclosure defendants in these counties are unrepresented. LASP provides direct representation to low-income homeowners facing mortgage foreclosure due to abusive and illegal lending practices. LASP also provides advice and referral services for homeowners at risk

of foreclosure. In 2016, LASP's foreclosure attorney assisted 360 homeowners with residential mortgage foreclosure matters in Bucks, Chester, and Delaware Counties.

The MERS system has a direct, negative influence on LASP and its clients. The incompleteness of public data sources forces LASP to expend extra time and resources in discovery to confirm the holders of its foreclosure clients' mortgages. Also, the services provided by LASP are funded, in significant part, by fees collected by county recorders of deeds for recordation of mortgage assignments. In the 2015-2016 fiscal year, LASP received \$908,799, or twenty percent of its budget, in Access to Justice Act funding. (Access to Justice Act funding includes other types of fees in addition to fees for mortgage assignments.)

MidPenn Legal Services

MidPenn Legal Services (MidPenn) was formed in 2001 through the merger of four multi-county legal services providers, each with a long history of providing legal services. MidPenn operates as integrated law firm that serves low-income residents in Berks and 17 other counties in Central Pennsylvania. MidPenn's mission is to provide equal access to justice and high-quality civil legal services to low-income residents and survivors of domestic violence/sexual assault and intimidation with civil legal problems in the areas of mortgage foreclosure, custody, protection from abuse, landlord/tenant, consumer, and employment law.

MidPenn advocates have always handled mortgage foreclosure cases, and in 2004 MidPenn established a specialized Consumer Unit, which began seeing issues involving credit card scams, payday lending, predatory lending, increased mortgage foreclosure, and subprime lending across the organization's region. The affected groups included communities with high populations of African-Americans, Latinos, and monolingual English-speaking individuals and families. This trend was particularly true for low-income clients in the region's more urbanized areas, such as Reading. From July 1, 2014 through June 30, 2016, MidPenn's advocates in Berks County handled 184 mortgage foreclosure cases.

The MERS system has a direct, negative influence on MidPenn and its clients. The incompleteness of public data sources forces MidPenn to expend extra time and resources in discovery to confirm the holders of its foreclosure clients' mortgages. Also, the services provided by MidPenn are funded, in significant part, by fees collected by county recorders of deeds for recordation of mortgage assignments. In the 2016-2017 fiscal year, MidPenn anticipates receiving \$1,757,919 in Access to Justice Act funding.

National Association of Consumer Advocates

The National Association of Consumer Advocates ("NACA") is a non-profit corporation whose members are private- and public-sector attorneys, legal services attorneys, law professors, and law students whose primary focus involves the

protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information-sharing among consumer advocates across the country and serving as a voice for its members as well as consumers in the ongoing effort to curb unfair and abusive business practices. NACA's members, as representatives of homeowners across the nation, have witnessed firsthand the negative impact of unfair and abusive practices in the mortgage market, from the unscrupulous origination practices responsible for the 2008 financial collapse to the assembly-line practices of the mortgage-servicing industry, which deprive consumers of a meaningful opportunity to defend their homes from foreclosure. NACA has an active Pennsylvania membership chapter.

Clarifi

The Consumer Credit Counseling Service of Delaware Valley, d/b/a Clarifi, is a 501(c)(3) nonprofit community service organization founded in 1966. Clarifi is certified by the United States Department of Housing and Urban Development as a comprehensive housing counseling agency and approved by the Pennsylvania Housing Finance Agency as a housing counseling agency. Clarifi provides counseling for all stages of homeownership, including foreclosure-prevention counseling that helps homeowners achieve loan modifications, repayment plans, forbearances, or other home retention solutions. In 2016, Clarifi provided 2,110 foreclosure-prevention counseling sessions to 1,516 clients in Pennsylvania. When

the specific holder of a mortgage is obfuscated by a non-public database system, it limits the ability of counseling agencies such as Clarifi to provide high-quality housing counseling services to low-to-moderate-income homeowners. Clarifi has experienced difficulties helping clients to obtain a solution when the servicer switches in the midst of the modification application process and the mortgagee is not recorded. In those instances, Clarifi's advocacy for the client is difficult or impossible because the counselor cannot identify the party to which the complaint should be directed.

II. ARGUMENT

The Commonwealth Court ruled that mortgage assignments do not have to be filed, and suggested that the failure to record documents revealing interests in property "is of limited consequence." Opinion at 8. This brief will discuss two reasons this view is wrong. First, Pennsylvania law does not recognize the separate transfer of a mortgage and a promissory note and requires that an assignment of mortgage be reduced to writing and publicly filed. Defendant-Respondent MERSCORP was created for the express purpose of circumventing this requirement and keeping secret the real owners of mortgage interests.

Second, consumers and the public at large are harmed by incomplete public land records and the evasion of filing fees that fund essential civil legal services

and affordable housing for low-income people. These harms fall heavily on low-income people served by Amici, as well as on Amici themselves.

In light of the errors underlying the Commonwealth Court’s opinion, the Court should grant the Petition for Allowance of Appeal.

A. Under Pennsylvania Law, a Mortgage and the Note It Secures Cannot Be Transferred Separately

The creation of a mortgage obligation requires the borrower-homeowner to execute two documents: (1) a note or bond that embodies the underlying loan and describes its terms, and (2) the mortgage instrument itself. The former is the obligation to repay the loan; the latter is a property interest that secures the repayment obligation. That is precisely what this Court meant in *Pines v. Farrell*, 848 A.2d 94 (Pa. 2004), when it described the “dual nature” of a mortgage transfer as involving both the transfer of a debt and an actual conveyance of an interest in property.

The MERS system is premised on the notion that these two interdependent components of a mortgage obligation can be split between different owners—the note lying with the beneficial owner of the debt and the mortgage with a static “nominee” of all conceivable transferees within the MERS membership. This severing of the debt from the property interest securing the debt is inconsistent with Pennsylvania law. It has long been understood that a mortgage cannot meaningfully exist without the underlying indebtedness it secures. *E.g.*, *Nat’l Live*

Stock Bank of Chi. v. First Nat'l Bank of Geneseo, 203 U.S. 296, 306 (1906). As famously explained, “The note is the cow and the mortgage the tail. The cow can survive without a tail, but the tail cannot survive without the cow.” Restatement (Third) of Prop.: Mortgages § 5.4, Reporters’ Notes (quoting the late Professor Chester Smith); *see also* 13 Pa.C.S. § 9203(g) (codifying the common-law rule in the case of a bulk sale of notes, such that the bulk purchaser, by operation of law, also acquires ownership of any mortgages securing the purchased notes); Elizabeth Renuart, *Uneasy Intersections: The Right to Foreclose and the U.C.C.*, 48 Wake Forest L. Rev. 1205, 1237 (2013) (“If the note and mortgage are split between different parties, the assignee of only the mortgage ordinarily holds a worthless piece of paper.”). Indeed, the Federal Home Loan Mortgage Corporation (“Freddie Mac”), which filed an amicus brief in the Commonwealth Court in support of Defendants-Respondents, has long used a Pennsylvania mortgage form that reflects the nonseverability of the mortgage and the note, because many of the key terms of the mortgage obligation, such as the interest rate and charges for prepayment and late payment, appear only in the separate note, which is incorporated into the mortgage by reference.²

Because the mortgage cannot be meaningfully severed from the underlying debt obligation it secures, a transfer of the mortgage obligation triggers separate

² *See* Freddie Mac Form 3039, Pennsylvania Mortgage, available at <http://www.freddiemac.com/uniform/doc/3039-PennsylvaniaMortgage.doc>.

rules governing the transfer of the note and of the mortgage. Far from being an outlandish suggestion that both the mortgage be assigned and the note negotiated in order to accomplish a transfer, the standard conveyancing language of a Pennsylvania mortgage assignment reflects precisely this expectation: “ALSO the Bond or Obligation in the said Indenture of Mortgage recited, and all Moneys, Principal and Interest, due and to grow due thereon.”³ Thus, when a mortgagee negotiates the mortgage note, by that act the mortgagee effectively transfers ownership of the underlying debt and must also execute an assignment of mortgage in order to complete the transfer.

Under Pennsylvania’s Statute of Frauds, 33 P.S. § 1, mortgage assignments must be contained in a writing, *see Bozzi v. Greater Del. Valley Sav. & Loan Ass’n*, 389 A.2d 122 (Pa. Super. 1978). In Pennsylvania, a mortgage “title theory” jurisdiction, *see Pines*, 848 A.2d at 100, the mortgage is not a mere accompaniment to the note, but is rather a recognized real property interest that must be reflected in the public real-estate records. An assignment of mortgage is thus subject to the Statute of Frauds, so when a mortgagee transfers the debt underlying the mortgage obligation, state law requires that the transfer be reduced to a written assignment of mortgage and publicly filed. MERS and its amici have mischaracterized the Plaintiffs-Petitioners as arguing that the notes themselves

³ *See* 2 Ronald M. Friedman, *Ladner Pennsylvania Real Estate Law*, § 26.01(c) (5th ed. 2006).

have to be filed. Notes are not property interests and need not be filed; but an assignment of mortgage—which, by implication, accompanies the transfer of the mortgage note—must be reduced to writing and filed. This has long been understood by Pennsylvania real estate practitioners, which is why the leading commentator on Pennsylvania conveyancing law has expressed skepticism about the legality of the MERS device as a proper substitute for a mortgagee’s recording obligations. 2 Ronald M. Friedman, *Ladner Pennsylvania Real Estate Law*, § 26.01(a) (5th ed. 2006) (characterizing the industry players behind the creation of MERS as “willing to assume the risks of not following [the] time-honored [recording] procedures”).

What the industry players behind MERS calculated would work in other states—maintaining static, recorded title in the name of the fictional MERS “nominee” while ownership in the mortgage notes passes from one entity to another—simply does not work in Pennsylvania.⁴

B. There Is No Public-Interest Justification for Allowing MERS to Ignore the Pennsylvania Recording Statute

The Commonwealth Court, without the benefit of any evidentiary record, based its decision in part on “a body of case law interpreting Pennsylvania

⁴ Although the Third Circuit, in a case of first impression, has interpreted Pennsylvania law otherwise, *Montgomery Cnty. v. MERSCORP Inc.*, 795 F.3d 372 (3d Cir. 2015), “it is axiomatic that [federal court] decisions [interpreting state law] are not binding and that this court is the final arbiter of state law.” *Hoy v. Angelone*, 720 A.2d 745, 750 (Pa. 1998).

recording laws that specifically addresses the purpose of those statutes and the effect of a failure to record an interest in land.” Opinion at 6. Aside from the fact that much of that case law predates MERS’s displacement of public recordation, the Commonwealth Court’s interpretation of the purpose and effect of Pennsylvania statutes is grounded on faulty assumptions that would be readily contradicted by evidence were this case to proceed past preliminary objections.

First, homeowners have an obvious interest in knowing the identity of those who own mortgage interests in their homes, as do potential purchasers of or investors in real estate. The MERS system frequently interferes with homeowners’ access to this information. Courts around the country have recognized that “having a single front man, or nominee, for various financial institutions makes it difficult for mortgagors and other institutions to determine the identity of the current note holder.” *Landmark Nat’l Bank v. Kesler*, 216 P.3d 158, 168 (Kan. 2009) (citing *In re Schwartz*, 366 B.R. 265, 266 (Bankr. D. Mass. 2007); *Johnson v. Melnikoff*, 873 N.Y.S.2d 234, 2008 N.Y. Misc. LEXIS 5353, at *14-15 (Sup. Ct. 2008), *aff’d*, 882 N.Y.S.2d 914 (App. Div. 2009)). Incomplete public land records sometimes even lead to forfeiture of a lender’s interest in a property. *E.g.*, *Mortgage Elec. Registration Sys. v. Ditto*, 488 S.W.3d 265 (Tenn. 2015). It is hard to imagine *any* policy justification for hiding from homeowners the identity of the secondary

mortgage entity that purchases their mortgage and on whose behalf their mortgage servicer will act.

For an illustration of the importance to homeowners of complete public land records, LASP often represents a delinquent homeowner who has been denied a loan modification on the grounds that the requested modification does not meet the guidelines of the owner of the mortgage; when this happens, the servicer seldom advises the homeowner of the entity that owns the mortgage, and it is therefore impossible to learn what the guidelines are, who is denying the loan modification, and whether the denial was correct under those guidelines.

For another illustration, LASP represented a 76-year-old mobile-home owner in Chester County. When she purchased the home in 1999, she put down more than half the purchase amount and got a modest mortgage with Sovereign Bank to cover the remaining cost. The Pennsylvania Department of Transportation issued a certificate of origin for the mobile home, but never provided the homeowner with a title. In 2001, Sovereign Bank assigned the mortgage to MERS. By 2011, the homeowner had only Social Security income, and she tried to sell her home. Chase Bank identified itself as her lender, but neither Chase Bank nor MERS was ever able to provide her with official proof of contiguous chain of title that was acceptable to PennDOT. Even though she had several purchase offers for more than double what she owed on the mortgage, because she was unable to

show contiguous chain of assignment from Sovereign Bank to Chase Bank, PennDOT refused to issue title, and she was thus unable to sell her home. The mobile home park evicted her, and Chase Bank eventually foreclosed.

Second, federal law now manifests the importance to homeowners of having this information. Under the Truth in Lending Act (“TILA”), a servicer must identify the beneficial owner of a mortgage upon the mortgagor’s written request, *see* 15 U.S.C. § 1641(f)(2), and, for mortgage assignments occurring after a 2009 TILA amendment, both the assignor and assignee must disclose the assignment to the homeowner within 30 days of the assignment, *id.* § 1641(g). Whenever possible, Pennsylvania law should be interpreted in a manner consistent with this federal policy. *See generally Trigona v. Lender*, 926 A.2d 1226, 1235 (Pa. Commw. Ct. 2007) (“[S]tatutes are to be construed in harmony with the existing law and as part of a general and uniform system of jurisprudence.”).

The Pennsylvania Bankers Association (“PBA”) suggested in an amicus brief before the Commonwealth Court that public recordation of mortgage assignments is now unnecessary because, thanks to TILA, borrowers have an alternative mechanism for locating the owner of their mortgage. It is illogical to suggest that a 2009 federal enactment silently reconfigured the fundamental structure of a centuries-old Pennsylvania recording statute. In any event, a homeowner cannot use TILA to obtain her mortgage’s complete chain of title,

which would be available as a public record if all assignments were recorded, and which is crucial for a homeowner facing a foreclosure filed by a stranger to the original transaction. Nor can parties other than the homeowner, such as potential purchasers of or investors in real estate, use TILA to learn who owns a mortgage.

Third, for mortgages that are eventually foreclosed, mortgage assignments must be filed anyway, but the MERS system has diminished the quality and meaningfulness of such assignments. In Pennsylvania, a foreclosure complaint, in its description of the plaintiff, must “set forth” all relevant assignments of the underlying mortgage. Pa.R.C.P. 1147(a)(1). When a mortgage is lodged in the name of MERS rather than the actual owner of the mortgage, a Pennsylvania foreclosure plaintiff will file a purported mortgage assignment from MERS to the plaintiff just before filing the foreclosure. Such an “assignment” does virtually nothing to reveal the chain of transfers from the original lender to the plaintiff.

Fourth, even though MERS has now granted homeowners (but not interested third parties) permission to review certain information in its database, the incomplete information offered by MERS is no substitute for clear, comprehensive records of ownership, available publicly and officially in the county registries. As one commentator, who has written extensively on MERS, notes:

First, unlike the traditional public system, MERS does not reveal to consumers the chain of ownership linking the original lender to the current owner of the loan. MERS also does not provide copies of the

documents that purport to transfer ownership interests in the land, making it difficult to spot forgery or errors.

Second . . . for securitized mortgages, MERS only reveals the name of the securitization trustee, rather than the trust it serves. . . . Learning the name of a borrower's securitization trustee does not allow the borrower to research the pooling and servicing agreement that controls a servicer's or trustee's authority to negotiate loan modifications. It also does not identify the name of the trust that could be liable for purchasing loans that violate the Home Ownership and Equity Protection Act or other state predatory lending laws. Even when the borrower knows the name of a securitization trustee, this search result is still not a legally authoritative search upon which a searcher may rely in ruling out the possibility of other potential purchasers that could achieve priority in an ownership dispute.

Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 Wm. & Mary L. Rev. 111, 129-30 (2011) (footnotes omitted). MERS's circumvention of the public recordation system has, for some homeowners facing foreclosure, reduced mortgages to the level of consumer debt, which lacks any public recording system, and which has become notorious for aggressive dunning by debt-collection agencies that may have no proof they have been properly assigned a debt, *see, e.g.*, Andrew Martin, *Automated Debt-Collection Lawsuits Engulf Courts*, N.Y. Times, July 12, 2010, at B1.

Moreover, the records in the MERS system are notoriously incomplete and unreliable. The information in the database is entered not by public servants, or even by employees of MERS, but rather by employees of MERS's members,

meaning the tens of thousands of employees of lenders, servicers, law firms, or title companies throughout the country, a fact causing one court to describe MERS as a “Wikipedia” of mortgage ownership information. *Culhane v. Aurora Loan Servs.*, 826 F. Supp. 2d 352, 368 (D. Mass. 2011), *aff’d*, 708 F.3d 282 (1st Cir. 2013). These individuals often receive no training or oversight from MERS, and they obtain permission to modify the database via “a boilerplate corporate resolution” that can be generated on the MERS web site. Peterson, *Two Faces*, *supra* at 144; *see also* Dustin A. Zacks, *Standing in Our Own Sunshine: Reconsidering Standing, Transparency, and Accuracy in Foreclosures*, 29 *Quinnipiac L. Rev.* 551, 589 (2011) (“MERS admits that its attitudes about accuracy in ownership transfer records are blasé: when asked how MERS verifies that certifying officers were signing accurate documentation, MERS’s President and CEO remarked, ‘Well, if nobody challenges it, then it’s probably true.’”).

The MERS system’s lack of oversight and its vulnerability to error or fraud are not merely speculative concerns. A survey of 396 foreclosure cases from six states, including Pennsylvania, “found that where MERS was mortgagee of record (fifty percent of cases), the plaintiff asserting the right to foreclose matched an identified ‘investor’ in the MERS public record only twenty percent of the time.” Alan M. White, *Losing the Paper—Mortgage Assignments, Note Transfers and Consumer Protection*, 24 *Loy. Consumer L. Rev.* 468, 486 & n.90 (2012). A

Bankruptcy Court in Nevada, reviewing the status of twenty-seven motions to lift stays filed by MERS, found that in six of them MERS had erroneously filed “as nominee of an entity that no longer has any ownership interest in the note.” *In re Mitchell*, No. BK-S-07-16226, 2009 Bankr. LEXIS 876, at *17-21 (Bankr. D. Nev. Mar. 31, 2009), *aff’d*, 423 B.R. 914 (D. Nev. 2009). Numerous other lawsuits have brought to light assignments within the MERS system that were documented improperly or not at all. *E.g.*, *In re Carrsow-Franklin*, 524 B.R. 33 (Bankr. S.D.N.Y. 2015), *aff’d in relevant part*, 213 F. Supp. 3d 577 (S.D.N.Y. 2016); *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008); *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 623-24 (Mo. Ct. App. 2009); *Wells Fargo Bank, Nat’l Ass’n v. Reyes*, 867 N.Y.S.2d 21, 2008 N.Y. Misc. LEXIS 3509, at *1-2 (Sup. Ct. 2008). A 2011 consent decree between MERS and five federal banking agencies included a finding that, among other things, MERS “failed to exercise appropriate oversight, management supervision and corporate governance, and . . . failed to devote adequate financial, staffing, training, and legal resources to ensure proper administration and delivery of services” to its members.⁵

Finally, by failing to record assignments in the county registries, the MERS system has not only denied revenues to Pennsylvania counties, it has also had the effect of denying funds to civil legal services organizations statewide. Under the

⁵ *In re MERSCORP, Inc.*, Joint Docket No. 2011-044 (Apr. 13, 2011), *available at* <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf>.

Pennsylvania Access to Justice Act (“AJA”), 42 Pa.C.S. §§ 4901 *et seq.*, county recorders of deeds must remit \$4.00 of each mortgage-assignment fee to a state fund dedicated to organizations that provide civil legal assistance to poor and disadvantaged persons in this Commonwealth. *See* 42 Pa.C.S. §§ 3733(a.1)(1)(v), 3733(a.1)(2)(iii), 3733.1(a)(3), 3733.1(c)(3); 204 Pa. Code § 29.351(f)(iii). In short, and contrary to opinion of the Commonwealth Court, Defendants-Respondents’ circumvention of the public recordation system for mortgage assignments is not only unlawful but of great consequence to the public interest as defined by the General Assembly.

III. CONCLUSION

The Commonwealth Court erred in dismissing the case, and this Court should reverse and allow the case to proceed in the Court of Common Pleas.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

Per Pa.R.A.P. 531(b) (3), I hereby certify that this Brief contains 4,455 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Benjamin D. Geffen _____

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PROOF OF SERVICE

I, Benjamin Geffen, hereby certify that on this date I caused to be served this

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