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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10  
11 JOSEFA S. LOPEZ, a single woman,  
12 individually and on behalf of a class of  
similarly situated individuals,

13 Plaintiff,

14 vs.

CASE NO.: 3:09-cv-00180

**MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

15 EXECUTIVE TRUSTEE SERVICES, LLC.;  
16 COUNTRYWIDE HOME LOANS, INC., a  
New York corporation; MERSCORP, INC., a  
17 Virginia corporation; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
18 INC., a subsidiary of MERSCORP, Inc., a  
Delaware corporation; FEDERAL HOME  
19 LOAN MORTGAGE CORPORATION, a  
Virginia corporation; FEDERAL NATIONAL  
20 MORTGAGE ASSOCIATION, a District of  
Columbia corporation; GMAC MORTGAGE,  
21 L.L.C., a Delaware corporation; NATIONAL  
CITY MORTGAGE, a foreign company and a  
22 division of NATIONAL CITY BANK, a  
subsidiary of National City Corporation;  
23 NATIONAL CITY CORPORATION, a  
Delaware corporation and a subsidiary of PNC  
24 Financial Services, Inc.; PNC FINANCIAL  
SERVICES, INC., a Pennsylvania corporation;  
25 J.P. MORGAN CHASE BANK, N.A., a New  
York corporation; CITIMORTGAGE, INC., a  
26 New York corporation; HSBC MORTGAGE  
CORPORATION, U.S.A., a Delaware  
27 corporation; AIG UNITED GUARANTY  
CORPORATION, a foreign corporation;  
28 WELLS FARGO BANK, N.A., a California  
corporation, dba WELLS FARGO HOME

EQUITY and dba WELLS FARGO HOME MORTGAGE, a division of WELLS FARGO BANK, N.A., a California corporation; BANK OF AMERICA, N.A., a Delaware corporation, and GE MONEY BANK, an Ohio corporation; JOHN AND JANE DOES I-X; BLACK AND WHITE PARTNERSHIP I-X; AND ABC CORPORATION I-X;

Defendants.

COMES NOW Plaintiff, JOSEFA LOPEZ, by and through her attorneys of record, Robert R. Hager and Treva Hearne, and respectfully requests that this Court enter a temporary restraining order and preliminary injunction to prohibit EXECUTIVE TRUSTEE SERVICES, LLC (hereinafter "ETS") and GMAC and MERS, their agents, employees, attorneys, and anyone acting on their behalf, from foreclosing, pursuing any foreclosure action, taking possession of, or in any other manner interfering with the peaceful enjoyment and possession by Mrs. Lopez of her home located at 7423 Baroque Court, Sun Valley, Nevada.

**Introduction**

**A. Josefa Lopez is in danger of losing her home of ten years on April 15, 2009.**

Josefa Lopez came to the United States from Nicaragua and she has resided in her Sun Valley home since 1999. She is a citizen of the United States. She cared for her aging mother in that home until 2004. (See Affidavit of Josefa Lopez, Exhibit 1.)

When Plaintiff purchased the property at 7423 Baroque Court, Sun Valley, Reno, Nevada, she obtained a purchase money mortgage from Chase in the approximate amount of \$130,000 payable in monthly payments amortized over 30 years at a fixed rate. (Exhibit 21). She owed approximately \$102,000 in 2005. When the rise in housing prices was occurring in 2005, the Plaintiff was contacted by many lenders offering to refinance her home, one of which lenders was The Mortgage Store. The Plaintiff had never heard of The Mortgage Store prior to this contact. The Plaintiff was induced into refinancing with The Mortgage Store as was generally occurring

1 across the country because of the fact that the Defendants in this case had conspired to create a  
2 system of making profits from the origination and securitization of residential mortgages without  
3 regard for the ability of the borrower to repay the loan, as alleged more particularly in the verified  
4 Complaint filed herein, specifically including the Fifth Claim for Relief. Plaintiff was  
5 encouraged and induced by The Mortgage Store to take a loan based solely based on her credit  
6 score and the equity in her home. (See Affidavit of Barrett R. Bates, Exhibit 2, and Affidavit of  
7 Eric Sharp, Exhibit 3.)  
8

9 The Mortgage Store knew that Plaintiff was unemployed at the time she was given the  
10 loan, and as a condition of The Mortgage Store providing the refinance loan, Plaintiff's brother  
11 and sister, who The Mortgage Store knew at the time were employed, were required to deed their  
12 interests in Plaintiff's home to Plaintiff so that the loan would only reflect the Plaintiff as the  
13 borrower on the loan. (See Exhibits 7, 11, 12.) The Mortgage Store originated the loan despite  
14 the fact that none of the loan documents reflected any ability of the Plaintiff to repay the loan,  
15 because each of the Defendants herein had created an unprecedented and maliciously predatory  
16 system of making profits from the origination, purchase, securitization, servicing and foreclosure  
17 of residential loans like Plaintiff's loan. (See generally all loan documents, Exhibit 6-20).  
18

19 The Plaintiff executed certain documents for the loan on October 18, 2005. At that time  
20 her brother and sister were also on the loan and signed the documents with her. However, within  
21 a couple of days, the lender told Plaintiff that she had to execute the documents by herself and  
22 that her brother and sister had to convey their interest to her or she would not qualify for the loan.  
23 (See Affidavit of Josefa Lopez, Exhibit 1.) The refinance with cash back was based upon the  
24 equity in the home and the credit score of the Plaintiff, and would exclude having the brother and  
25 sister who did not live in the home as a primary residence from co-signing on the loan. (See  
26 Affidavit of Eric Sharp, Exhibit 3 and Affidavit of Barrett R. Bates, Exhibit 2.)  
27  
28

1 On October 26, 2005, Plaintiff was required to sign many pages of closing documents  
2 with her brother and sister and none of them were given an opportunity to read the documents and  
3 the documents were all in English. A couple of days later, The Mortgage Store agents required  
4 Josefa Lopez to re-execute the documents in her name only and required her brother and sister to  
5 convey their interest in the home to Josefa Lopez as the sole owner. (Exhibit 1).  
6

7 The only thing that was explained to Josefa Lopez was the initial payment of \$1,065.00  
8 and the interest rate of 5.25%. She believed this payment at this interest would continue for the  
9 life of the loan. No one disclosed to her that the payment would change. (Exhibit 1).

10 After execution of the documents by the Plaintiff alone, the loan was transferred for  
11 funding first to Impac, which used Countrywide to service the loan sometime within the first few  
12 months of the loan (See Exhibit 9), and then to Defendant GMAC sometime prior to May of  
13 2006. (See Exhibit 13.) The “servicing,” also known as the right “to collect payments” from the  
14 Plaintiff on the fraudulent loan, is still held by GMAC. In October 2008, the payment expanded  
15 according to the adjusted rate of interest and the payment was \$1,547.00. (Exhibit 17.) The  
16 Plaintiff could not make the payments. In December 2008, Defendant ETS informed the Plaintiff  
17 that she was in default and that it was foreclosing against the Plaintiff on her home.  
18

19 Defendant ETS has given notice of the foreclosure. (See Exhibit 20.) The Plaintiff has not  
20 communicated with ETS and did not know of its existence until she received her notice of  
21 foreclosure. ETS has determined to go forward with the foreclosure with full knowledge, or  
22 careless disregard, of (a) the fact that the loan was predatory, (b) that the loan never had any  
23 market value based upon the lack of any documentation reflecting the ability of the Plaintiff to  
24 repay the loan, (c) that the Deed of Trust is void due to the fact that MERS was named as the  
25 “beneficiary” under the Deed of Trust, although MERS had declared prior to being so designated  
26 that it would never own any interest in the Deed of Trust; and, (d) therefore, there was never an  
27  
28

1 actual beneficiary as is required for a Deed of Trust to be valid, and that the loan was originated  
2 for the purpose of generating profits from the origination, securitization and foreclosure of the  
3 loan.

4 This Motion is brought on an emergency basis due to the fact that Plaintiff's home  
5 is presently scheduled for foreclosure sale on April 15, 2009, as reflected by the documents and  
6 Affidavits filed in support of this Motion and the Declaration of Robert R. Hager. (See Exhibit 4  
7 with attachments.)

8  
9 **Facts**

10 On October 16, 2005, Plaintiff refinanced the property by obtaining a refinance mortgage  
11 from The Mortgage Store which was in reality a "negative amortization" refinance mortgage from  
12 The Mortgage Store because Plaintiff was paying only the interest on the loan and no principle.  
13 (See Exhibits 14, 15, 16 and 17.)

14  
15 In October 2008, the payment expanded according to the adjusted rate of interest and the  
16 payment was \$1,547.00. (Exhibit 17). The Plaintiff could not make the payments. In December  
17 2008, Defendant ETS informed the Plaintiff that she was in default and that it was foreclosing  
18 against the Plaintiff on her home.

19 **B. MERS and the other Defendants have engaged in a conspiracy to make**  
20 **profits and deprive persons like Josefa Lopez of their homes.**

21  
22 As specifically alleged in the Fifth Claim for Relief in Plaintiff's verified Complaint,  
23 MERS was created by the "Defendant co-conspirators" for the purpose of defrauding borrowers,  
24 the government, the investors in the Defendant banks and AIG, and the investors in the mortgage-  
25 backed securities that were sold and/or insured by the Defendant co-conspirators. The current  
26 financial crisis that began in the United States and which has brought the world economy to its  
27 knees can be directly traced to the creation and operation of MERS.  
28

1 Before MERS, it would not have been possible for mortgages with no market value, such  
2 as Plaintiff's in this case, to be sold at a profit or collateralized and sold as mortgage-backed  
3 securities. Before MERS, it would not have been possible for the Defendant banks and AIG to  
4 conceal from government regulators the extent of risk of financial losses those entities faced from  
5 the predatory origination of residential loans and the fraudulent re-sale and securitization of those  
6 otherwise non-marketable loans. Before MERS, the actual beneficiary of every Deed of Trust on  
7 every parcel in the United States and the State of Nevada could be readily ascertained by merely  
8 reviewing the public records at the local recorder's office where documents reflecting any  
9 ownership interest in real property are kept.  
10

11 After MERS, it was impossible for a borrower, his or her attorneys, the courts, the  
12 government or anyone else to identify the actual beneficial owner of any particular loan or the  
13 property which was the collateral securing that loan. After MERS, from the moment the Deed of  
14 Trust was executed by the borrower, there was no "beneficiary" under the Deed of Trust, and all  
15 subsequent assignments of any interest in the loan and Deed of Trust were known by the  
16 Defendant co-conspirators to be fraudulent and unlawful. After MERS, the servicing rights to  
17 predatory loans such as Plaintiff's were retained by the originator or transferred to other predatory  
18 entities for the specific purpose and with the specific intent to ultimately foreclose on the  
19 residence and take the borrower's home.  
20  
21

22 In the case of Plaintiff and others similarly situated, the servicing rights were transferred  
23 after the origination of the loan to an entity so large that communication with the servicer became  
24 difficult if not impossible. The servicer in many instances did not know the identity of the actual  
25 beneficiary or owner of the loan because the loan had been bundled with others and sold as  
26 mortgage-backed security. Therefore, the servicer did not have the authority to negotiate a  
27 modification of the loan or to respond appropriately to evidence presented to the servicer by the  
28

1 borrower of predatory lending in the origination of the loan. The servicer was interested in only  
2 one thing – making a profit from the foreclosure of the borrower’s residence – so that the entire  
3 predatory cycle of fraudulent origination, resale, and securitization of yet another predatory loan  
4 could occur again. This is the legacy of MERS, and the entire scheme was predicated upon the  
5 fraudulent designation of MERS as the “beneficiary” under millions of deeds of trust in Nevada  
6 and other states.  
7

8 This case and other cases across the Nation arose because the Plaintiff was the victim of  
9 fraudulent and predatory lending practices perpetrated upon Plaintiff by the actions of each of the  
10 Defendants as part of the business policies and practices of each Defendant to commit acts which  
11 constituted violations of the Truth in Lending Act, the Real Estate Settlement Procedures Act, the  
12 Fair Housing Act, and the Fair Debt Collection Practices Act, fraud, conspiracy to commit fraud,  
13 conspiracy to convert property and violations of State law. As alleged in the Fifth Claim for  
14 Relief in the Verified Complaint filed herein, the Defendants have conspired among themselves  
15 and with other unknown parties to:  
16

17 (1) Develop a system of earning profits from the origination and securitization of  
18 residential loans without regard for the rights of Plaintiff and other borrowers and homeowners in  
19 Nevada and the United States, and without regard for the ability of Plaintiff and other borrowers  
20 to repay the loans so originated and securitized by intentionally creating a nationwide system of  
21 predatory and deceptive residential lending practices;  
22

23 (2) Intentionally create, manage, operate and control the Defendant Mortgage Electronic  
24 Registration Systems, Inc. (hereinafter “MERS”) for the specific purpose of being designated as a  
25 sham “beneficiary” in the original deeds of trust securing those loans, with the unlawful intent  
26 and for the unlawful purpose of making it difficult or impossible for Plaintiff and other victims of  
27 such industry-wide predatory policies and practices to identify and hold responsible the persons  
28

1 and entities responsible for the unlawful actions of Defendants and their co-conspirators;

2 (3) Intentionally perpetuate and fuel an unsustainable and unprecedented increase in  
3 housing construction in Nevada and the United States, of residential lending, of profits to  
4 financial institutions, and of bonuses and financial rewards to the persons in the positions within  
5 the Defendants' companies and their business co-conspirators to divide and split amongst  
6 themselves the unlawfully and fraudulently obtained profits from that unlawful conspiracy;  
7

8 (4) Adopt and implement residential lending underwriting guidelines for use in Nevada  
9 and the entire United States, which were intended to, and did, generate unprecedented profits for  
10 Defendants and their co-conspirators, corporate Officers and Directors, at the expense of Plaintiff  
11 and other persons who were fraudulently induced by the Defendants and their co-conspirators into  
12 taking out residential loans that were known by Defendants and their co-conspirators at the time  
13 the loans were originated to likely result in foreclosure on those loans and loss by Plaintiff and  
14 other borrowers of their homes, or with reckless disregard and intentional indifference by  
15 Defendants and their co-conspirators of the likelihood of such foreclosure; and  
16

17 (5) Adopt and implement a nationwide and industry-wide practice of intentionally  
18 deceiving borrowers of residential loans for the purpose and with the intent of obtaining  
19 signatures by borrowers on promissory notes and deeds of trust secured by American real estate,  
20 so that Defendants and their co-conspirators could then immediately resell those residential loans  
21 at a huge profit without adding anything of value to the assets, but instead merely misrepresenting  
22 to the purchasers thereof the true value of those assets because of the knowledge at the time of the  
23 re-sale of those loans by the Defendants and their co-conspirators that there was an extremely  
24 high likelihood of default and non-payment of those loans based upon the underwriting guidelines  
25 used to qualify borrowers, and of the unsustainable housing price increases in Nevada and the  
26 United States that Defendants and their co-conspirators, their corporate Officers and Directors  
27  
28

1 had intentionally created in order to personally benefit as alleged in Paragraph (3) above.

2 The Defendants, through their creation, funding, and ownership of MERS, sought to hide  
3 and insulate the brokers and originators of predatory toxic loans from accountability and liability  
4 by creating an entity which simultaneously informed all lenders who originated loans that (1)  
5 MERS would never own or acquire any actual beneficial interest in any loan in which it was  
6 named as beneficiary under the deed of trust; and that (2) MERS could be named as a beneficiary  
7 for purposes of public notice and notice to the borrower and would act in that capacity if so  
8 designated by the lender who originated the loan. The Affidavit of Marcy Larson (Exhibit 5 and  
9 attachments) reflects that MERS and the Defendant co-conspirators specifically understood that:  
10

11 “TERM AND CONDITIONS

12 2. **The Member, at its own expense, shall promptly, or as soon thereafter as**  
13 **practicable, cause MERS to appear in the appropriate public records as the**  
14 **mortgagee of record** with respect to each mortgage loan that the Member registers on the  
15 MERS System. **MERS shall serve as mortgagee of record with respect to all such**  
16 **mortgage loans solely as a nominee, in an administrative capacity, for the beneficial**  
17 **owner or owners thereof from time to time. MERS shall have no rights whatsoever**  
18 **to any payments made on account of such mortgage loans, to any servicing rights related**  
19 **to such mortgage loans, or to any mortgaged properties securing such mortgage loans.**  
MERS agrees not to assert any rights (other than rights specified in the Governing  
20 Documents) with respect to such mortgage loans or mortgaged properties. **References**  
21 **herein to “mortgages(s)” and “mortgagee of record” shall include deed(s) of trust**  
22 **and beneficiary under a deed of trust and any other form of security instrument**  
23 **under applicable state law.**

24 ...

25 6. **MERS and the Member agree that: (i) the MERS System is not a vehicle**  
26 **for creating or transferring beneficial interests in mortgage loans, (ii) transfers of**  
27 **servicing interests reflected on the MERS system are subject to the consent of the**  
28 **beneficial owner of the mortgage loans,** and (iii) membership in MERS or use of the  
MERS System shall not modify or supersede any agreement between or among the  
Members having interests in mortgage loans registered on the MERS System.”  
(Emphasis added). (Ex.5, Attachment, p. VC10052000VA)

The inconsistencies within those Terms and Conditions applicable to the use of MERS by  
the Defendant co-conspirators reflect both a disclaimer by MERS of the acquisition at any time of  
any beneficial interest in any mortgage, loan, and collateral, and that every “Member” is  
specifically required “promptly, or as soon thereafter as practicable, to cause MERS to appear in

1 the appropriate public record” as the alleged “beneficiary under each mortgage loan.” This  
2 reflects the conspiracy among MERS, the Defendant co-conspirators and others acting in concert  
3 with them to intentionally misrepresent to the public and the borrowers that MERS was the actual  
4 beneficiary, and was specifically intended by the Defendants to establish a basis for Defendants to  
5 deny any knowledge of or participation by the corporate Officers and Directors of Defendants in  
6 the conspiracy alleged herein that was making them capable of reaping unprecedented profits.  
7

8 The intent and purpose of Defendants and their co-conspirators in the creation,  
9 management, operation and control of MERS was, without limitation, to make it impossible for  
10 the borrowers, their attorneys, the courts, the government, and anyone other than the Defendants’  
11 co-conspirators, who created and controlled MERS, to identify the actual beneficial owner of any  
12 particular loan or the property which was the collateral securing that loan until such time, if any,  
13 that foreclosure action was initiated. At such time as an alleged default could be asserted, then  
14 entities such as Defendants GMAC and ETS intentionally join in the unlawful conspiracy by  
15 unlawfully asserting rights from known fraudulent purported assignments by MERS for the sole  
16 purpose and with the sole intent of initiating and completing foreclosure proceedings on  
17 Plaintiff’s home and on tens of thousands of other homes in the State of Nevada. Here again, the  
18 motive of Defendants GMAC and ETS and other similar entities in intentionally participating in  
19 said conspiracy was, without limitation, to make huge and unprecedented profits at the expense of  
20 Plaintiff and others similarly situated who would be forced to leave their homes and lose the  
21 investment they had made in the homes.  
22

23  
24 Each of the Defendants and their co-conspirators have intentionally preyed upon persons  
25 like the Plaintiff and created MERS as a fiction behind which the lenders could disappear.  
26 Further, these Defendants have preyed upon Plaintiff and others in Nevada and the United States  
27 who are elderly, disabled, or who have a protected minority or gender status under law or who  
28

1 were and are unable to understand the terms of the loan documents and foreclosure documents  
2 which were generated by Defendants and their co-conspirators in order to make money. In  
3 particular, Defendants GMAC and ETS have a business practice and policy of providing the  
4 Notice of Default and Intent to Sell to borrowers in nonjudicial foreclosure when the borrowers  
5 would have no reason to know why these foreclosing trustees had any interest in the borrowers'  
6 homes nor how to reach them to negotiate the foreclosure.  
7

8 This practice and policy of Defendants MERS, GMAC and ETS reflects the intentional  
9 exploitation of the inability of the borrowers to reach anyone to stop the foreclosure on their  
10 homes. The conduct by Defendant MERS in transferring the beneficial rights after appointing  
11 some unknown third party as the Trustee was an intentional act to insulate the true beneficiary  
12 from contact by the borrower. This deceit and cloaking of the true owner of the beneficial  
13 interest and the failure to provide documents and communication regarding the foreclosure and  
14 the default is contrary to the standards of certainty in the transfer of interests in real estate that has  
15 been adopted by the legislatures and judiciary in the United States for centuries, and is contrary to  
16 the decency in contract relations that one is entitled to in a civilized society.  
17

18 The Defendants have adopted an intentional policy and practice of engaging in these  
19 fraudulent acts in order to deprive Plaintiff of her home and Plaintiff asks that the foreclosure be  
20 enjoined and stopped and that MERS and the real parties in interest be required to produce the  
21 documentation of their interest in the various deeds of trusts and notes that involve the Plaintiff's  
22 home.  
23

24 As explained above, it was not only the borrowers who were defrauded by the Defendant  
25 co-conspirators herein, but also the investors who purchased fraudulent loans with no market  
26 value or who purchased securities backed by those toxic mortgages which were typically sold in  
27 bundles. The investors did not receive any documentation supporting the transfer of the  
28

1 indebtedness. Defendants GMAC and ETS, likewise, did not purchase the Plaintiff's note, they  
2 are simply the henchmen for the Defendant co-conspirators.

3 The attached Declaration of Robert R. Hager reflects that the story in this case is  
4 hauntingly similar to that in Stoffels, et al., v. GRP, et al. pending before this Court (Case No.  
5 3:08-cv-458-ECR-RAM). In that case, the Defendant GRP, a wholly-owned subsidiary of Sallie  
6 Mae, sought to advance a foreclosure and sell the Plaintiff's home **having never paid any**  
7 **consideration whatsoever for the obviously predatory loan that, in the opinion of Plaintiffs'**  
8 **expert in that case and Plaintiff's expert in this case had no market value.** (See Exhibit 2,  
9 paragraph 9 and Exhibit 4, attachment 1.) What is now happening in Nevada and across the  
10 United States is that families and people are being foreclosed on and forced from their homes  
11 through foreclosures advanced by subsidiaries (such as ETS and GRP) of financial institutions  
12 (such as GMAC and Sallie Mae). These presumably venerable financial institutions create and  
13 control these subsidiaries with the specific intent and for the specific purpose of distancing their  
14 names from the dastardly, disdainful and devastating foreclosures on known predatory loans.  
15 This devastation of the American homeowner and entirely fraudulent scheme is predicated upon  
16 the active participation of MERS, and the Defendant co-conspirators are fully aware that MERS  
17 lacks any authority to designate any substitute beneficiary or trustee to advance any foreclosure.  
18 In other words, the Defendant co-conspirators have created subsidiaries in an effort to support  
19 deniability and to distance themselves from public awareness of the devastating effects of their  
20 ongoing actions.  
21  
22  
23

24 The Plaintiff had no contractual agreement with GMAC, ETS or MERS. Congress passed  
25 the protective acts TILA, RESPA, etc., in order to require notice be given to the borrower. The  
26 reasoning behind Congress' legislation is obvious in that the borrower must be able to contact the  
27 person with the authority and the interest in making certain that the borrower makes his payments  
28

1 and stays in his home. None of the Defendants who Plaintiff seeks to enjoin from foreclosing on  
2 her home has ever owned any interest in the loan or home affected by the pending foreclosure  
3 action. Defendants MERS, GMAC and ETS are strangers to Plaintiff, her loan and home, and  
4 they should be enjoined from further advancing any foreclosure of Plaintiff's home and of  
5 purporting to transfer any rights or interest in the loan or the property which is alleged to be  
6 collateral for that loan.  
7

8 The Mortgage Store, the originator or "lender" of the loan, appears to no longer be in  
9 business or has changed the means by which to be contacted, as is the case with many such  
10 predatory residential loan originators who have transferred their assets offshore. In any event, The  
11 Mortgage Store has never been designated as the beneficiary under any security instrument  
12 related to the loan or Plaintiff's home, and it is instead MERS, GMAC and ETS who are now  
13 within days of unlawfully conducting a foreclosure sale of Plaintiff's residence.  
14

15 **II.**

16 **Points and Authorities in Support of Preliminary Injunction**

17 **A.**

18 **An injunction is appropriate because of the irreparable harm**  
19 **that will be caused to the Plaintiff if the foreclosure sale occurs.**  
20

21 **1. A temporary restraining order is appropriate to maintain the status quo.**

22 The Plaintiff's home will be sold on April 15, 2009, without intervention from this Court.  
23 The foreclosure laws of the State of Nevada do not require that the lender seek a judicial order for  
24 the foreclosure.<sup>3</sup>

25 Rule 65(b) of the Federal Rules of Civil Procedure provides that this Court may issue a  
26 TRO without notice to the adverse party where "specific facts in an affidavit or a verified  
27

28 <sup>3</sup> NRS 40.430 et seq.

1 complaint clearly show that immediate and irreparable injury, loss, or damage will result to the  
2 movant. . .”<sup>5</sup> The standards for a Temporary Restraining Order are similar to the standards for a  
3 preliminary injunction.<sup>6</sup>

4 Injunctive relief is appropriate when the Plaintiff will suffer “irreparable harm” and when  
5 the Plaintiff shows “a reasonable probability of success on the merits of its claim.”<sup>7</sup> In this case,  
6 injunctive relief is appropriate because Plaintiff is threatened with a clear and present danger of  
7 irreparable harm if her residence is sold at the foreclosure sale scheduled for April 15, 2009.

9 The two tests for issuance of a restraining order or preliminary injunction “are not  
10 separate, but rather represent the outer reaches of a single continuum.”<sup>8</sup>

11 At one end of the continuum, the moving party is required to show both a  
12 probability of success on the merits and the possibility of irreparable injury.<sup>9</sup>

14 Four of the guiding factors relied upon by the courts to determine whether a preliminary  
15 injunction is appropriate are listed as follows in Wright & Miller, Federal Practice and Procedure:  
16 Civil, § 2948:

- 17 (1) The significance of the threat of irreparable harm to plaintiff if the injunction is
- 18 not granted;
- 19 (2) The state of the balance between this harm and the injury that granting the
- 20 injunction would inflict on the defendant;
- 21

22 <sup>5</sup> Fed. R. Civ. P. 65(b).

24 <sup>6</sup> *Immigrant Assistance Project of the L.A. County of Fed’n of Labor v. INS*, 306 F.3d 842, 873 (9<sup>th</sup> Cir. 2002).

25 <sup>7</sup> *Barahon- Gomez v. Reno*, 167 F.3d 1228, 1234 (9<sup>th</sup> Cir. 1999).

26 <sup>8</sup> *Los Angeles Memorial Coliseum v. National Football League*, 634 F.2d 1197, 1201 (9<sup>th</sup> Cir. 1980).

27 <sup>9</sup> *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9<sup>th</sup> Cir. 1983); *Dep’t of Parks & Rec. of Calif. v. Bazaar Del*  
28 *Mundo, Inc.* 448 F.3d 1118, 1123 (9<sup>th</sup> Cir. 2006).

1 (3) The probability that plaintiff will succeed on the merits; and,

2 (4) The public interest.<sup>10</sup>

3 A preliminary injunction/temporary restraining order is “an extraordinary remedy, which  
4 should be granted only in limited circumstances.”<sup>11</sup> This remedy should only be granted where  
5 the merits of the case clearly favor one party over the other.<sup>12</sup> The *Remlinger* court explained  
6 that:

7  
8 The cases best suited to preliminary relief are those in which the important facts  
9 are undisputed, and the parties simply disagree about what the legal consequences are of  
10 those facts. The court in such a case can take the undisputed facts, apply the law to them,  
11 and fairly easily decide which party is likely to prevail.

12 A party seeking a preliminary injunction must meet a standard which includes:

13 the moving party may meet its burden by demonstrating either (1) a combination  
14 of probable success on the merits and the possibility of irreparable injury; or (2)  
15 that serious questions exist and the balance of hardships tips sharply in its favor.<sup>13</sup>

16 The underlying purpose of a temporary restraining order is “to preserve the status quo and  
17 prevent irreparable harm before a preliminary injunction hearing may be held.”<sup>14</sup>  
18

19  
20 <sup>10</sup> *Mountain States Telephone & Telegraph Co. v. Dept. of Public Service Regulation*, 588 F. Supp. 5, 8  
21 (D. Montana 1983). *Also see, Barahona-Gomez v. Reno*, cited *supra*, and *Golden Gate Restaurant Assoc.  
v. City and County of San Francisco*, 512 F.3d 1112 (9<sup>th</sup> Cir. 2008).

22 <sup>11</sup> *Instant Air Freight Co. v. C.F. Freight, Inc.*, 882 F. 2d 797, 800 (3d Cir. 1989).

23 <sup>12</sup> *Remlinger v. Nevada*, 896 F. Supp. 1012, 1015 (D. Nev. 1995).

24 <sup>13</sup> *Cassim v. Bowen*, 824 F. 2d 791, 795 (9<sup>th</sup> Cir. 1987)

25 <sup>14</sup> *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439, 94 S.Ct.  
26 1113, 39 L.Ed. 2d 435 (1974); *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130-31 (9<sup>th</sup> Cir. 2006).

1 The irreparable harm to the Plaintiff is the loss of her home. The Plaintiff will suffer  
2 physical and mental injury if she is required to move from her home with no possibility of  
3 replacing this housing, thus she will be rendered homeless.

4  
5 **2. When the Court weighs the irreparable harm to the Plaintiff, the harm to the Plaintiff is substantial.**

6 The second consideration of the court is the weighing of the harm to the Plaintiff without  
7 the injunction versus the harm to the Defendants if the injunction is granted. The harm to the  
8 Plaintiff will be losing her home. The only harm to the Defendant is that it will not be able to go  
9 forward with the foreclosure of one of hundreds of thousands of homes whose mortgages are  
10 managed by GMAC. In other words, GMAC will only lose use of their money for the time  
11 period in which this case can be tried.

13 Real property is unique under the laws of the State of Nevada and, therefore, the loss of  
14 real property is irreparable harm, particularly when it is the home of the Plaintiff.<sup>15</sup> Plaintiff has  
15 been a homeowner for nearly ten years. Now, due to the Notice of Foreclosure recorded by the  
16 Defendants, the Plaintiff would not qualify for a mortgage to buy a home. Predatory lenders like  
17 GMAC not only steal the home and life savings of naive Americans, but they leave those victims  
18 with destroyed credit that follows these innocent victims for years in the future.

20 The Plaintiff will be irreparably harmed by the loss of her home. The Defendant will just  
21 have a mere interference with the foreclosure. No adequate remedy at law is available to the  
22 Plaintiff to protect her home.

23  
24 **B.**

25 **The Plaintiffs are likely to prevail upon the merits of their claims.**

26 **1. Executive Trustee Services, LLC does not own the mortgage against the Plaintiff's home,**

27 <sup>15</sup> *Hamm v. Arrowcreek Homeowners Assoc.*, 183 P.3d 895 (Nev. 2008)

1 **and, therefore, has no right to foreclose on the property.**

2 The Deed of Trust of the Plaintiff indicated that the lender was The Mortgage Store  
3 Financial. The beneficiary was MERS. As stated above, MERS has expressly stated that it had  
4 no beneficial interest in the deed of trust of the Plaintiff or any other deed of trust where it was  
5 designated the beneficiary.  
6

7 The Plaintiff has no contractual agreement with GMAC. Executive Trustee Services,  
8 LLC does not own the mortgage. Executive Trustee Services, LLC has no right to foreclose on  
9 this property because the mortgage was based on fraud and federal laws were violated as will be  
10 more specifically explained hereinafter. Because the legality of the instrument itself is at issue,  
11 the foreclosure cannot proceed until the issues are resolved and this injunction will maintain the  
12 status quo until these issues are resolved.  
13

14 An Ohio District Court requested clarification of the documentation in a foreclosure  
15 action and found no documents assigning rights to the servicer of the mortgage.<sup>16</sup> The Ohio Court  
16 was astonished that the servicer of the mortgage believed that it had rights to foreclose before a  
17 proper assignment was made.<sup>17</sup> Although the counsel for the mortgage servicing industry was  
18 patronizing to the Ohio Court, that Court recognized the sloppy business practices that left the  
19 mortgage servicing industry with no right to foreclose in its haste to profit.<sup>18</sup>  
20

21 MERS had no beneficial interest in the deed of trust and, therefore, had no basis for its

22 <sup>16</sup> *In re Foreclosure Cases*, 2007 U.S. Dist LEXIS 84011 (D. Ohio 2007).

23 <sup>17</sup> *Id.*, footnote 1

24  
25 <sup>18</sup> *Id.*, The Court finally summarized its response to the sloppy business practices and the wholesale rush  
26 to foreclosure, “the Court will illustrate in simple terms its decision: “Fluidity of the market – X dollars;  
27 “contractual arrangements between institutions and counsel - X dollars, “purchasing mortgages in bulk and  
28 securitizing (without proper paper) - X dollars, “rush to file, slow to record after judgment - X dollars, “the  
jurisdictional integrity of the United States District Court” - priceless.” *Id.* at page 9, 10. Obviously, the  
kind of practices business concerns may justify for their profit ventures do not necessarily comport with  
what the law requires.

1 designation of Trustee, nor has ETS recorded or presented any document to the Plaintiff  
 2 establishing its rights under the deed of trust. ETS was not substituted in as trustee and does not  
 3 have the legal right to foreclose nor any right to sell the Plaintiff's home.

4 **2. The loan that the Plaintiff was given by the Defendants violated and continues**  
 5 **to violate the Fair Housing Act.**

6 The Fair Housing Act<sup>26</sup> was adopted by Congress to protect unsuspecting and  
 7 unsophisticated borrowers in that class of persons that include protected minorities such as the  
 8 Plaintiff from being exploited by predatory lending schemes. All the Defendants in the complaint  
 9 acted in concert and literally "passed the baton" in creating the on-going fraud against Josefa  
 10 Lopez. The failure to analyze the benefit to Josefa Lopez of borrowing money on her house that  
 11 was on a fixed payment, fixed interest rate then to have her assume a with a mortgage that she did  
 12 not qualify for and that would result in the loss of her home was fraught with discrepancies  
 13 including, but not limited to, the fact that she was unemployed with no income and that this loan  
 14 was based solely on taking equity from her home. This mortgage had all the indicia that the Fair  
 15 Housing Act covers in fraudulent practices.  
 16  
 17

18 Predatory lending practices directly affect the availability of housing and are not "normal  
 19 economic activity" and thus fall within the protections of the Fair Housing Act.<sup>27</sup> The actual  
 20 injury caused by the predatory loan practice is that the Plaintiff will lose her home. The predatory  
 21 lending scheme was designed to fail and to take the Plaintiff's home. ETS is simply the last  
 22 predator of this ugly food chain.

23 The Plaintiff is likely to prevail on the merits of her claim under the Fair Housing Act and  
 24 on her fraud claims. This court should grant the temporary restraining order because the Plaintiff  
 25

26 \_\_\_\_\_  
<sup>26</sup> 42 U.S.C. § 3601 *et seq.*

27  
 28 <sup>27</sup> *Willingham v. Novastar Mortgage, Inc.*, 2006 U.S. Dist. LEXIS 97149 (D. W.D. Tenn. 2006)

1 is likely to prevail on the merits and because the burden to the Defendants is minimal. The  
2 irreparable harm to the Plaintiff is substantial, i.e., the loss of her home.

3 WHEREFORE FOR THE ABOVE-STATED REASONS, the Plaintiff respectfully  
4 requests that the Court enter a temporary restraining order and preliminary injunction that would  
5 prohibit Defendants ETS, GMAC and MERS, their agents, employees, attorneys, and anyone  
6 acting on their behalf, from foreclosing, pursuing any foreclosure action, taking possession of, or  
7 in any other manner interfering with the peaceful enjoyment and possession by Josefa Lopez of  
8 her home located at 7423 Baroque Court, Sun Valley, Nevada, and that no bond be required of  
9 the Plaintiff because no damages are ascertainable to the Defendants.  
10

11 Dated this 9<sup>th</sup> day of April, 2009.

12 HAGER & HEARNE

13  
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