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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 RECONTRUST COMPANY, N.A.,

13 Defendant.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER
THE CONSUMER PROTECTION
ACT

14 The Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna,
15 Attorney General, and James T. Sugarman, Assistant Attorney General, brings this action
16 against the defendant named below. The State alleges the following on information and belief:

17 **I. PLAINTIFF**

18 1.1 The Plaintiff is the State of Washington.

19 1.2 The Attorney General is authorized to commence this action pursuant to
20 RCW 19.86.080 and RCW 19.86.140.

21 **II. DEFENDANT**

22 2.1 Defendant RECONTRUST COMPANY, N.A, (ReconTrust or Defendant) is a
23 for-profit business entity permitted by the U.S. Office of the Comptroller of the Currency as a
24 nondepository, uninsured, limited-purpose national trust bank.

25 2.2 ReconTrust is a California corporation and is a wholly-owned subsidiary of
26 Bank of America, N.A.

1 ReconTrust's services or the cost of the third party services ReconTrust chooses, and they
2 cannot direct ReconTrust's activities. This vulnerable situation is compounded for
3 homeowners by the complexities of the foreclosure process, by the homeowners' highly
4 distressed financial circumstances, and the high stakes nature of the proceeding. Foreclosure
5 sales are usually irreversible. Any defense must be asserted before the sale occurs. Because
6 courts are not involved in foreclosures, homeowners' only protections are the detailed
7 procedures and requirements contained in the Deed of Trust Act, and a neutral foreclosure
8 trustee who insures those procedures are followed to the letter.

9 4.3 ReconTrust is a foreclosure trustee that has failed to comply with the procedures
10 of the Deed of Trust Act in each and every foreclosure it has conducted since at least June 12,
11 2008, and it is a trustee who is wholly owned by the loan servicer seeking to foreclose.

12 V. FACTS

13 5.1 ReconTrust regularly acts as a successor trustee for deeds of trust secured by
14 residential real property located in the State of Washington.

15 5.2 ReconTrust has been at all times relevant to this action in competition with
16 others engaged in similar activities in the state of Washington and engages in the acts below as
17 a matter of practice.

18 **ReconTrust Fails to Maintain an Office in the State of Washington as Required by** 19 **Law.**

20 5.3 Defendant has failed to maintain the statutorily-required physical presence in
21 the State of Washington, with telephone service at that address. RCW 61.24.030(6).

- 22 a. By issuing Notices of Trustee's Sale, conducting trustee's sales, and
23 issuing Trustee's Deeds without maintaining the required physical
24 presence, Defendant has misrepresented its authority to issue such
25 notices, conduct trustee's sales, and issue Trustee's Deeds.
26

1 b. By conducting the nonjudicial foreclosure process while failing to
2 maintain a physical presence with telephone service, the Defendant has
3 unfairly: i) prevented homeowners from having face-to-face contact with
4 their trustee, ii) prevented homeowners from gaining responses to time-
5 sensitive foreclosure issues, iii) prevented homeowners from physically
6 presenting time-sensitive payments to stop a foreclosure, iv) prevented
7 homeowners from delivering payments in a manner that insures that the
8 beneficiary can not deny payment was made, v) prevented homeowners
9 from physically presenting mortgage-related documents in a manner that
10 will stop the beneficiary from claiming the homeowner failed to provide
11 such documents, and vi) potentially clouded title to homes it has sold at
12 auction.

13 **ReconTrust Fails to Conduct Foreclosures as a Neutral Third Party With a Duty**
14 **of Good Faith Towards the Borrower and the Lender.**

15 5.4 As a trustee on deeds of trust, Defendant has a duty of good faith towards the
16 borrower and grantor on the deed of trust, as well as to the beneficiary.

17 5.5 ReconTrust has agreements with beneficiaries and/or their agents to the effect
18 that ReconTrust will only cancel or continue non-judicial foreclosure sales if the beneficiary or
19 agent approves.

20 5.6 When borrowers have asked ReconTrust to cancel a sale date because of issues
21 they believe require cancellation or continuance of the sale, ReconTrust has told borrowers that
22 it will not or cannot stop a sale without the permission of the lender or servicer.

23 5.7 ReconTrust has committed unfair and deceptive acts and violated its duty of
24 good faith by noticing and conducting trustee sales while failing to perform statutory requisites
25 for conducting such sales as contained in the Deed of Trust Act, RCW 61.24.030 and .040.
26 Those failures include:

- a. Failing to maintain a physical presence with telephone service at that address.
- b. Failing to identify the actual owner of the Promissory Note in the Notice of Default.
- c. Failing to obtain proof that the beneficiary is the owner of the promissory note secured by the deed of trust.
- d. Failing to clearly and conspicuously identify in the Notice of Trustee's Sale the defaults, other than nonpayment, that entitle the beneficiary to foreclose and which may be cured by the borrower. Instead, ReconTrust's Notices identify every possible default and demand those defaults be cured whether those defaults have actually occurred or not.
- e. Conducting foreclosure sales in non-public places such as the garage of a private office building and a hotel ballroom.
- f. Creating or using documents essential to a valid trustee's sale, or to a reconveyance of the deed of trust, that are improperly executed, notarized or sworn to, including: i) documents that were not signed in front of a notary, ii) documents that had both the signature and notarization applied mechanically while claiming that the signatory personally appeared before the notary, iii) using signatories who simultaneously claim to be officers of the beneficiary, of MERS, and of a servicer, all while actually being employees of ReconTrust, and iv) executing documents without direct knowledge of the facts contained therein.
- g. Conducting joint prosecution and/or defense of legal claims with the beneficiary or its agent on matters related to its duty of good faith to the borrower.

1 5.8 Homeowners have the right to stop a foreclosure by paying an amount (the
2 “reinstatement amount”) set by statute and itemized by the foreclosure trustee.
3 RCW 61.24.090.

4 5.9 The Deed of Trust Act limits the reinstatement amount to the following charges:
5 arrearages on the loan; expenses “actually incurred” by the trustee to enforce the note; a
6 reasonable trustee’s fee; a reasonable attorney’s fee; and, the costs of recording a notice of
7 discontinuance of the foreclosure. RCW 61.24.090 (1)(a) and (b).

8 5.10 Defendant has failed to properly itemize and/or misrepresented the
9 reinstatement amount by, including but not limited to, overcharging for recording fees, posting
10 fees, and mailing fees.

11 5.11 By demanding inaccurate amounts and failing to properly itemize amounts,
12 Defendant has prevented borrowers from determining whether fees are reasonable, has
13 overcharged borrowers and has prevented borrowers from curing their default within the
14 statutory guidelines for reinstatement.

15 **ReconTrust Conceals or Misrepresents the Identity of the Actual Owner of the**
16 **Debt.**

17 5.12 Defendant systematically conceals, misrepresents or inaccurately divulges the
18 true parties to the mortgage transaction in its foreclosure notices and related documents.

19 a. ReconTrust accepts and records in county land records Appointments of
20 Successor Trustee from purported beneficiaries such as Bank of
21 America, NA, knowing, or duty-bound to know, that they are not the
22 holders of the loans and are therefore not beneficiaries under the Deed of
23 Trust Act.

24 b. In Notices of Default, ReconTrust misrepresents the owner of the
25 Promissory Note by only naming the servicer, such as BAC Home
26 Loans Servicing, LP, when the actual owner is a securitization trust.

1 Defendant does not identify the actual owner anywhere on the Notices
2 of Default. The Deed of Trust Act requires ReconTrust to identify both
3 the owner of the note and the servicer of the note, with their respective
4 addresses, as well as the servicer's phone number, on each Notice of
5 Default. RCW 61.24.030(8)(l).

6 c. In a form document with the title "Important Legal Notice" ReconTrust
7 claims that BAC Home Loans Servicing, LP is the "Creditor to whom
8 the debt is owed" when Defendant knows, or should know, that BAC is
9 not the creditor to whom the debt is owed.

10 d. In Notices of Trustee's Sale ReconTrust claims that the current
11 beneficiary is "BAC Home Loans Servicing, LP FKA Countrywide
12 Home Loans Servicing LP, (BAC)", or "Bank of America, N.A,
13 Successor by Merger to BAC Home Loans Servicing, LP FKA
14 Countrywide Home Loans Servicing LP", when Defendant knows or
15 should know that these entities are loan servicers and not beneficiaries of
16 the deed of trust. In some Notices of Trustee's Sale, Defendant fails to
17 name any current beneficiary.

18 e. In Notices of Trustee's Sale ReconTrust claims that the deed of trust
19 secures an obligation in favor of Mortgage Electronic Registration
20 Systems, Inc, (MERS) as beneficiary, when Defendant knows or should
21 know that MERS is never the party to whom the obligation is owed.

22 f. In its Trustee's Deeds ReconTrust claims that the promissory note was
23 executed in favor of MERS when MERS never appears in promissory
24 notes and is never the party to be repaid.

25 g. In its Trustee's Deeds ReconTrust claims that BAC Home Loans
26 Servicing, LP FKA Countrywide Home Loans Servicing LP, was "the

1 holder of the indebtedness secured by the Deed of Trust” at the time it
2 requested that the Defendant foreclose when Defendant knew or should
3 have known BAC was not the holder of the indebtedness.

4 **ReconTrust’s Trustee’s Deeds Contain Material Misrepresentations.**

5 5.13 ReconTrust’s duty of good faith includes creating and recording a Trustee’s
6 Deed after the foreclosure sale which transfers the property from the homeowner to the highest
7 bidder at the foreclosure auction.

8 5.14 The Trustee’s Deed must recite facts showing that the sale was conducted in
9 compliance with the specific requirements of the Deed of Trust Act so that the successful
10 bidder at the sale may rely on these recitals as conclusive evidence the Act was followed, and
11 clear title is delivered. RCW 61.24.040(7).

12 5.15 ReconTrust’s Trustee’s Deeds claim that it has complied with every provision
13 of the Deed of Trust Act when ReconTrust does not comply with every provision of that Act.
14 ReconTrust believes the Deed of Trust Act is preempted by federal law and therefore
15 consciously does not comply with provisions of the Act.

16 5.16 ReconTrust’s Trustee’s Deeds claim that copies of the Note were served on the
17 homeowner when Defendant knew or should have known that copies of the Note were not
18 delivered to the homeowner.

19 5.17 ReconTrust’s Trustee’s Deeds make contradictory assertions regarding a
20 material fact of the trustee’s sale: whether the transaction was sold to the highest bidder for
21 cash or whether it was a “credit bid” where the owner of the debt bid the amount owing in
22 satisfaction of the debt. This distinction has important ramifications regarding title, excise tax
23 consequences, and whether a void foreclosure can be set aside.

24 5.18 Defendant’s failures to abide by the Deed of Trust Act have concealed material
25 information needed by homeowners to assert rights and defenses stemming from their loan
26 transaction, to meaningfully negotiate the terms of a loan modification, to exercise their

1 | statutory right to reinstate their mortgage, to cure their defaults, and to postpone or stop a
2 | foreclosure sale.

3 | **VI. CAUSES OF ACTION**

4 | **A. Misrepresentations**

5 | 6.1 In the course of conducting its business Defendant made numerous
6 | misrepresentations and failed to disclose material terms as alleged in paragraphs 1.1 through 5.18.
7 | Such conduct constitutes unfair or deceptive acts or practices in trade or commerce, and/or unfair
8 | methods of competition in violation of RCW 19.86.020, is contrary to the public interest, and is
9 | not reasonable in relation to the development and preservation of business.

10 | **B. Unfair Practices**

11 | 6.2 In the course of conducting its business Defendant engaged in numerous unfair
12 | acts and practices as alleged in paragraphs 1.1 through 5.18. Such conduct constitutes unfair
13 | practices and violates RCW 19.86.020, is contrary to the public interest, and is not reasonable in
14 | relation to the development and preservation of business.

15 | **VII. PRAYER FOR RELIEF**

16 | **WHEREFORE**, Plaintiff, State of Washington, prays for relief as follows:

17 | 7.1 That the Court adjudge and decree that the Defendant has engaged in the conduct
18 | complained of herein.

19 | 7.2 That the Court adjudge and decree that the conduct complained of constitutes
20 | unfair or deceptive acts and practices and an unfair method of competition and is unlawful in
21 | violation of the Consumer Protection Act, Chapter 19.86 RCW.

22 | 7.3 That the Court issue a permanent injunction enjoining and restraining the
23 | Defendant, and its representatives, successors, assigns, officers, agents, servants, employees, and
24 | all other persons acting or claiming to act for, on behalf of, or in active concert or participation
25 | with the Defendant, from continuing or engaging in the unlawful conduct complained of herein.
26 |

1 7.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two
2 thousand dollars (\$2,000) per violation against the Defendant for each and every violation of
3 RCW 19.86.020 caused by the conduct complained of herein.

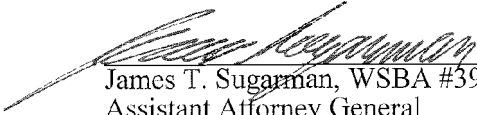
4 7.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems
5 appropriate to provide for restitution to consumers of money or property acquired by the
6 Defendant as a result of the conduct complained of herein.

7 7.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that the
8 plaintiff, State of Washington, have and recover from the Defendant the costs of this action,
9 including reasonable attorneys' fees.

10 7.7 For such other relief as the Court may deem just and proper.

11 DATED this 4th day of August, 2011.

12
13 ROBERT M. MCKENNA
 Attorney General

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15 
16 James T. Sugarman, WSBA #39107
17 Assistant Attorney General
 Attorneys for Plaintiff
 State of Washington