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IN THE SUPREME COURT FOR THE STATE OF IDAHO

GREGORY RENSHAW, an individual,

Plaintiff-Appellant,

v.

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., a Delaware corporation,

Defendant-Respondent,

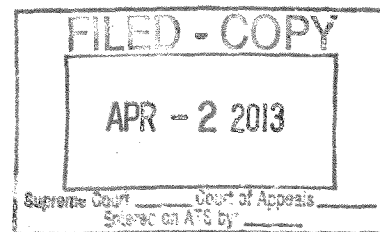
and

HOMECOMINGS FINANCIAL, LLC, a Delaware  
limited liability company; EXECUTIVE  
TRUSTEE SERVICES, LLC, a Delaware limited  
liability company; DOES I-V, and ABC  
CORPORATIONS I-V,

Defendants.

Supreme Court Docket No. 40512-2012  
Ada County Docket No. 2010-23898

**APPELLANT'S BRIEF**



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**APPELLANT'S BRIEF**

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Appeal of Gregory Renshaw v. Homecomings Financial, LLC, et al in the Fourth Judicial  
District of the State of Idaho,  
in and for the County of Ada, Case No. CV OC 1023898  
Honorable Deborah Bail, Presiding District Judge

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John L. Runft, ISB #1059  
Jon M. Steele, ISB # 1911  
Runft & Steele Law Offices, PLLC  
1020 W. Main St., Ste 400  
Boise, ID 83702  
Tel : (208) 333-8506  
Fax : (208) 343-3246  
e-mail: [JSteele@runftsteele.com](mailto:JSteele@runftsteele.com)  
*Attorneys for Appellant*

Michael G. Halligan, ISB # 6874  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205-3089  
Tel: (503) 227-1111  
Fax: (503) 248-0130  
e-mail: [mikeh@sussmanshank.com](mailto:mikeh@sussmanshank.com)  
*Attorney for Respondent*



**TABLE OF CONTENTS**

TABLE OF CONTENTS.....	<i>i</i>
TABLE OF AUTHORITIES.....	<i>iii</i>
I. STATEMENT OF THE CASE.....	1
A. NATURE OF THE CASE.....	1
B. COURSE OF PROCEEDINGS BELOW.....	1
C. STATEMENT OF FACTS.....	4
II. ISSUES ON APPEAL.....	9
III. STANDARD OF REVIEW .....	9
IV. APPLICABLE LAW.....	11
V. ARGUMENT.....	16
1. MERS IS NOT A LAWFUL “BENEFICIARY” WITHIN THE TERMS OF IDAHO’S TRUST DEED ACT.....	16
a. MERS Has No Financial Interest In Appellant’s Note.....	18
b. MERS Cannot Proceed On Behalf Of The Loan Owner Because It Does Not Possess The Note And Does Not Represent And Is Not The Agent Of The Holder Of Appellant’s Note.....	20
2. MERS HAS IGNORED THE RECORDING REQUIREMENTS OF IDAHO CODE § 45-1505(1).....	21
3. WHAT IS THE LEGAL EFFECT OF MERS ACTING AS AN UNLAWFUL BENEFICIARY UNDER THE TERMS OF IDAHO’S DEED OF TRUST ACT?.....	22
4. APPELLANT’S CAUSES OF ACTION AGAINST MERS.....	22
a. Negligence.....	22
b. Idaho Consumer Protection Act.....	22
5. APPELLANT IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS AS A RESULT OF THIS APPEAL.....	24
VI. CONCLUSION.....	24

APPENDIX

1. Excerpts from Plaintiff’s First Amended Complaint and Homecomings Financial, LLC, Mortgage Electronic Registration Systems, Inc. and Executive Trustee Services, LLC’s Answer to First Amended Complaint and Demand for Jury Trial.....	1-3
2. Excerpts from Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission to Defendant Homecomings Financial, LLC and Defendant Homecomings Financial, LLC’s Answers and Responses to Plaintiff’s First Set of Interrogatories and Requests for Production of Documents.....	1-2
3. Excerpts from Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission to Defendant Homecomings Financial, LLC and Defendant Homecomings Financial, LLC’s Answers and Responses to Plaintiff’s First Set of Requests for Admission.....	1-7
4. Excerpts from Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission to Mortgage Electronic Registration Systems, Inc. and Defendant Mortgage Electronic Registration Systems, Inc’s Answers and Responses to Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission.....	1-5
5. Excerpts from Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission to Executive Trustee Services, LLC and Defendant Executive Trustee Services, LLC Answers and Responses to Plaintiff’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission.....	1-6

**TABLE OF CASES AND AUTHORITIES**

**CASES**

*Armacost v. HSBC Bank USA*, 1:10-CV-00274-EJL-LMB,  
United States District Court, Ninth Circuit (March 2, 2011).....20

*Bain v. Metropolitan Mortgage Group, Inc.*,  
285 P.3d 34, 175 Wn.2d 83 (Wash. 2012).....12, 15

*Bank of N.Y. v. Silverberg*, 86 A.D.3d 274; 926 N.Y.S.2d 532 (2011).....16

*Bellistri v. Ocwen Loan Serv.*, 284 S.W.3d 619, 623 (Mo. Ct. App. 2009).....20

*Cox v. Helenius*, 693 P.2d 683, 103 Wn.2d 383 (Wash. 1985).....15

*E. Idaho Agr. Credit Ass'n v. Neibaur*,  
130 Idaho 623, 626, 944 P.2d 1386, 1389 (1997).....10

*E. Milling Co. v. Flanagan*, 152 Me. 380, 382-83, 130 A.2d 925, 936 (1957).....16

*First Sec. Bank of Idaho, N.A. v. Murphy*,  
131 Idaho 787, 790, 964 P.2d 654, 657 (1998).....10

*Galbraith v. Bangas, Inc.*, 655 P.2d 119, 121 (Ct. App. 1982).....22

*In re Agard*,  
444 B.R. 231, 247 (Bankr. E.D.N.Y. 2011).....13, 15

*In re MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, n. 2, 861 N.E.2d 91,  
828 N.Y.S.2d 266 (2006).....13

*In re Sheridan*, 2009 WL 631355 (Bkrtcy D. Idaho 2009).....11

*In re Vargas*, 396 B.R. 511, 517 (Bankr. C.O. Cal. 2008).....20

*Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*,  
136 Idaho 233, 31 P.3d 921 (2001).....10

*Jackson v. Mortgage Elec. Registration Sys. Inc.*,  
770 N.W.2d 487, 5491 (Minn. 2009).....14, 15, 16

*Just's, Inc. v. Arrington Construction Co., Inc.*, 583 P.2d 997, 1003 (Idaho 1978).....22

*Landmark Nat'l Bank v. Kesler*,  
192 P.3d 177, 179 (Kan. App. 2008), 216 P.3d 158 (Kan. 2009).....20

<i>McFadden v. Sein</i> , 139 Idaho 921, 88 P.3d 740 (2004).....	10
<i>MERSCORP, Inc. v. Romaine</i> , 8 N.Y.3d 90, 861 N.E.2d 81 (2006).....	13, 16
<i>Mortg. Elec. Registration Sys., Inc. v. Azize</i> , 965 So.2d 151, 154 n. 3 (Fla. Dist. Ct. App. 2007).....	14
<i>Mortgage Elec. Registration Sys., Inc. v. Estrella</i> , 390 F.3d 522, 524-25 (7th Cir. 2004).....	18
<i>Mortgage Elec. Registration Sys., Inc. v. Neb. Dep't Banking &amp; Fin.</i> , 704 N.W.2d 784, 788 (Neb. 2005).....	19
<i>Mortgage Elec. Registration Sys., Inc. v. S.W. Homes of Ark.</i> , 301 S.W.3d 1, 2009 Ark. 152 (Ark. 2009).....	19
<i>Niday v. GMAC Mortg., LLC</i> , 284 P.3d 1157, 251 Or.App. 278 (Or.App. 2012).....	21
<i>Peoples Nat. Bank of Wash. v. Ostrander</i> , 491 P.2d 1058, 6 Wn. App. 28 (Wash. App. Div. 3 1971).....	15
<i>Pub. Emps' Ret. Sys. Of Miss. V. Merrill Lynch &amp; Co.</i> , 277 F.R.D. 97, 102-03 (S.D.N.Y. 2011).....	13
<i>Riverside Development Co. v. Ritchie</i> , 103 Idaho 515, 518 n. 1, 650 P.2d 657, 660 n. 1 (1982).....	10
<i>Taylor v. Herbold</i> , 483 P.2d 664 (Idaho 1971).....	22
<i>Trotter v. Bank of New York Mellon, et al</i> , 275 P.3d 857 (Idaho 2012).....	12
<i>Zollinger v. Carrol</i> , 137 Idaho 397, 399, 49 P.3d 402, 404 (2002).....	10
<b><u>STATUTES &amp; RULES</u></b>	
Idaho Code § 12-120(3).....	24
Idaho Code § 45-1502.....	11
Idaho Code § 45-1502(1).....	11
Idaho Code § 45-1502(2).....	11
Idaho Code § 45-1502(4).....	11
Idaho Code § 45-1505(1).....	9, 12, 23

Idaho Code § 48-603.....22

Idaho Appellate Rule 35(a)(5).....24

**OTHER AUTHORITIES**

Black’s Law Dictionary at 1149 (9<sup>th</sup> ed. 2009).....16

Chana Joffe-Walt & David Kestenbaum, *Before Toxie was Toxic*,  
Nat’l Pub. Radio (September 17, 2010, 12:00 A.M.).....14

Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending,  
and the Mortgage Electronic Registration System*,  
78 U. Cin. L. Rev. 1359, 1361 (2010).....13

Dustin A. Zacks, *Standing in Our Own Sunshine:  
Reconsidering Standing, Transparency, and Accuracy in Foreclosures*,  
29 Quinnipiac L. Rev. 551, 570-71 (2011).....14

Phyllis K. Slesinger & Daniel McLaughlin,  
*Mortgage Electronic Registration System*, 31 Idaho L. Rev. 805, 807 (1995).....13, 14



**I.**  
**STATEMENT OF THE CASE**

**A. NATURE OF THE CASE.**

This action was filed to halt a non-judicial foreclosure instituted by Homecomings Financial, LLC (“Homecomings”) through and with Mortgage Electronic Registration Systems, Inc. (“MERS”) and Executive Trustee Services, Inc. (“ETS”). Gregory Renshaw (“Appellant”) sought to stop the foreclosure sale of his home; sought a decree that Homecomings, MERS, and ETS have no substantive rights in Appellant’s Promissory Note (“Note”) or Deed of Trust (“DOT”); and sought damages.

This action was brought pursuant to Section 22 of Appellant’s DOT entitled Acceleration, which provides the following:

**“The notice shall further inform Borrower of ...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.”** (emphasis added)

Appellant challenges MERS’ substantive right to foreclose his Loan (“Loan” refers to the Appellant’s Note and DOT). Additionally, MERS has failed to abide by the procedure required by the Idaho Trust Deeds Act prior to commencing the foreclosure sale of Appellant’s home.

**B. COURSE OF PROCEEDINGS BELOW.**

Appellant filed his Complaint on December 6, 2010. R., p. 15. The trustee’s sale of Appellant’s home was scheduled for December 29, 2010. R., p. 22, ¶ 48. The trustee’s sale was cancelled. Appellant filed his First Amended Complaint on February 15, 2011. R., p. 123.

On August 3, 2011 the trial court issued its Memorandum Decision and Order on Defendants' Motion to Dismiss or for Summary Judgment. R., p. 261. In its Memorandum Decision, the trial court dismissed the majority of Appellant's causes of action.

Following this ruling and the bankruptcy filings of Homecomings and ETS, Appellant's surviving claims against MERS are the following: (1) negligence in commencing the foreclosure sale of Appellant's home and (2) violation of the Idaho Consumer Protection Act in commencing the foreclosure sale of Appellant's home

Appellant's Expert Witness Disclosure was made on March 12, 2012. R., p. 275. Appellant's disclosed the following as his experts:

1. Richard Kahn, Foreclosure Fraud Examiner. R., p. 276.
2. Dr. Michael McMartin, Appellant's treating physician. R., p. 276
3. Heidi Emery, Title examiner. R., p. 276.

Appellant filed his First Request for Judicial Notice on March 16, 2012. R., p. 449.

On March 21, 2012 Homecomings, MERS, and ETS filed their Motion for Summary Judgment. R., p. 1015.

Appellant filed his Motion for Partial Summary Judgment on April 11, 2012. R., p. 1193.

On April 20, 2012, Appellant filed his Second Request for Judicial Notice (R., p. 1417), which included the following evidence:

Request No. 20: Exhibit 111, written transcript of Video Deposition of R. K. Arnold taken on September 25, 2009 in the case *Henderson v. MERSCORP, INC, et al*, Case No. CV 08-900805.00 in the Circuit Court for Montgomery County, Alabama.

Appellant filed his Rebuttal Expert Witness Disclosure of Richard Eppink on May 10, 2012. R., pp. 1710-1722.

On May 16, 2012, Appellant filed Notice of Bankruptcy Filing, which notified the trial court that Homecomings and ETS had filed for Chapter 11 Bankruptcy relief, requested Homecomings and ETS verify their bankruptcy filing, and notified the trial court that Appellant intended to proceed with the scheduled jury trial solely against MERS. R., p. 1746.

The jury trial of this case was to commence on July 10, 2012.

On May 25, 2012 Appellant filed his Third Request for Judicial Notice (R., p. 1748) and his Notice of Intent to Offer Defendants' Admissions at Trial. R., p. 1797.

On June 8, 2012 MERS' attorneys moved to Withdraw as Counsel for MERS. R., p. 11.

On June 13, 2012, the trial court denied MERS' motions to strike Appellant's experts. Tr., p. 85, *l.* 4 – *l.* 14. The trial court granted counsel's motion to withdraw and vacated the jury trial on June 22, 2012. R., pp. 2022-2023.

On July 23, 2012 the trial court entered its Decision and Order re: Summary Judgment granting MERS summary judgment and denying Appellant his Motion for Partial Summary Judgment. R., p. 2025. Appellant filed his Motion for Reconsideration on August 6, 2012. R., p. 2035.

On October 16, 2012, the trial court entered its Decision and Order re: Motion for Reconsideration, which denied Appellant's Motion for Reconsideration (R., p. 3389) and entered its final Judgment. R., p. 3394.

Appellant filed his Notice of Appeal on November 27, 2012 (R., p. 3396) followed by his Amended Notice of Appeal on November 28, 2012. R., p. 3408.

**C. STATEMENT OF FACTS.**

The facts are set forth in Appellant's Amended Complaint, Homecomings, MERS and ETS' Answer, MERS' admissions, multiple discovery responses of the parties, depositions, expert reports, affidavits filed in support and in opposition to the summary judgment motions and in Appellant's First, Second, and Third Requests for Judicial Notice, all part of the Record in this appeal. The Clerk's Record consists of 3,424 pages. As the trial judge stated, "[t]here are a number of factual assertions by both sides which are hotly disputed...."

The trial court's Decision and Order re: Summary Judgment states the pertinent facts as follows:

The plaintiff's loan was secured by a Deed of Trust on his property at 3480 South Pimmit Place in Boise, Idaho which listed Homecomings Financial, LLC as the lender, Pioneer Title as the Trustee, and MERS as the beneficiary under the Deed of Trust. The Deed of Trust specifically provides that MERS, as nominee for the lender and its "successors and assigns" has the right to foreclose and sell the property and to take any action that the lender was entitled to take. The Deed of Trust makes repeated reference to MERS and the fact that it is the beneficiary of the Deed. It also clearly indicates that the loan server may be changed and that the note or interests in it can be sold without prior notice to the borrower. The plaintiff signed the Deed of Trust on June 27, 2007. The Deed of Trust was recorded on July 3, 2007. The plaintiff failed to make his May, 2010 loan payment and has failed to make any payments since

then. (footnote deleted) In August 2010, the plaintiff was served with a Notice of Default and Election to Sell Under Deed of Trust by Pioneer Title Company as the trustee "in favor of 'MERS' MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. SOLELY AS NOMINEE FOR HOMECOMINGS FINANCIAL, LLC ... as Beneficiary." The Notice states that MERS was the current holder of the beneficiary interest in the Deed of Trust. It asserts a default in the monthly payment beginning May 1, 2010. A Trustee's Sale was scheduled for December 29, 2010. A Debt Validation Notice apparently sent concurrently with the Notice of Default and Election to Sell advised the plaintiff of the amount of the delinquency and gave him thirty days to dispute the validity of the debt and listed the "current creditor" as Mortgage Electronic Registration Systems, Inc. The plaintiff's home was not sold in the trustee sale.

In August, 2010, the plaintiff applied to GMAC to refinance his loan. He did not qualify because his income was insufficient. In March, 2012, he again applied for a loan modification. He did not qualify for a Home Affordable Modification Program ("HAMP") loan because of his income level.

It is not disputed that Homecomings Financial LLC. transferred its interest in the note to Residential Funding LLC, a related company. The note is currently held by GMAC Mortgage LLC. In November, 2007, Residential Funding LLC. sold the beneficial interest on the loan to Freddie Mac which is a member of MERS. GMAC is the servicer on the loan and is a member of MERS. The plaintiff was notified that GMAC was the servicer on the loan in June, 2009. Payments on the mortgage were processed by GMAC from July 1, 2009 until the plaintiff failed to make his May, 2010 payment. No mortgage payments have been made since that time. The trustee's sale did not go forward.

The plaintiff, in his Amended Complaint, challenged the authority of MERS to commence a non-judicial foreclosure and the failure of the various mortgage entities involved to follow the requirements of Idaho's trust deed statutes, including recording requirements. The Amended Complaint also challenges MERS power to act in the deed of trust foreclosure proceedings. Most of the causes of action asserted in the Amended Complaint are raised against other defendants. The plaintiff asserts causes of action against MERS for negligence, tortious interference with contract, wrongful foreclosure, slander of title, fraud, unjust enrichment, and consumer protection act violations. Judge Williamson, who had previously been the judge assigned to this case, dismissed the cause of action for Tortious Interference with Contract with respect to

MERS as well as the causes of action for fraud, slander of title and unjust enrichment. There are a number of factual assertions by both sides which are hotly disputed but the focus, in all motions for summary judgment, is whether there are any genuine, material issues of fact which are in dispute. There are no issues of material fact in dispute.

R. pp. 2025– 2028, Decision and Order re: Summary Judgment, July 23, 2012,

The following material facts are also included in the Record:

On August 11, 2010 (prior to filing this lawsuit) Appellant first applied for a Home Affordable Loan Modification. R., pp. 1235-1246. Two days later, Appellant was served with (1) Notice of Default and Election to Sell Under Deed of Trust (R., p. 130) and (2) Notice of Trustee's Sale (R., p. 130).

The following facts are uncontroverted by reason of the Defendants' admissions in their pleadings and in their responses to Requests for Admission. For ease of reference an Excerpt of these pleading and discovery responses are set forth in the Appendix which is found in the Clerk's Record at pp. 1797-1819.

- a. Homecomings, MERS, and ETS had scheduled a foreclosure sale of Appellant's home for December 29, 2010 at 1:00 p.m. R., pp. 186-187.
- b. On October 15, 2010 Appellant, by a Qualified Written Request (QWR), requested the current holder of the Note and the current holder of the DOT be identified and that the scheduled foreclosure sale be cancelled. R., pp. 189-204.

- c. On November 11, 2010 Appellant, again by a QWR, requested that certain documents be produced and that the scheduled foreclosure be cancelled.  
R., pp. 206-207.
- d. Homecomings is not the current holder of Appellant's Note.
- e. Homecomings is not in possession of Appellant's Note.
- f. Homecomings is not the current beneficiary of Appellant's DOT.
- g. Homecomings transferred its interest in Appellant's Note and its Interest in Appellant's DOT.
- h. Homecomings does not represent and is not the agent of the current holder of Appellant's DOT.
- i. Homecomings' has no interest in Appellant's Note or Appellant's DOT it seeks to foreclose.
- j. MERS has no financial interest in Appellant's Note.
- k. MERS does not represent the current holder of Appellant's Note.
- l. Appellant's DOT names Pioneer Title Company of Ada County as trustee.
- m. ETS is not the trustee of the DOT.
- n. ETS does not purport to be the trustee of the DOT.
- o. ETS is the attorney-in-fact for Pioneer Title Company of Ada County.
- p. ETS prepared and delivered to Appellant:
  - i. Notice of Default and Election to Sell Under Deed of Trust (R., pp. 71-72);

- ii. Notice of Trustee's Sale (R., pp. 73-74); and
- iii. Debt Validation Notice (R., p. 75).
- r. Only authorized persons or entities may foreclose the Deed of Trust.
- s. No sale, transfer or assignment of Plaintiff's Deed of Trust has been recorded in Ada County, Idaho.
- t. Homecomings and ETS are subsidiaries of GMAC Mortgage, LLC.

Appellant's loan has been securitized or sold on the secondary market. Tr., p. 45, *II*. 13-14. R., pp. 304-306

The beneficial interest in Appellant's loan was transferred to Freddie Mac on November 9, 2007. R., pp. 306-307, 1247. Freddie Mac requires the properly endorsed original note and properly assigned DOT original be held by the document custodian in every Residential Mortgage Backed Security. R., p. 307.

Multiple endorsements and transfers of Appellant's Note are found in the Record at pp. 1248-1249. All endorsements are undated, are made without recourse, and are made between subsidiaries of GMAC Mortgage, LLC.

MERS Rule 8 requires a recorded Assignment from MERS to the last lender prior to commencing foreclosure. R., pp. 1322-1326.

MERS Rule 8 requires that this foreclosure proceeding be done in the lender's name and not in MERS's name. R., pp. 1322-1326.

MERS documentation has been robo-signed. R., pp. 316-317.



Appellant made a second application for a Home Affordable Loan Modification on December 11, 2011. R., p. 1235-1246.

Appellant is entitled to a Home Affordable Loan Modification of no more than 31% debt to income ratio or \$435 per month. R., p. 314.

## **II. ISSUES ON APPEAL**

1. Is Mortgage Electronic Registration Systems, Inc. a lawful “beneficiary” within the terms of Idaho’s Trust Deed Act?
2. Does the transfer of Appellant’s Note from the lender to a successor result in an automatic assignment of the DOT that must be recorded prior to the commencement of non-judicial foreclosure proceedings under Idaho Code § 45-1505(1)?
3. What is the legal effect of MERS acting as an unlawful beneficiary under the terms of Idaho’s Deed of Trust Act?
4. What cause of action does Appellant possess against MERS?
5. Is Appellant entitled to an award of attorney fees and costs as the result of this appeal?

## **III. STANDARD OF REVIEW**

The mere fact that both Appellant and MERS moved for summary judgment in the trial court does not establish that there is no genuine issue of material fact. Appellant’s motion must be evaluated on its own merits, its own facts, and its own legal theories.

In *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 31 P.3d 921 (2001), the Idaho Supreme Court held that where the parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment; **however, the mere fact that both parties move for summary judgment does not in and of itself establish that there is no genuine issue of material fact.** When parties have filed cross-motions for summary judgment the applicable standard of review does not change, and the Supreme Court must evaluate each party's motion on its own merits. *See, McFadden v. Sein*, 139 Idaho 921, 88 P.3d 740 (2004) for the same propositions.

If the case is to be tried by the court **without a jury**, where cross-motions for summary judgment are filed, based upon the same evidentiary facts and upon the same theories and issues, the parties effectively have stipulated that no genuine issues of material fact exist (emphasis added). *Zollinger v. Carrol*, 137 Idaho 397, 399, 49 P.3d 402, 404 (2002) (citing *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 518 n. 1, 650 P.2d 657, 660 n. 1 (1982)).

But such is not the case here. This case was to be tried **before a jury** and Appellant's facts and legal theories are not the same as those advanced by MERS. *See also, E. Idaho Agr. Credit Ass'n v. Neibaur*, 130 Idaho 623, 626, 944 P.2d 1386, 1389 (1997); *First Sec. Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998).

#### IV. APPLICABLE LAW

MERS is a recent invention of the mortgage industry unrecognized by traditional mortgage law that, as its own documents prove, has no role in the lending process. Instead, it acts as a privatized county recorder's office that neither the borrower, the public nor the courts can access. MERS' efforts to use forms and legal sleight of hand to manufacture an interest in Appellant's DOT have no basis in fact or law.

As Judge Meyers, Chief U.S. Bankruptcy Judge for the District of Idaho stated:

...[c]hanges in mortgage practices over the past several years have created a number of new issues.... Serial assignments of the mortgagee's interest(s) and the securitization of mortgages have complicated what was previously a generally straight-forward standing analysis.

*In re Sheridan*, 2009 WL 631355 (Bkrcty D. Idaho 2009).

The Idaho Trust Deed Act (Idaho Code § 45-1502 through § 45-1515) provides definitions for three and only three parties to a deed of trust. Idaho deed of trust law provides statutory definitions around which the roles and rights of the three parties have developed. First, "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee." Idaho Code § 45-1502(1). Second, "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation." Idaho Code § 45-1502(2). Third, "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest." Idaho Code § 45-1502(4).

Prior to *Trotter v. Bank of New York Mellon, et al*, 275 P.3d 857 (Idaho 2012), certain issues presented in this case had not been addressed by an Idaho Appellate Court. Trotter, a *pro se* litigant, in both the District Court and Idaho Supreme Court asserted the following:

1. Before a party may make use of the procedural requirements under the Deed of Trust Act, it must demonstrate its substantive right to use them.
2. That his promissory note had been securitized thus eliminating the possibility of default on his part.
3. That a trustee is required to prove it has standing.
4. Under Idaho law MERS could not assign its interest in his deed of trust.

Based upon the Record in *Trotter* (which *did not* include Trotter's deed of trust and *did not* include any evidence of securitization and *did not* include any legal precedent) the Idaho Supreme Court affirmed the District Court's grant of Summary Judgment to Defendants.

The *pro se* homeowner in *Trotter* **failed** to provide the District Court with any facts or authority that supported his legal theories.

Unlike *Trotter*, based upon this Record, it is undisputed that MERS has no interest in Appellant's Note or DOT and that MERS has no substantive, contractual or statutory authority to foreclose on Appellant's home. *See, R.*, pp. 1387-1391 for factual and legal distinction between this case and *Trotter*.

In order to understand what MERS is and what it is not, it is helpful to first examine the structure of MERS. The Washington Supreme Court, in the case of *Bain v. Metropolitan Mortgage Group, Inc.*, No. 86206-1 (August 16, 2012) described MERS as follows:

MERS, now a Delaware corporation, was established in the mid 1990s by a consortium of public and private entities that included the Mortgage Bankers Association of America, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), the American Bankers Association, and the American Land Title Association, among many others. See, *In re MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 96 n. 2, 861 N.E.2d 91, 828 N.Y.S.2d 266 (2006); Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 Idaho L. Rev. 805, 807 (1995); Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L. Rev. 1359, 1361 (2010). It established “a central, electronic registry for tracking mortgage rights ...[where p]arties will be able to access the central registry (on a need to know basis.)” Slesinger & McLaughlin, *supra*, at 806. This was intended to reduce the costs, increase the efficiency, and facilitate the securitization of mortgages and thus increase liquidity. Peterson, *supra*, at 1361. As the New York high court described the process:

The initial MERS mortgage is recorded in the County Clerk’s office with Mortgage Electronic Registration Systems, Inc.” named as the lender’s nominee or mortgagee of record on the instrument. During the lifetime of the mortgage, the beneficial ownership interest or servicing rights may be transferred among MERS members (MERS assignments), but these assignments are not publically recorded; instead they are tracked electronically in MERS’s private system.

*Romaine*, 8 N.Y.3d at 96, 828 N.Y.S.2d 266, 861 N.E.2d 81. MERS “tracks transfers of servicing rights and beneficial ownership interests in mortgage loans by using a permanent 18-digit number called the Mortgage Identification Number.” Resp. Br. of MERS at 13 (*Bain*) (footnote omitted). It facilitates secondary markets in mortgage debt and servicing rights, without the traditional costs of recording transactions with the local county records offices. Slesinger & McLaughlin, *supra*, at 808; *In re Agard*, 444 B.R. 231, 247 (Bankr. E.D.N.Y. 2011)

Many loans have been pooled into securitization trusts where they, hopefully, produce income for investors. See, e.g. *Pub. Emps’ Ret. Sys. Of Miss. V. Merrill Lynch & Co.*, 277 F.R.D. 97, 102-03 (S.D.N.Y. 2011)

(discussing process of pooling mortgages into asset backed securities). MERS has helped overcome what had come to be seen as a drawback of the traditional mortgage financing model: lack of liquidity. MERS has facilitated securitization of mortgages bringing more money into the home mortgage market. With the assistance of MERS, large numbers of mortgages may be pooled together as a single asset to serve a security for creative financial instruments tailored to different investors. Some investors may buy the right to interest payments only, other principal only; different investors may want to buy interest in the pool for different durations. *Mortg. Elec. Registration Sys., Inc. v. Azize*, 965 So.2d 151, 154 n. 3 (Fla. Dist. Ct. App. 2007); Dustin A. Zacks, *Standing in Our Own Sunshine: Reconsidering Standing, Transparency, and Accuracy in Foreclosures*, 29 *Quinnipiac L. Rev.* 551, 570-71 (2011); Chana Joffe-Walt & David Kestenbaum, *Before Toxie was Toxic*, Nat'l Pub. Radio (September 17, 2010, 12:00 A.M.) (discussing formation of mortgage backed securities). In response to the changes in the industries, some states have explicitly authorized lenders' nominees to act on lenders' behalf. *See., Jackson v. Mortg. Elec. Registration Sys, Inc.*, 770 N.W.2d 487, 491 (Minn. 2009) (noting Minn. State. § 507.413 is "frequently called 'the MERS statute'"). As of now, our state has not.

As MERS itself acknowledges, its system changes "a traditional three party deed of trust [into] a four party deed of trust, wherein MERS would act as the contractually agreed upon beneficiary for the lender and its successors and assigns." MERS Resp. Br. At 20 (Bain). As recently as 2004, learned commentators William Stoebuck and John Weaver could confidently write that "[a] general axiom of mortgage law is that obligation and mortgage cannot be split, meaning that the person who can foreclose the mortgage must be the one to whom the obligation is due." 18 *Stoebuck & Weaver, supra*, § 18.18, at 334. MERS challenges that general axiom. Since then, as the New York bankruptcy court observed recently:

In the most common residential lending scenario, there are two parties to a real property mortgage—a mortgagee, *i.e.*, a lender, and a mortgagor, *i.e.* a borrower. With some nuances and allowances for the needs of modern finance this model has been followed for hundreds of years. The MERS business plan, as envisioned and implemented by lenders and others involved in what has become known as the mortgage finance industry, is based in large part on

amending this traditional model and introducing a third party into the equation. MERS is, in fact, neither a borrower nor a lender, but rather purports to be both “mortgagee of record” and a “nominee” for the mortgagee. MERS was created to alleviate problems created by, what was determined by the financial community to be, slow, burdensome recording processes adopted by virtually every state and locality. In effect the MERS system was designed to circumvent these procedures. MERS, as envisioned by its originators, operates as a replacement for our traditional system of public recordation of mortgages.

*Agard*, 444 B.R. at 247.

Critics of the MERS system point out that after bundling many loans together, it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused greater concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud becomes extraordinarily difficult. The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity of interested parties to prevent wrongful foreclosure.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash. App. 28, 491 P.2d 1058).

The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.

*Bain v. Metropolitan Mortgage Group, Inc.*, 285 P.3d 34, 175 Wn.2d 83 (Wash. 2012).

Unlike some states, Idaho has not enacted amendments designed to “privatize” portions of the Idaho Trust Deed Act so as to specifically allow for MERS.

**V.  
ARGUMENT**

**1. MERS IS NOT A LAWFUL “BENEFICIARY” WITHIN THE TERMS OF IDAHO’S TRUST DEED ACT.**

This case, unlike *Bain*, is about errors in foreclosure, misrepresentation and fraud. The facts presented to the Court prove MERS’ lack of authority, lack of accountability, misrepresentation, and fraud. MERS’ unlawful use of the non-judicial foreclosure statute has, until this case, insulated it from liability. Appellant’s DOT designates MERS both as nominee and beneficiary. A nominee is a “person designated to act in place of another usu[ally] in a very limited way,” or a “party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.” Black’s Law Dictionary at 1149 (9<sup>th</sup> ed. 2009); *see also E. Milling Co. v. Flanagan*, 152 Me. 380, 382-83, 130 A.2d 925, 936 (1957) (demonstrating the limited role of a nominee in a contract case). The remaining beneficial rights in Appellant’s DOT are vested solely in the Lender.

None of the deed of trust covenants in Appellant’s DOT are made to MERS or in favor of MERS. Each promise and covenant gives rights to the Lender, whereas MERS’ rights are limited solely to acting as a nominee. In Appellant’s DOT, MERS is stated to be the “nominee” three times.

Appellant’s DOT, like millions of others, was sold, aggregated, and resold, in “bundles” to investment banks for ultimate placement within various “tranches” of a securitized mortgage loan trust formed in connection with the marketing and sale of exotic investment products in the



form of Collateralized Debt Obligations (CDOs), Collateralized Mortgage Obligations (CMOs), or other form of mortgage-backed securities (MBS). The bundled and aggregated mortgage loans were passed through a “Special Purpose Vehicle” (SPV) or Special Investment Vehicle (SIV) into a securitized mortgage loan trust. These mortgage loans were insured through various credit enhancements and insurances including Credit Default Swaps (CDS).

When Appellant’s loan was securitized it was sold and pooled into a mortgage backed security trust REMIC. This trust, the true owner of Appellant’s obligation, is governed by certain operative documents that dictate the actions of any and all agents for the trust, their powers, and how they may act on behalf of the trust.

The REMIC structure was created in the 1986 amendments to the IRS tax code. A REMIC trust has a special tax status with the Internal Revenue Service that allows the cash flow on the pools of loans to “pass through” to the individual certificate holders, thereby avoiding double taxation on the cash flow—a significant profit advantage to the investors of that trust that translates into millions of dollars in taxes save.

A REMIC trust has absolutely no power to act outside of the power and authority vested in it by the trust documents. The governing documents for a REMIC trust are the Prospectus, Pooling and Servicing Agreement, and the Mortgage Loan Purchase Agreement.

The only entity that can transfer Appellant’s loan is this REMIC trust. If the REMIC trust has transferred Appellant’s obligation to another entity, it is likely that the entire REMIC trust would lose its tax status and possibly subject all cash flow received by this trust to double taxation.

As set forth in the Record, MERS never lent Appellant any money; never demanded any money from Appellant, was never paid any money by Appellant; and Appellant never received any documents advising that MERS had purchased his mortgage loan.

As set forth in the Record, Appellant's obligation has been sold, assigned, and transferred many, many times.

**a. MERS Has No Financial Interest In Appellant's Note.**

MERS has no financial interest in Appellant's Note. This is admitted in ¶ 52 of the Defendants' Answer. R., p. 251.

MERS' admission of its complete lack of interest in Appellant's Loan is corroborated by the decision of other courts that have examined the function of MERS. For instance, the United States Court of Appeals for the Seventh Circuit has described MERS's complete lack of substantive involvement in the lending transaction:

MERS is not the lender. It is a membership organization that records, trades, and forecloses loans on behalf of many lenders, acting for their accounts rather than its own.... It is a nominee only, holding title to the mortgage but not the note. Each lender appears to be entitled not only to payment as the note's equitable (and legal) owner but also to control any litigation and settlement.

*Mortgage Elec. Registration Sys., Inc. v. Estrella*, 390 F.3d 522, 524-25 (7th Cir. 2004).

Similarly, the Nebraska Supreme Court has "conclude[d] that MERS does not acquire mortgage loans" because "simply stated, MERS has no independent right to collect on any debt because MERS itself has not extended credit, and none of the mortgage debtors owe MERS any

money.” *Mortgage Elec. Registration Sys., Inc. v. Neb. Dep’t Banking & Fin.*, 704 N.W.2d 784, 788 (Neb. 2005). This conclusion relied upon MERS’s arguments to that court that:

[I]t only holds legal title to members’ mortgages in a nominee capacity and is *contractually prohibited from exercising any rights with respect to the mortgages (i.e. foreclosure) without the authorization of the members.* Further, MERS argues that it does not own the promissory notes secured by the mortgages and has no right to the payments made on the notes.

*Id.* at 787 (emphasis added).

The Arkansas Supreme Court “specifically reject[ed] the notion that MERS may act on its own, independent of the direction of the specific lender who holds the repayment interest in the security instrument at the time MERS purports to act.” *Mortgage Elec. Registration Sys., Inc. v. S.W. Homes of Ark.*, 301 S.W.3d 1, 2009 Ark. 152 (Ark. 2009) (Slip. Op. at 4-5). Based on that fact, Arkansas’ highest court went on to hold that

MERS is not the beneficiary, even though it is so designated in the deed of trust. Pulaski Mortgage, as the lender on the deed of trust, was the beneficiary. It receives the payments on the debt.

*Id.* (slip op. at 6).

The Kansas Court of Appeals, in reviewing the MERS’s role in home loan transactions, rejected the MERS claim that the court was obligated to treat it as the beneficiary of the deed of trust simply because it is designated as such on the face of the document:

We must pay close attention not only to the terms given to the parties in carefully crafted documents but also to the roles each party actually performed. No matter the nomenclature, the true role of a party shapes the application of legal principles in this case.

*Landmark Nat'l Bank v. Kesler*, 192 P.3d 177, 179 (Kan. App. 2008), 216 P.3d 158 (Kan. 2009); *see also, Bellistri v. Ocwen Loan Serv.*, 284 S.W.3d 619, 623 (Mo. Ct. App. 2009) cited by U.S. Magistrate Boyle, Report and Recommendation, *Armacost v. HSBC Bank, USA*, 1:10-CV-00274-EJL-LMB, decided February 9, 2011, adopted by U.S. District Judge Lodge on March 2, 2011.

**b. MERS Cannot Proceed On Behalf Of The Loan Owner Because It Does Not Possess The Note And Does Not Represent And Is Not The Agent Of The Holder Of Appellant's Note.**

MERS admits at ¶ 55 of its Answer (R., p. 251) that it does not represent and is not the agent of the current holder of the Appellant's Note. *See In re Vargas*, 396 B.R. 511, 517 (Bankr. C.O. Cal. 2008) ("If [the original lender] has transferred the note, MERS is no longer an authorized agent of the holder unless it has a separate agency contract with the new undisclosed principal.") The pleadings conclusively prove that the original lender, Homecomings does *not* own the Loan and that MERS does not hold possession of the Note and does not represent and is not the agent of the current owner.

MERS, which has neither a financial interest in Appellant's Loan nor a role recognized by traditional mortgage law, has fabricated a legal fiction that has no basis in Idaho law.

**2. MERS HAS IGNORED THE RECORDING REQUIREMENTS OF IDAHO CODE § 45-1505(1).**

In this case MERS admits that assignments of both the Appellant's Note and Appellant's DOT have been made but fail to identify the assignee or owner and fail to offer any paper evidencing the assignments.

Appellant's Note and DOT have been assigned without recourse (R., p. 250, ¶ 48 and p. 251, ¶ 50), no sale, transfer or assignment of Appellant's DOT has been recorded (R., p. 249, ¶ 40), none of the Defendants have any financial interest in Appellant's Note or DOT they seek to foreclose (R., p. 251, ¶ 52 and p. 253, ¶ 78), but still MERS expects this Court to believe that it has substantive rights in Appellant's Note and DOT.

Contrary to its pleading and discovery responses, MERS' counsel represented to the trial court that there had been no assignments.

Mr. McGee: There were no assignments, and then that's the issue here. There were no assignments of the deed of trust.

What we have here is a loan, which was sold on the secondary market. The security for that note --follows that note around, and so long as it's held by a members of MERS, MERS remains as the nominee beneficiary.

Tr., p. 45, ll. 10-18.

The trial court found that MERS' structure skirts Idaho law requiring the recording of the assignment of the deed of trust. The trial court also acknowledged the analysis in *Niday v. GMAC Mortg., LLC*, 284 P.3d 1157, 251 Or.App. 278 (Or.App. 2012) under which the MERS structure cannot use the statutory non-judicial foreclosure structure as the necessary predicate—

publicly recording the assignment of the lender's beneficial interest—is absent.

Idaho law also requires publicly recorded assignments. For that reason MERS **cannot** legally initiate the foreclosure sale of Appellant's home. *See also*, Expert Rebuttal Report of Richard Eppink, R., pp. 1710-1722.

**3. WHAT IS THE LEGAL EFFECT OF MERS ACTING AS AN UNLAWFUL BENEFICIARY UNDER THE TERMS OF IDAHO'S DEED OF TRUST ACT?**

Initially MERS must halt its use of the non-judicial foreclosure provisions of the Idaho Trust Deed Act. MERS' conduct is negligent and in violation of the Idaho Consumer Protection Act.

**4. APPELLANT'S CAUSES OF ACTION AGAINST MERS.**

**a. Negligence.**

This Court has held "that negligent conduct and breach of contract are two distinct theories of recovery . . . . A tort requires the wrongful invasion of an interest protected by the law, not merely an invasion of an interest created by the agreement of the parties." *Just's, Inc. v. Arrington Construction Co., Inc.*, 583 P.2d 997, 1003 (Idaho 1978). Active negligence or *misfeasance* is necessary to support an action in tort based upon a breach of contract." *Galbraith v. Bangas, Inc.*, 655 P.2d 119, 121 (Ct. App. 1982) (citing *Taylor v. Herbold*, 483 P.2d 664 (Idaho 1971) (emphasis in original)).

Appellant's home is an interest protected by the law. MERS' conduct is not merely an invasion or breach of contract, but is a concerted, deliberate and purposeful end run around all applicable laws. A deed of trust is a contract specifying statutory and contractual duties.

MERS has breached the contract in its failure to disclose that it has no recognized substantive or financial interest in Appellant's DOT; that it is required by its own Rule 8 to record in Ada County, Idaho the assignment of its interest to the last lender prior to commencing a non-judicial foreclosure; that it knowingly violated its own Rule 8; that it knowingly violated Idaho Code § 45-1505(1), which mandates that assignment be recorded prior to commencing foreclosure; that it relies upon "certifying officers," which it knows are robo-signers; that it breached its obligation to comply with the Real Estate Settlement Procedures Act by its failure to adequately respond to Appellant's QWRs; and its violation of the Home Affordable Loan Modification Guidelines by denial of Appellant's three separate applications. *See also*, Expert Rebuttal Report of Richard Eppink, R., pp. 1710-1722.

**b. Idaho Consumer Protection Act.**

Idaho Code § 48-603 declares, to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

(17) Engaging in any act or practice which is otherwise misleading, false, deceptive to the consumer.

The complexity of the incestuous relationship, the undisclosed conflicts, the violations of Idaho law set forth above are intended to and do create confusion, mislead, are false, and are deceptive.

5. APPELLANT IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS AS A RESULT OF THIS APPEAL.

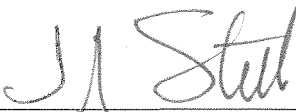
Pursuant to Idaho Code § 12-120(3) and I.A.R 35(a)(5) Appellant, as the prevailing party in this appeal, shall be entitled to an award of attorney fees and costs.

VI.  
CONCLUSION

Despite being presented with overwhelming evidence of MERS' unlawful use of Idaho's non-judicial foreclosure statute and state, Federal, and Bankruptcy court decisions that have consistently held that MERS is not a "beneficiary" entitled to foreclose Appellant's DOT, the trial court granted MERS' Motion for Summary Judgment. The trial court's ruling must be reversed and this case remanded for jury trial.

Respectfully submitted this 2nd day of April 2013.

RUNFT & STEELE LAW OFFICES, PLLC

By:   
\_\_\_\_\_  
JON M. STEELE  
Attorney for Appellant



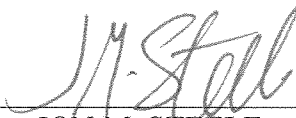
CERTIFICATE OF SERVICE

The undersigned hereby certified that on this 2nd day of April 2013, a true and correct copy of the APPELLANT'S BRIEF was served upon opposing counsel as follows:

Michael G. Halligan, ISB No. 6874  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205-3089

US Mail  
 Personal Delivery  
 Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By:   
\_\_\_\_\_  
JON M. STEELE  
Attorney for Appellant

# Appendix

**EXCERPTS FROM  
Plaintiff's First Amended Complaint  
and**

**Homecomings Financial, LLC, Mortgage Electronic Registration Systems, Inc. And Executive  
Trustee Services, LLC's Answer To First Amended Complaint And Demand For Jury Trial**

Para.	Plaintiff's First Amended Complaint	Para.	Homecomings Financial, LLC, Mortgage Electronic Registration Systems, Inc. And Executive Trustee Services, LLC's Answer To First Amended Complaint And Demand For Jury Trial
50	In August 2010 Renshaw was served with (1) Notice of Default and Election to Sell Under Deed of Trust ( <i>See</i> , Exhibit 9) and (2) Notice of Trustee's Sale ( <i>See</i> , Exhibit 10).	34	Defendants admit the allegations in paragraphs 50 - 53 and further state that the documents speak for themselves.
51	In August 2010, Renshaw also received a Debt Validation Notice naming Mortgage Electronic Systems, Inc as his current creditor. <i>See</i> , Exhibit 11.	34	Defendants admit the allegations in paragraphs 50 - 53 and further state that the documents speak for themselves.
52	Homecomings, MERS, and Trustee have scheduled a foreclosure sale of Renshaw's home for December 29, 2010 at 1:00 p.m. <i>See</i> , Exhibits 9 and 10.	34	Defendants admit the allegations in paragraphs 50 - 53 and further state that the documents speak for themselves.
53	The Notice of Default and Election to Sell (Exhibit 9) and the Notice of Trustee's Sale (Exhibit 10) state that the beneficiary interest in Renshaw's property is held by Mortgage Electronic Registration Systems, Inc.	34	Defendants admit the allegations in paragraphs 50 - 53 and further state that the documents speak for themselves.
61	No sale, transfer or assignment of Renshaw's Deed of Trust has been recorded in Ada County, Idaho.	40	With respect to the allegations in paragraph 61. upon information and belief, Defendants admit the allegations and further state that the records of the Ada County Recorder speak for themselves.
63	Renshaw on October 15, 2010 has, by a qualified written request, requested that the current holder of the Note and the current holder of the Deed of Trust be identified and that the scheduled foreclosure sale be cancelled. <i>See</i> , Exhibit 12.	42	Defendants admit the allegations in paragraph 63 and further state that the document speaks for itself.
66	Renshaw, again, on November 11, 2010, by a qualified written request, requested that certain documents be produced and that the scheduled foreclosure sale be cancelled. <i>See</i> , Exhibit 14.	45	Defendants admit the allegations in paragraph 66 and further state that the document speaks for itself.
68	Homecomings is not the current holder of the Renshaw Note.	47	Defendants admit the allegations in paragraph 68 -70.

69	Homecomings is not in possession of the Renshaw Note.	47	Defendants admit the allegations in paragraph 68 -70.
70	Homecomings is not the current beneficiary of the Renshaw Deed of Trust.	47	Defendants admit the allegations in paragraph 68 -70.
71	Homecomings has assigned the Renshaw Note without recourse.	48	With respect to the allegations in paragraph 71, Defendants admit that Homecomings has transferred its interest in the Renshaw Note.
73	Homecomings has assigned the Renshaw Deed of Trust without recourse.	50	With respect to the allegations in paragraph 73, Defendants admit that Homecomings has transferred its interest in the Renshaw Deed of Trust.
75	MERS has no financial interest in the Renshaw Note.	52	Defendants admit the allegations in paragraph 75.
77	Homecomings does not represent and is not the agent of the current holder of the Renshaw Note.	54	The allegations in paragraphs 77 - 78 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit the same.
78	Homecomings does not represent and is not the agent of the current holder of the Renshaw Deed of Trust.	54	The allegations in paragraphs 77 - 78 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit the same.
79	MERS does not represent and is not the agent of the current holder of the Renshaw Note.	55	The allegations in paragraph 79 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit MERS does not "represent" the current holder of the Note and deny it is not the "agent" of the same.
81	That the Renshaw Deed of Trust names Pioneer Title Company of Ada County as trustee.	57	Defendants admit the allegations in paragraph 81 and state that the document speaks for itself
123	Homecomings is not the beneficiary of the Deed of Trust.	76	Defendants admit the allegations in paragraph 123.
125	Homecomings has no interest in the Note or Deed of Trust it seeks to foreclose.	78	With respect to the allegations in paragraph 125, Defendants admit only that Homecomings has no interest in the Note or Deed of Trust. Defendants deny the remaining allegations.
127	Homecomings does not hold possession of the Note.	80	Defendants admit the allegations in paragraph 127.

135	<p>That Homecomings, MERS and Trustee have stated the following facts to Renshaw:</p> <ul style="list-style-type: none"> <li>a. That MERS is the beneficiary of the Deed of Trust.</li> <li>b. That MERS has the authority to foreclose on Renshaw's property.</li> <li>c. That Homecomings has the authority to foreclose on Renshaw's property.</li> <li>d. That Trustee has the authority to foreclose on Renshaw's property.</li> </ul>	85	<p>Defendants admit the allegations in subparts (a) and (b) of paragraph 135, and deny the allegations in subpart (c) of paragraph 135 to the extent it references statements regarding the present status of the loan. With respect to subpart (d), Defendants admit Defendants may have represented that the Trustee has the authority to hold a foreclosure sale.</p>
136	<p>That such statements are false.</p>	86	<p>With respect to the allegations in paragraph 136, Defendants deny that those statements in subparts (a) and (b) of paragraph 135 are false. Defendants admit that the statement in subpart (c) is presently false. Defendants admit that the statement in subpart (d) is false, but clarify by stating that the Trustee has the authority to hold a foreclosure sale.</p>

**EXCERPTS FROM**  
**Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission To Defendant Homecomings Financial, LLC**  
**and**  
**Defendant Homecomings Financial, LLC's Answers And Responses To Plaintiff's First Set Of Interrogatories And Requests For Production Of Documents**

<b>Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission To Defendant Homecomings Financial, LLC</b>	<b>Defendant Homecomings Financial, LLC's Answers And Responses To Plaintiff's First Set Of Interrogatories And Requests For Production Of Documents</b>
<u>INTERROGATORY NO. 10:</u> Identify the current and all former holders of the Renshaw Promissory Note and Renshaw DOT.	ANSWER NO. 10: Homecomings objects to this interrogatory on the grounds that it is compound, vague, ambiguous, and undefined as to the meaning of the terms "holders of the Renshaw Promissory Note and Renshaw DOT." Without waiving these objections, Homecomings identifies the following entities as current and former investors in the Renshaw Promissory Note and Renshaw DOT: Idaho Home Loan Mortgage Corporation, Residential Funding Company, LLC, Homecomings Financial, LLC. Homecomings identifies the following entities as current and former servicers and subservicers of the loan: GMAC Mortgage, LLC, Homecomings Financial, LLC, Residential Funding Company, LLC. Please also see Bates range HF000598 to HF000602. Further, discovery is ongoing. Therefore, Homecomings reserves the right to supplement this answer as appropriate in accordance with the Idaho Rules of Civil Procedure and/or any relevant orders of the court.
<u>INTERROGATORY NO. 11:</u> Identify the custodian of the Renshaw Promissory Note and Renshaw DOT.	ANSWER NO. 11: Homecomings objects to this interrogatory on the grounds that it is compound, vague, ambiguous, and undefined as to the meaning of the term "custodian." Without waiving these objections, Homecomings identifies the "custodian" of the Renshaw Promissory Note and Renshaw DOT as the MERS certifying officer of GMAC Mortgage, LLC. Further, discovery is ongoing. Therefore, Homecomings reserves the right to supplement this answer as appropriate in accordance with the Idaho Rules of Civil Procedure and/or any relevant orders of the court.
<u>REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:</u> Produce the original Renshaw Promissory Note and any endorsements and the original Renshaw DOT and any assignments.	RESPONSE NO.3: Homecomings objects to this request on the grounds that it is unduly burdensome and because Homecomings does not possess the "original" Renshaw Promissory Note or the "original" Renshaw DOT. Please also see Answer to Interrogatory No. 11. Moreover, the "original" Renshaw DOT was duly filed and recorded in Ada County as Instrument No. 107095032. Further, discovery is ongoing. Therefore, Homecomings reserves

	<p>the right to supplement this answer as appropriate in accordance with the Idaho Rules of Civil Procedure and/or any relevant orders of the court,</p>
<p><u>REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5:</u> Produce all documents naming the current and all former owners or holders of the Renshaw Promissory Note.</p>	<p>RESPONSE NO.5: Homecomings objects to this request on the grounds that it is vague, ambiguous, and undefined as to the meaning of the terms "owner" and "holder." Without waiving these objections, please see Bates range HF000598 to HF000602. Further, discovery is ongoing. Therefore, Homecomings reserves the right to supplement this answer as appropriate in accordance with the Idaho Rules of Civil Procedure and/or any relevant orders of the court,</p>
<p><u>REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6:</u> Produce all documents naming the current and all former owners or holders of the Renshaw DOT.</p>	<p>RESPONSE NO.6: Homecomings objects to this request on the grounds that it is vague, ambiguous, and undefined as to the meaning of the terms "owner" and "holder." Without waiving these objections, please see Bates range HF000598 to HF000602. Further, discovery is ongoing. Therefore, Homecomings reserves the right to supplement this answer as appropriate in accordance with the Idaho Rules of Civil Procedure and/or any relevant orders of the court,</p>

**EXCERPTS FROM**  
**Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission To Defendant Homecomings Financial, LLC**  
**and**  
**Defendant Homecomings Financial, LLC's Answers To Plaintiff's First Set Of Requests For Admission**

<b>Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission To Defendant Homecomings Financial, LLC</b>	<b>Defendant Homecomings Financial, LLC's Answers To Plaintiff's First Set Of Requests For Admission</b>
<p><b>REQUEST FOR ADMISSION NO. 43:</b> Admit that you, MERS, and Trustee scheduled a foreclosure sale of Renshaw's home for December 29, 2010 at 1:00 p.m. See, Exhibits 9 and 10 to Plaintiffs' First Amended Complaint.</p>	<p><b>RESPONSE NO. 43:</b> Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">34. Defendants admit the allegations in paragraphs 50 - 53 and further state that the documents speak for themselves.</p>
<p><b>REQUEST FOR ADMISSION NO. 51:</b> Admit that any effort to foreclose a deed of trust by a party lacking authority to carry out a foreclosure is void.</p>	<p><b>RESPONSE NO. 51:</b> Homecomings objects to this request on the grounds that it requests admission of a pure conclusion of law, to which no response is required. Without waiving such objection, Homecomings answers by admitting only that non-judicial foreclosure of a deed of trust should comply with the requirements of the Idaho Trust Deed Act, I.e. § 45- 1502, et seq.</p>
<p><b>REQUEST FOR ADMISSION NO. 68:</b> Admit that you are not the current holder of the Renshaw Promissory Note.</p>	<p><b>RESPONSE NO. 68:</b> Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a).</p>



	<p>Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">47. Defendants admit the allegations in paragraph 68 - 70.</p>
<p><u>REQUEST FOR ADMISSION NO. 69:</u> Admit that you are not in possession of the Renshaw Promissory Note.</p>	<p>RESPONSE NO. 69: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">47. Defendants admit the allegations in paragraph 68 - 70.</p>
<p><u>REQUEST FOR ADMISSION NO. 70:</u> Admit that you are not the current beneficiary of the Renshaw DOT.</p>	<p>RESPONSE NO. 70: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">47. Defendants admit the allegations in paragraph 68 -70.</p>

<p><u>REQUEST FOR ADMISSION NO. 71:</u> Admit that you assigned the Renshaw Promissory Note without recourse.</p>	<p>RESPONSE NO. 71: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">48. With respect to the allegations in paragraph 71. Defendants admit that Homecomings has transferred its interest in the Renshaw Note.</p>
<p><u>REQUEST FOR ADMISSION NO. 72:</u> Admit that only the holder of the Renshaw Promissory Note and the Renshaw DOT or other authorized person or entity may foreclose the Renshaw DOT.</p>	<p>RESPONSE NO. 72: Homecomings objects to this request on the grounds that it is overbroad and vague, in part, because "authorized person or entity" is undefined. Homecomings also objects because it requests admission of a legal conclusion, Without waiving such objections, Homecomings admits that authorized persons or entities may foreclose the Renshaw DOT.</p>
<p><u>REQUEST FOR ADMISSION NO. 75:</u> Admit that you assigned the Renshaw DOT without recourse.</p>	<p>RESPONSE NO. 75: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p>

	<p>50. With respect to the allegations in paragraph 73. Defendants admit that Homecomings has transferred its interest in the Renshaw Deed of Trust.</p>
<p><u>REQUEST FOR ADMISSION NO. 82:</u> Admit that you do not represent and you are not the agent of the current holder of the Renshaw Promissory Note.</p>	<p>RESPONSE NO. 82: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>54. The allegations in paragraphs 77 - 78 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit the same.</p>
<p><u>REQUEST FOR ADMISSION NO. 83:</u> Admit that you do not represent and you are not the agent of the current holder of the Renshaw DOT.</p>	<p>RESPONSE NO. 83: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>54. The allegations in paragraphs 77 - 78 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit the same.</p>

<p><u>REQUEST FOR ADMISSION NO. 84:</u> Admit that MERS has no financial interest in the Renshaw Promissory Note.</p>	<p>RESPONSE NO. 84: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">52. Defendants admit the allegations in paragraph 75.</p>
<p><u>REQUEST FOR ADMISSION NO. 86:</u> Admit that MERS does not represent and is not the agent of the current holder of the Renshaw Promissory Note.</p>	<p>RESPONSE NO. 86: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p style="padding-left: 40px;">55. The allegations in paragraph 79 state legal conclusions to which no affirmative response is required. To the extent a response is required, Defendants admit MERS does not "represent" the current holder of the Note and deny it is not the "agent" of the same.</p>
<p><u>REQUEST FOR ADMISSION NO. 111:</u> Admit that you are not the beneficiary of the Renshaw DOT.</p>	<p>RESPONSE NO. 111: Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the</p>

	<p>factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>76. Defendants admit the allegations in paragraph 123.</p>
<p><u>REQUEST FOR ADMISSION NO. 115:</u> Admit that you do not hold possession of the Renshaw Promissory Note.</p>	<p><u>RESPONSE NO. 115:</u> Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>80. Defendants admit the allegations in paragraph 127.</p>
<p><u>REQUEST FOR ADMISSION NO. 123:</u> Admit that you, MERS, and Trustee stated the following facts to Renshaw:</p> <ol style="list-style-type: none"> <li>a. That MERS is the beneficiary of the Deed of Trust.</li> <li>b. That MERS has the authority to foreclose on Renshaw's property.</li> <li>c. That you have the authority to foreclose on Renshaw's property.</li> <li>d. That Trustee has the authority to foreclose on Renshaw's property.</li> </ol>	<p><u>RESPONSE NO. 123:</u> Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is</p>

	<p>known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>85. Defendants admit the allegations in subparts (a) and (b) of paragraph 135, and deny the allegations in subpart (c) of paragraph 135 to the extent it references statements regarding the present status of the loan. With respect to subpart (d), Defendants admit Defendants may have represented that the Trustee has the authority to hold a foreclosure sale.</p>
<p><u>REQUEST FOR ADMISSION NO. 124:</u> Admit that such statements (see above Request for Admission No. 123) are false.</p>	<p><u>RESPONSE NO. 124:</u> Homecomings objects to this request on the grounds that it constitutes an effort to harass and annoy Homecomings. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. Homecomings has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, Homecomings asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits, denies, or qualifies its admission or denial by reference to its Answer as follows:</p> <p>86. With respect to the allegations in paragraph 136, Defendants deny that those statements in subparts (a) and (b) of paragraph 135 are false. Defendants admit that the statement in subpart (c) is presently false. Defendants admit that the statement in subpart (d) is false, but clarify by stating that the Trustee has the authority to hold a foreclosure sale.</p>

**EXCERPTS FROM**  
**Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission to Mortgage Electronic Registration Systems, Inc.**  
**and**  
**Defendant Mortgage Electronic Registration Systems, Inc.'s Answers And Responses To Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission**

Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission to Mortgage Electronic Registration Systems, Inc.	Defendant Mortgage Electronic Registration Systems, Inc.'s Answers And Responses To Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission
REQUEST FOR ADMISSION NO. 8: Admit that in August 2010, Renshaw also received a Debt Validation Notice naming Mortgage Electronic Systems, Inc [sic] as his current creditor. See, Exhibit 11 to Plaintiffs' First Amended Complaint.	RESPONSE TO REQUEST FOR ADMISSION NO. 8: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits this request.
REQUEST FOR ADMISSION NO. 10: Admit that the Notice of Default and Election to Sell (Exhibit 9 to Plaintiffs' First Amended Complaint) and the Notice of Trustee's Sale (Exhibit 10 to Plaintiffs' First Amended Complaint) state that the beneficiary interest in Renshaw's property is held by Mortgage Electronic Registration Systems, Inc.	RESPONSE TO REQUEST FOR ADMISSION NO. 10: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits this request.
REQUEST FOR ADMISSION NO. 25: Admit that no sale, transfer or assignment of Renshaw's DOT has been recorded in Ada County, Idaho.	RESPONSE TO REQUEST FOR ADMISSION NO. 25: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well

	<p>as the requirements of Rule 36(a). Without waiving such objection, MERS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 27: Admit that Renshaw on October 15, 2010 has, by a qualified written request, requested that the current holder of the Renshaw Promissory Note and the current holder of the Renshaw DOT be identified and that the scheduled foreclosure sale be cancelled. See, Exhibit 12 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 27: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits this request.</p>
<p>REQUEST FOR ADMISSION NO, 32: Admit that on November 19, 2010 Renshaw, through his attorney, received a letter stating that MERS "... acts solely as a nominee for Lender. ." See, Exhibit 15 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 32: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits that Renshaw, through his attorney, received a letter stating that MERS "... acts solely as a nominee for Lender ... "</p>
<p>REQUEST FOR ADMISSION NO. 47: Admit that the Renshaw DOT names Pioneer Title Company of Ada County as trustee.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 47: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits this request.</p>



<p>REQUEST FOR ADMISSION NO. 48: Admit that Trustee is not the trustee of the Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 48: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits that Executive Trustee Services is not the trustee of the Renshaw DOT, but qualifies the admission by stating that Executive Trustee Services does not purport to be the trustee of the Renshaw DOT. Executive Trustee Services is the attorney-in-fact for Pioneer Lender Trustee Services d/b/a Pioneer Title Company of Ada County.</p>
<p>REQUEST FOR ADMISSION NO. 64: Admit that you knew of the Renshaw Promissory Note and Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 64: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36( a). Without waiving such objection, MERS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 69: Admit that Homecomings is not the beneficiary of the Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 69: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed all Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well</p>

	as the requirements of Rule 36(a). MERS further objects to this request on the grounds that it requests admission of a pure conclusion of law. Without waiving such objections, MERS admits.
REQUEST FOR ADMISSION NO. 71: Admit that Homecomings has no interest in the Renshaw Promissory Note or Deed of Trust.	RESPONSE TO REQUEST FOR ADMISSION NO. 71: MERS objects to this request on the grounds that it is compound and vague and constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS admits this request.
REQUEST FOR ADMISSION NO. 81: Admit that you, Trustee, and Homecomings stated the following facts to Renshaw:  a. That MERS is the beneficiary of the Deed of Trust.  b. That MERS has the authority to foreclose on Renshaw's property.  c. That Homecomings has the authority to foreclose on Renshaw's property.  d. That Trustee has the authority to foreclose on Renshaw's property.	RESPONSE TO REQUEST FOR ADMISSION NO. 81: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits subparts (a) and (b), and denies the allegations in subpart (c) to the extent it references statements regarding the present status of the loan. With respect to subpart (d), MERS denies.
REQUEST FOR ADMISSION NO. 82: Admit that such statements (see above Request for Admission No. 81) are false.	RESPONSE TO REQUEST FOR ADMISSION NO. 82: MERS objects to this request on the grounds that it constitutes an effort to harass and annoy MERS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. MERS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, MERS

	<p>asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, denies that those statements in subparts (a) and (b) are false. MERS admits that the statement in subpart (c) is presently false. MERS admits that the statement in subpart (d) is false, but clarifies by stating that Executive Trustee Services, as attorney-in-fact for Pioneer Title Company d/b/a Pioneer Lender Trustee Services, has the authority to foreclosure.</p>
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**EXCERPTS FROM**  
**Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission to Executive Trustee Services, LLC**  
**and**  
**Defendant Executive Trustee Services, LLC's Answers And Responses To Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission**

<b>Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission to Executive Trustee Services, LLC</b>	<b>Defendant Executive Trustee Services, LLC's Answers And Responses To Plaintiff's First Set Of Interrogatories, Requests For Production Of Documents, And Requests For Admission</b>
<p>REQUEST FOR ADMISSION NO.1: Admit that you prepared and delivered to Renshaw:</p> <ul style="list-style-type: none"> <li>a. Notice of Default and Election to Sell Under Deed of Trust - Exhibit 9 to First Amended Complaint.</li> <li>b. Notice of Trustee's Sale - Exhibit 10 to First Amended Complaint.</li> <li>c. Debt Validation Notice - Exhibit 11 to First Amended Complaint.</li> </ul>	<p>RESPONSE TO REQUEST FOR ADMISSION NO.1: Admit.</p>
<p>REQUEST FOR ADMISSION NO. 8: Admit that in August 2010 Renshaw was served with (1) Notice of Default and Election to Sell Under Deed of Trust (See, Exhibit 9 to Plaintiffs' First Amended Complaint) and (2) Notice of Trustee's Sale (See, Exhibit 10 to Plaintiffs' First Amended Complaint).</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO.8: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 9: Admit that in August 2010, Renshaw also received a Debt Validation Notice naming Mortgage Electronic Systems, Inc as his current creditor. See, Exhibit 11 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO.9: objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>

<p>REQUEST FOR ADMISSION NO. 10: Admit that you, MERS, and Homecomings scheduled a foreclosure sale of Renshaw's home for December 29, 2010 at 1:00 p.m. See, Exhibits 9 and 10 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 10: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 11: Admit that the Notice of Default and Election to Sell (Exhibit 9 to Plaintiffs' First Amended Complaint) and the Notice of Trustee's Sale (Exhibit 10 to Plaintiffs' First Amended Complaint) state that the beneficiary interest in Renshaw's property is held by Mortgage Electronic Registration Systems, Inc.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 11: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements. of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 12: Admit that MERS is not the beneficial owner of the Renshaw DOT. See, Deed of Trust, Exhibit 7 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 12: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). ETS further objects to the term "beneficial owner" because that term is vague, ambiguous, and undefined. Without waiving such objection, ETS admits that MERS is not the "owner" of the Renshaw DOT. ETS qualifies its admission by stating that MERS is the beneficiary holding legal title to interests granted by Plaintiff for the Deed of Trust, as nominee for the lender.</p>

<p>REQUEST FOR ADMISSION NO. 23: Admit that no sale, transfer or assignment of Renshaw's DOT has been recorded in Ada County, Idaho.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 23: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 25: Admit that Renshaw on October 15, 2010 has, by a qualified written request, requested that the current holder of the Renshaw Promissory Note and the current holder of the Renshaw DOT be identified and that the scheduled foreclosure sale be cancelled. See, Exhibit 12 to Plaintiffs' First Amended Complaint.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 25: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 32: Admit that you are not the holder of the Renshaw Promissory Note.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 32: ETS objects to this request on the grounds that it is vague, ambiguous, and undefined as to the meaning of the term "holder." Without waiving these objections, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 33: Admit that you are not in possession of the Renshaw Deed of Trust.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 33: Admit.</p>
<p>REQUEST FOR ADMISSION NO. 34: Admit that only the holder of the Renshaw Promissory Note and the Renshaw DOT or other authorized person or entity may foreclose the Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 34: ETS objects to this request on the grounds that it is overbroad and vague, in part, because the terms "holder" and "authorized person or entity" are undefined, ETS also objects because it requests admission of a pure legal conclusion. Without waiving such objections, ETS admits only that authorized persons or entities may foreclose the Renshaw DOT.</p>

<p>REQUEST FOR ADMISSION NO. 37: Admit that you have no financial interest in the Renshaw Promissory Note or Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 37: ETS objects to this request on the grounds that it is compound and vague as to the term "financial interest." Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 38: Admit that you have suffered no financial loss as a result of nonpayment of the Renshaw Promissory Note.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 38: Admit.</p>
<p>REQUEST FOR ADMISSION NO. 39: Admit that you do not represent and you are not the agent of the current holder of the Renshaw Promissory Note.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 39: ETS objects to this request on the grounds that it is undefined as to the meaning of the term "holder" and requests admission of a pure conclusion of law. Without waiving such objection, ETS admits this request. ETS is the attorney-in-fact for the trustee under the deed of trust securing payment of the Renshaw Promissory Note.</p>
<p>REQUEST FOR ADMISSION NO. 40: Admit that you do not represent and you are not the agent of the current holder of the Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 40: ETS objects to this request on the grounds that it is undefined as to the meaning of the term "holder" and requests admission of a pure conclusion of law. Without waiving such objection, ETS admits this request. ETS is the attorney-in-fact for the trustee under the deed of trust securing payment of the Renshaw Promissory Note.</p>
<p>REQUEST FOR ADMISSION NO. 44: Admit that the Renshaw DOT names Pioneer Title Company of Ada County as trustee.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 44: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 45: Admit that you are not the trustee of the Renshaw DOT.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 45: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well</p>

	as the requirements of Rule 36(a). Without waiving such objection, ETS admits that it is not the trustee of the Renshaw DOT, but qualifies the admission by stating that ETS does not purport to be the trustee of the Renshaw DOT. ETS is the attorney-in-fact for Pioneer Lender Trustee Services d/b/a Pioneer Title Company of Ada County, the trustee of the Renshaw DOT.
REQUEST FOR ADMISSION NO. 61: Admit that you are not a party to the Renshaw Promissory Note and Renshaw DOT.	RESPONSE TO REQUEST FOR ADMISSION NO. 61: Admit.
REQUEST FOR ADMISSION NO. 62: Admit that you knew of the Renshaw Promissory Note and Renshaw DOT.	RESPONSE TO REQUEST FOR ADMISSION NO. 62: Admit.
REQUEST FOR ADMISSION NO. 67: Admit that Homecomings is not the beneficiary of the Renshaw DOT.	RESPONSE TO REQUEST FOR ADMISSION NO. 67: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). ETS further objects to this request on the grounds that it requests admission of a pure conclusion of law. Without waiving such objections, ETS admits this request.
REQUEST FOR ADMISSION NO. 69: Admit that Homecomings has no interest in the Renshaw Promissory Note or Renshaw DOT.	RESPONSE TO REQUEST FOR ADMISSION NO. 69: ETS objects to this request on the grounds that it is compound and vague and constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.
REQUEST FOR ADMISSION NO. 71: Admit that Homecomings does not hold possession of the Renshaw Promissory Note.	RESPONSE TO REQUEST FOR ADMISSION NO. 71: ETS objects to this request on the grounds that it is compound and vague and constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly



	<p>every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS admits this request.</p>
<p>REQUEST FOR ADMISSION NO. 79: Admit that you, MERS, and Homecomings stated the following facts to Renshaw:</p> <ul style="list-style-type: none"> <li>a. That MERS is the beneficiary of the Deed of Trust.</li> <li>b. That MERS has the authority to foreclose on Renshaw's property.</li> <li>c. That you have the authority to foreclose on Renshaw's property.</li> <li>d. That Homecomings has the authority to foreclose on Renshaw's property.</li> </ul>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 79: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual allegations and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, admits subparts (a), (b), and (c) (as attorney-in-fact for the trustee). With respect to subpart (d), ETS denies.</p>
<p>REQUEST FOR ADMISSION NO. 80: Admit that such statements (see above Request for Admission No. 79) are false.</p>	<p>RESPONSE TO REQUEST FOR ADMISSION NO. 80: ETS objects to this request on the grounds that it constitutes an effort to harass and annoy ETS. This Request for Admission, and nearly every other Request for Admission in this set of discovery requests, recites verbatim the factual and/or legal contentions of Renshaw set forth in Renshaw's First Amended Complaint. ETS has filed an Answer that fairly admits, denies, or qualifies the admission or denial with explanation in accordance with the requirements and responsibilities of a party answering a complaint, as well as the requirements of Rule 36(a). Without waiving such objection, ETS asserts that it has made reasonable inquiry, and to the extent the information is known or readily obtainable, denies that those statements in subparts (a), (b) and (c) are false. ETS admits that the statement in subpart (d) is presently false.</p>