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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

In re: LISA MARIE CHONG, Debtor.	Bankruptcy Case No. BK-S-07-16645-LBR Appellate Ref. No.: 09-00010
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. LISA MARIE CHONG, Appellee.	Case No. 2:09-cv-0661-KJD-LRL

In re: JOSHUA SCOTT MITCHELL and STEPHANIE JIDITH MITCHELL a/k/a STEPHANIE JUDITH CABRAL, Debtors.	Bankruptcy Case No. BK-S-07-16226-LBR Appellate Ref. No.: 09-00018
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. JOSHUA SCOTT MITCHELL and STEPHANIE JIDITH MITCHELL a/k/a STEPHANIE JUDITH CABRAL, Appellees.	Case No. 2:09-cv-0668-JCM-RJJ
In re: BARRY ALLEN TRAYNOR and LARALEE M. TRAYNOR, Debtors.	Bankruptcy Case No. BK-S-07-18851-LBR Appellate Ref. No.: 09-00016
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. BARRY ALLEN TRAYNOR and LARALEE M. TRAYNOR, Appellees.	Case No. 2:09-cv-0669-LDG-PAL

In re: SHEILA MEDINA a/k/a SHEILA GOGGIN, Debtor.	Bankruptcy Case No. BK-S-08-12206-BAM Appellate Ref. No.: 09-00017
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. SHEILA MEDINA a/k/a SHEILA GOGGIN, Appellee	Case No. 2:09-cv-0670-KJD-GWF
In re: ROBERT THOMAS ATKERSON and DAWN NICOLE ATKERSON, Debtor.	Bankruptcy Case No. BK-S-08-11608-BAM Appellate Ref. No.: 09-00011
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. ROBERT THOMAS ATKERSON and DAWN NICOLE ATKERSON, Appellee.	Case No. 2:09-cv-0673-RCJ-GWF

In re: WILLIAM JAY ZEIGLER and DAWN M. ZEIGLER, Debtor.	Bankruptcy Case No. BK-S-08-10718-MKN Appellate Ref. No.: 09-00012
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. WILLIAM JAY ZEIGLER and DAWN M. ZEIGLER, Appellee.	Case No. 2:09-cv-0676-RLH-PAL
In re: PETER C. ALTMANN, JR., Debtor.	Bankruptcy Case No. BK-S-08-10108-LBR Appellate Ref. No.: 09-00013
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. PETER C. ALTMANN, JR., Appellee.	Case No. 2:09-cv-0677-JCM-LRL

In re: SURJIT SAMBRA, Debtor.	Bankruptcy Case No. BK-S-08-17506-MKN Appellate Ref. No.: 09-00019
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. SURJIT SAMBRA, Appellee.	Case No. 2:09-cv-0683-RLH-RJJ
In re: JOSE ANG AND DIVINA ANG, Debtor.	Bankruptcy Case No. BK-S-08-11860-LBR Appellate Ref. No.: 09-00021
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. JOSE ANG AND DIVINA ANG, Appellee.	Case No. 2:09-cv-0684-LDG-GWF

In re: GUILLERMINA CORTES, Debtor.	Bankruptcy Case No. BK-S-08-17344-MKN Appellate Ref. No.: 09-00022
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. GUILLERMINA CORTES, Appellee.	Case No. 2:09-cv-0685-KJD-RJJ
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MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. ELDRIDGE JOSEPH DUFAUCHARD, Appellee.	Case No. 2:09-cv-0691-JCM-LRL

In re: MICHELE DART, Debtor.	Bankruptcy Case No. BK-S-08-017344-MKN Appellate Ref. No.: 09-0006
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. MICHELE DART, Appellee.	Case No. 2:09-cv-00873-KJD-GWF
In re: ADAM J. BREEDEN, Debtor.	Bankruptcy Case No. BK-S-07-17577-LBR Appellate Ref. No.: 09-0008
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. ADAM J. BREEDEN, Appellee.	Case No. 2:09-cv-00874-LDG-LRL

In re: JEFFREY PILATICH, Debtor.	Bankruptcy Case No. BK-S-07-17182-MKN Appellate Ref. No.: 09-00023
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. JEFFREY PILATICH, Appellee.	Case No. 2:09-cv-00888-KJD-GWF
In re: KATHLEEN O'DELL, Debtor.	Bankruptcy Case No. BK-S-08-16913-MKN Appellate Ref. No.: 09-0020
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. KATHLEEN O'DELL, Appellee.	Case No. 2:09-cv-00889-KJD-PAL

In re: ROBERT A. BEALER and CASSANDRA N. BEALER, Debtor.	Bankruptcy Case No. BK-S-08-10052-MKN Appellate Ref. No.: 09-00015
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. ROBERT A. BEALER and CASSANDRA N. BEALER, Appellee.	Case No. 2:09-cv-0890-PMP-PAL
In re: DEAN MAURER	Bankruptcy Case No. BK-S-06-12287-BAM Appellate Ref. No.: 09-00014
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. DEAN MAURER, Appellee.	Case No. 2:09-cv-00891-JCM-GWF

In re: LONNIE EARL HAWKINS AND LISA WILLETT HAWKINS, Debtors.	Bankruptcy Case No. BK-S-07-13593-LBR Appellate Ref. No.: 09-0009
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellant, v. LONNIE EARL HAWKINS AND LISA WILLETT HAWKINS, Appellees.	Case No. 2:09-cv-00892-KJD-GWF

REPLY BRIEF OF *AMICI CURIAE* CENTER FOR RESPONSIBLE LENDING AND NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLEES AND ARGUING FOR AFFIRMANCE

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SUMMARY OF ARGUMENT

Mortgage Electronic Registration Systems, Inc. ("MERS") does not dispute that it lacks the ability to negotiate with homeowners facing foreclosure. MERS also does not refute its lack of financial interest in homeowners' loans. By identifying only itself in motions to lift the automatic bankruptcy stay and proceed with foreclosure, MERS hides from homeowners the identity of those with an interest and ability to negotiate resolutions other than foreclosure.

Homeowners would benefit from learning directly from court filings whom to contact to prevent foreclosure, rather than having to spend precious time contacting MERS in the hope that it might reveal who is behind its mask. MERS is wrong to blithely dismiss *amici*'s argument after just such concerns led Congress to require that loan owners disclose their identities and after courts around the country have recognized that the use of MERS's name, instead of the loan owners' name, may harm homeowners.

Not only is filing lift stay motions using MERS's name harmful to homeowners seeking to avoid foreclosure, but it also violates the well established requirements for standing and real-party-in-interest status in federal courts. MERS responds with no authority that allows it to file a lift stay motion when—as in all the appeals before this Court—it has no financial interest in lifting the stay or foreclosing and it refuses to identify who has that interest.

MERS, therefore, correctly concedes that it lacked standing and real-party-in-interest in sixteen of the eighteen appeals. MERS's effort to obtain standing and real-party-in-interest status in the remaining two appeals by purporting to be the note holder fares no better. First, it is based entirely upon evidence that the bankruptcy court excluded—a decision that this Court reviews using the demanding abuse-of-discretion standard. Second, the evidence, even if

considered, establishes that the promissory notes have remained in the loan owners' control and possession at all times and the financial interests related to the loans have stayed with the loan owners. MERS's attempt to turn itself into a note holder with standing is a sham that should be disregarded.

Accordingly, the arguments in *amici*'s initial brief continue to support the bankruptcy court's denial of relief in all of the cases on appeal. This Court should affirm.

ARGUMENT

I. MERS DOES NOT EFFECTIVELY REFUTE ITS HARM TO HOMEOWNERS.

MERS dismisses, as "[u]nfounded [a]ttacks," *amici*'s concerns that filing lift stay motions using its name hinders financially strapped homeowners from avoiding foreclosure. MERS Resp. at 11. Yet it fails to refute the persuasive evidence cited in our initial brief.

First, MERS accuses *amici* of distorting state supreme courts' public policy concerns about the harms caused by MERS obscuring the loan owner's identity. *See* MERS Resp. at 11-12. But that response is disingenuous. The Minnesota Supreme Court squarely stated that "[w]e share plaintiffs' concern over the possibility that" allowing MERS not to disclose the name of the loan owner "may foreclose federal remedies that are otherwise available to homeowners." *Jackson v. Mortgage Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 502 (Minn. 2009). Likewise, both Judge Ciparick and Chief Judge Kaye of the New York Court of Appeals wrote opinions highlighting potential harms caused by MERS. *See MERSCORP, Inc. v. Romaine*, 861 N.E.2d 81, 86 (N.Y. 2006) (Ciparick, J., concurring) ("[W]hether this benefit [of MERS] will outweigh the negative consequences cannot be ascertained by this Court."); *id*. at 88 (Kaye, C.J., dissenting in part) ("[T]here is little evidence that the MERS system provides equivalent benefits

to home buyers and borrowers—and, in fact, some evidence that it may create substantial disadvantages.").

The Kansas Supreme Court's recent decisions similarly identified "the MERS system [as] introduce[ing] its own problems and complications" into mortgage law. *Landmark Nat'l Bank v. Kesler*, __ P.3d ___, 2009 WL 2633640, at *11 (Kan. Aug. 28, 2009). It highlighted the problems that arise because "having a single front man, or nominee, for various financial institutions makes it difficult for mortgagors and other institutions to determine the identity of the current note holder." *Id.*; *see also id.* ("In attempting to circumvent the statutory registration requirement for notice, MERS creates a system in which the public has no notice of who holds the obligation on a mortgage."). It further noted that "in obscuring from the public the actual ownership of a mortgage," MERS "thereby creat[es] the opportunity for substantial abuses and prejudice to mortgagors." *Id.* (quoting *Johnson v. Melnikoff*, 873 N.Y.S.2d 234 (N.Y. Sup. Ct. 2008)).

Second, MERS's response completely ignores the public policy expressed in Congress's recent action in the bipartisan Helping Families Save Their Homes Act of 2009 to require that loan owners disclose their identity to homeowners. *See* Pub. L. No. 111-22, § 404, 123 Stat. 1632, 1658 (codified at 15 U.S.C. § 1641(g)(1)). As noted in our initial brief, Congress was motivated by the precise concerns raised by filing lift stay motions in MERS's name. *See* CRL Br. at 15-16.

The amicus brief filed by a Michigan housing counseling organization, Mission of Peace, does not alter our concerns. While we are pleased that MERS has been helpful in assisting one group, that experience is not shared by many other counseling and legal aid organizations that

work with financially distressed homeowners.[1] Moreover, Mission of Peace confirms that housing counselors and struggling homeowners need to work with parties holding financial interests in the loans, rather than MERS, to avoid foreclosure. *See* Mission of Peace Br. at 10 ("[T]he mortgage servicer is the only entity with the ability to effect changes in the mortgage loan, delay foreclosure, compromise amounts outstanding, resolve disputes, or otherwise assist borrowers.").[2] Borrowers and housing counselors would not have to take the added step of contacting MERS in the hope that it will reveal the party who can negotiate if that party's name is named in a lift stay motion.[3] Indeed, protecting parties from having to play a game of

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[1] *See, e.g.*, Brief of *Amici Curiae* South Brooklyn Legal Services, AARP, Center for Responsible Lending, National Consumer Law Center, National Association of Consumer Advocates, Jacksonville Area Legal Aid, Inc., Empire Justice Center, Legal Services for the Elderly in Queens, Fair Housing Justice Center of HELP USA, Neighborhood Economic Development Advocacy Project, Queens Legal Aid, Legal Services for New York City-Staten Island, and Legal Aid Bureau of Buffalo, *MERSCORP, Inc. v. Romaine*, 861 N.E.2d 81 (N.Y. filed Oct. 6, 2006); Gretchen Morgenson, *The Mortgage Machine Backfires*, N.Y. Times, Sept. 27, 2009, at BU1 ("When MERS was involved, borrowers who hoped to work out their loans couldn't identify who they should turn to."); Mike McIntire, *Murky Middleman*, N.Y. Times, Apr. 24, 2009, at B1 ("MERS . . . holds 60 million mortgages on American homes, through a legal maneuver that has saved banks more than $1 billion over the last decade but made life maddeningly difficult for some troubled homeowners.").

[2] Loan owners have a substantial financial interest in settling with financially distressed homeowners to avoid foreclosure because of the substantial loss the owners incur on each foreclosure. *See* Congressional Oversight Panel, *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months* 108 (2009) (finding foreclosure, rather than a loan modification, typically is economically irrational for lenders), *available at* http://cop.senate.gov/documents/cop-100909-report.pdf. Therefore, it is significant that MERS lacks financial interest in the loans, which might alter its view of the desirability of foreclosure. *Cf. id*. at 70, 108 (noting that the financial incentives of mortgage servicers and loan owners may not align, hindering economically rational loan modifications).

[3] Such added steps can have real consequences, as it is essential that financially distressed homeowners start negotiating to avoid foreclosure as soon as possible. *See* U.S. Dep't of Hous. & Urban Dev., Tips for Avoiding Foreclosure, http://www.hud.gov/foreclosure/foreclosuretips.cfm (last visited Oct. 13, 2009) ("The further behind you become, the harder it will be to reinstate your loan and the more likely that you will lose your house. Contact your lender as soon as you realize that you have a problem.").

telephone in order to identify who really controls the litigation is the exact reason that those prosecuting motions in federal courts must have standing and real-party-in-interest status.[4]

II. MERS MAKES NO ATTEMPT TO DEMONSTRATE THE FINANCIAL INTEREST NECESSARY FOR STANDING AND REAL-PARTY-IN-INTEREST STATUS.

MERS fails to respond to *amici*'s showing, based on the record and the rulings of numerous other courts, that it lacks any economic interest in the loans at question on appeal. *See* CRL Br. at 6-9. Instead, MERS relies on the authority of one inapposite Arizona bankruptcy court opinion to claim it does not need to demonstrate any financial interest. *See* MERS Resp. at 3 (citing *In re Hill*, No. 08-16161, 2009 WL 1956174, at *3-4 (Bankr. D. Ariz. July 6, 2009)).

The law of standing and real-party-in-interest status is clear: A party must have *its own* stake in the litigation in order to prosecute an action in federal court, including a lift stay motion. *See* CRL Br. at 9-10. Moreover, the law is unequivocal that parties cannot manufacture standing merely by asserting a stake; instead, they must robustly demonstrate their interest. *See Summers v. Earth Island Inst.*, 129 S. Ct. 1142, 1152 (2009) ("Standing, we have said, is not an ingenious academic exercise in the conceivable . . . [but] requires . . . a factual showing of perceptible harm." (alterations in original) (internal quotation marks omitted)). MERS has completely failed to demonstrate a stake because the record shows that MERS has no entitlement to the borrower payments or proceeds of foreclosure for any loan in these appeals. *See* MERS Terms and Condition at ¶ 2 (Appx. 490) ("MERS shall have no rights *whatsoever* to any payments

[4] As noted in both the trustee's brief and our initial brief, MERS's inability to negotiate with homeowners on avoiding foreclosure means it cannot comply with the local bankruptcy rules' requirement to make a good faith attempt at resolving disputes before filing a lift stay motion. *See* L.R. Bankr. P. 4001(a)(3). MERS ignores this argument.

made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans." (emphasis added)).

MERS's reliance on *In re Hill* is misplaced because that case does not address a note holder who lacked any financial interest. Instead, that case involved a servicer—to whom the mortgage payments were due—filing a lift stay motion. *See In re Hill*, 2009 WL 1956174, at *1 (indicating that Chase Finance, who filed the motion, was responsible for "the day-to-day servicing of the Loan"); *id*. at *4 ("[T]here are substantial postpetition defaults in the payments *due to Chase Finance*" (emphasis added)). Therefore, MERS—to whom no money is due—is in an entirely different position than the party who filed the *In re Hill* lift stay motion.[5] *See* CRL Br. at 10 n.5 (distinguishing the issue in these appeals from whether a servicer can file a lift stay motion, because servicers have financial interests in loan repayment).

MERS's response also attempts to create the false impression that legal authority is on its side by string citing a number of decisions by this Court, irrelevant to these appeals, that *Nevada law* permits MERS to conduct *non-judicial* foreclosures using its name. *See* MERS Resp. at 7-8 & n.4. These appeals address the very different question whether *federal law* gives MERS the right to take affirmative actions *in court*.

Judge Dawson's recent decision in *Croce v. Trinity Mortgage Assurance Corp.*, which MERS heavily relies upon in its response, is explicit: it addresses only the question of MERS's right to use its name "in connection with a nonjudicial foreclosure proceeding under Nevada law." No 2:08-CV-01612-KJD-PAL, 2009 WL 3172119, at *3 (D. Nev. Sept. 28, 2009). Judge

[5] The original *In re Hill* deed of trust named MERS as the beneficiary, but the lift stay motion was brought in the servicer's name and the deed of trust was assigned to the servicer. *See* 2009 WL 1956174, at *1-2. That practice contrasts with MERS's actions in the appeals before this Court.

Dawson rejected the attempt by the homeowner in that case to rely on an Ohio federal court's standing decision because "the [Ohio] case is distinguishable as it dealt with judicial foreclosure proceedings brought by lenders." *Id*. at *5. That case—like the others that MERS string cites—has no bearing on whether MERS can file lift stay motions in its own name.

Holding that MERS lacks standing and real-party-in-interest status in these appeals is consistent with the rationales behind those doctrines: "The purpose of the [real-party-in-interest] requirement is to protect individuals from the harassment of suits by persons who do not have the power to make final and binding decisions concerning prosecution, compromise and settlement. . . . [A] real party in interest must be in such command of the action as to be legally entitled to give a complete acquittal or discharge to the other party upon performance." *In re Tainan*, 48 B.R. 250, 252 (Bankr. E.D. Pa. 1985), *cited with approval in Greer v. O'Dell*, 305 F.3d 1297, 1303 (11th Cir. 2002). MERS has never suggested that it has such power, and the record and decisions by other courts are clear that all rights related to the loans are held by the loan owners, rather than by MERS. *See* CRL Br. at 6-9; *see also Landmark*, 2009 WL 2633640, at *9 (describing MERS as a "straw man"); *id*. at *13 ("[MERS] lent no money and received no payments from the borrower. It suffered no direct, ascertainable monetary loss as a consequence of the [foreclosure] litigation.").

III. MERS FAILS TO DEMONSTRATE IT IS A LEGITIMATE HOLDER OF THE DART AND ZEIGLER NOTES.

Instead of demonstrating a financial interest in any of the loans at issue in these appeals, MERS responds that it has standing and real-party-in-interest status as a note holder. *See* MERS Resp. at 3-5. Even if financial interest were not required to have standing or real-party-in-

interest status—a position that is contrary to law, as explained above—the record does not establish that MERS is a legitimate note holder in any of these appeals.

MERS's argument that it holds the note is flawed because it wholly relies on evidence excluded by the bankruptcy court. The bankruptcy court explicitly rejected the affidavits of Stacey Kranz and Cynthia Mech by finding that "the testimony in these cases is neither competent nor admissible." Opinion and Order at 13 (Appx. 752); *see id*. at 13 & n.57 (citing the Kranz affidavit as an example of testimony that did not demonstrate adequate personal knowledge); *id*. at 14 (Appx. 753) (finding the Mech affidavit "inadequate"). Yet MERS's assertion that it is the note holder depends on the Kranz and Mech affidavits, *see* MERS Resp. at 4-5, which this Court cannot consider unless it determines the bankruptcy court abused its discretion by making a "clearly erroneous assessment of the evidence," *Heath v. Am. Express Travel Related Serv. Co.* (*In re Heath*), 331 B.R. 424, 429 (9th Cir. B.A.P. 2005).

Even if this Court considers the evidence excluded by the bankruptcy court, MERS fails to refute *amici*'s unmasking of the legal machination that undergirds its claim to hold the Dart and Zeigler notes. As explained in our initial brief, MERS claims it holds the note notwithstanding the fact that the note remains in the loan owners' control and possession at all times. MERS justifies its note holder status by (1) investing employees of the loan owners as MERS "officers" and (2) asserting that the loans magically transfer to MERS by virtue of the loan owners' employees taking on a title with MERS, despite the notes always remaining in control and possession of the loan owners. *See* CRL Br. at 10-11.

MERS's response that this arrangement is authorized by its rules is neither supported by the record nor legally relevant. *See* MERS Resp. at 4. First, MERS erroneously relies on its

Rule of Membership 3, Section 3(a), and William Hultman's declaration describing that rule, as authorizing MERS to take possession of notes or become a note holder through the Certifying Officers. The only reference to a "note holder" in Rule 3, Section 3(a) involves situations when a member, rather than MERS, is the note holder. *See* Rules of Membership, Rule 3, Section 3(a)(ii) (Appx. 458) (allowing Certifying Officers, on MERS's behalf, to "assign the lien of any mortgage naming MERS as the mortgagee when the Member is also the current promissory note-holder"). Moreover, the Rules of Membership also require MERS "at all times [to] comply with the instructions of the holder of mortgage loan promissory notes"—a nonsensical requirement if MERS is a note holder. Rules of Membership, Rule 2, Section 6 (Appx. 456).

Second, whether or not MERS's rules authorize it to be a note holder through its Certifying Officers, MERS cannot manufacture a legal status that is not supported by actual facts. The identity of a note holder is just such a legal status. *See In re Wilhelm*, 407 B.R. 392, 402 n.19 (Bankr. D. Idaho 2009). "Holder" status can be legally acquired only by transferring possession. *See* Nev. Rev. Stat. § 104.3201(1) ("'Negotiation' means a *transfer of possession*, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person *who thereby becomes its holder*." (emphases added)). But, as described in our initial brief, the control and possession of the Dart and Zeigler notes have never left the note owners. *See* August 18 Affidavit of Stacey Kranz at ¶4 (Appx. 647) ("Bank of America, who is listed as the current servicer on the Ziegler . . . loan registered on the MERS® System, had (and has) physical possession of the original Zeigler note in its files. MERS in turn had possession of the original Zeigler Note through a MERS Certifying Officer who is an employee of the member listed as

servicer on the MERS® System."); August 15 Affidavit of Cynthia Mech at ¶4 (Appx. 642) (same).

MERS has cited no authority, from Nevada or any other jurisdiction, that allows an entity to become a note holder when the incumbent note holder has not given up control and possession. Instead, courts in numerous contexts treat purported transfers as "shams" when control or other legal rights do not change hands. *See* CRL Br. at 11. This Court should treat MERS's note holder claim in a similar fashion. *See* Christopher L. Peterson, Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System 31-34 (Sept. 7, 2009) (arguing courts should disregard MERS' "arguably flawed legal mumbo jumbo" of "naming thousands of individual employees of *other* companies and law firms 'certifying officers' of MERS"), *available at* http://ssrn.com/abstract-1469749.

CONCLUSION

MERS has not refuted its lack of a financial interest in the loans at issue in these appeals. Therefore it lacked standing and real-party-in-interest status to file lift stay motions in its name. Its attempt to use legal machinations, which deprive bankrupt homeowners of a guarantee that they will know who owns their loans and who can negotiate with them to avoid foreclosure, cannot defeat basic prerequisites for affirmatively invoking the federal courts' power. Accordingly, this Court should affirm the bankruptcy court's opinion.

Respectfully Submitted,

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October 13, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October 2009, I electronically filed this Reply Brief of *Amici Curiae* Center for Responsible Lending and National Association of Consumer Bankruptcy Attorneys in Support of Appellees and Arguing for Affirmance with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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