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5 Attorneys for Plaintiff
6 Mortgage Electronic Registration Systems, Inc.,
a Delaware corporation

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION - E-FILING**
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13 MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC., a)
14 Delaware corporation,)

15 Plaintiff,)

16 vs.)

17 TERESA G. WHARTON; JOHN J.)
WHARTON; THOMAS E. ROBERTS,)
18 M.D.; FRANCHISE TAX BOARD, STATE)
OF CALIFORNIA; DEPARTMENT OF)
19 TREASURY, INTERNAL REVENUE)
SERVICE; and DOES 1-50, inclusive,)

20 Defendants.)
21)

CASE NO. 5:08-cv-05152 JF

**STIPULATION AS TO EQUITABLE
SUBROGATION OF THE INTERESTS
OF FRANCHISE TAX BOARD AND
[PROPOSED] ORDER OF DISMISSAL
OF ACTION AS AGAINST
FRANCHISE TAX BOARD**

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23 It is hereby stipulated by and between plaintiff Mortgage Electronic Registration
24 Systems, Inc. ("MERS") and defendant Franchise Tax Board, State of California, ("Franchise
25 Tax Board") by and through their respective counsel, as follows:

26 1. That pursuant to the doctrine of equitable subrogation, plaintiff MERS' interest
27 in the real property commonly known as 645 Buena Vista Avenue, Gilroy, California and

28 **STIPULATION AS TO EQUITABLE SUBROGATION OF THE INTERESTS OF FRANCHISE TAX BOARD
AND [PROPOSED] ORDER OF DISMISSAL OF ACTION AS AGAINST FRANCHISE TAX BOARD;**

Case No. 5:08-cv-05152 JF

S:\F\Wharton\Pleadings\Stip subrogation.Franchise Tax Brd.Rev.wpd

1 legally described in Exhibit 1 attached hereto (the "Subject Property") in the amount of
2 \$180,766.41 is prior and superior to the interests of defendant Franchise Tax Board.

3 2. Based on the foregoing, defendant Franchise Tax Board subordinates its interest
4 to plaintiff MERS' interest in the Subject Property in the amount set out above and the action is
5 dismissed as against defendant Franchise Tax Board with each party to bear its own costs and
6 attorneys' fees.

7 OFFICE OF THE ATTORNEY GENERAL

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9 Dated: December 3, 2009

By: Marguerite C. Stricklin
Marguerite Stricklin
Deputy Attorney General
Attorneys for Franchise Tax Board, State of
California

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13 Dated: December __, 2009

14 STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP

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16 By: _____
Jeffrey H. Lowenthal
Lucas E. Gilmore
Attorneys for Plaintiff
Mortgage Electronic Registration Systems, Inc., a
17 Delaware corporation
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20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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22
23 Dated: 12/4/09

Jeremy Fogel
THE HONORABLE JEREMY FOGEL
United States District Court Judge

1 legally described in Exhibit 1 attached hereto (the "Subject Property") in the amount of
2 \$180,766.41 is prior and superior to the interests of defendant Franchise Tax Board.

3 2. Based on the foregoing, defendant Franchise Tax Board subordinates its interest
4 to plaintiff MERS' interest in the Subject Property in the amount set out above and the action is
5 dismissed as against defendant Franchise Tax Board with each party to bear its own costs and
6 attorneys' fees.

7 OFFICE OF THE ATTORNEY GENERAL

8
9 Dated: December __, 2009

By: _____
Marguerite Stricklin
Deputy Attorney General
Attorneys for Franchise Tax Board, State of
California

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11
12
13 Dated: December 3, 2009

STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP

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16 By: /s/ Lucas E. Gilmore
Jeffrey H. Lowenthal
Lucas E. Gilmore
Attorneys for Plaintiff
Mortgage Electronic Registration Systems, Inc., a
Delaware corporation

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20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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23 Dated: _____

THE HONORABLE JEREMY FOGEL
United States District Court Judge

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2009, I electronically filed the foregoing
**STIPULATION AS TO EQUITABLE SUBROGATION OF THE INTERESTS OF
FRANCHISE TAX BOARD AND [PROPOSED] ORDER OF DISMISSAL OF ACTION
AS AGAINST FRANCHISE TAX BOARD** with the Clerk of the Court using the ECF
system which will send notification of such filing to all attorneys of record registered for
electronic filing.

By: /s/ Lucas E. Gilmore
Lucas E. Gilmore
Attorneys for Plaintiff
Mortgage Electronic Registration Systems, Inc., a
Delaware corporation

DESCRIPTION

THE LAND REFERRED TO IN THIS DESCRIPTION SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, UNINCORPORATED AREA OF GILROY, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

ALL OF PARCEL 1 OF THAT CERTAIN "PARCEL MAP", RECORDED DECEMBER 8, 1970 IN BOOK 276 OF MAPS, AT PAGE 18, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF A WATER PIPELINE 10 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE COMMON LINE BETWEEN SAID PARCELS 2 AND 3 OF SAID PARCEL MAP, DISTANT THEREON SOUTH 18 DEG. 09 MIN. 20 SEC. EAST, 63.00 FEET FROM THE NORTHERLY CORNERS COMMON THERETO; THENCE NORTH AND SOUTH 71 DEG. 50 MIN. 40 SEC. EAST, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 2, A DISTANCE OF 13.00 FEET TO THE WESTERLY LINE OF A WELL SITE LOCATED WITHIN SAID PARCEL 2 AND THE TERMINATION OF SAID CENTER LINE AS RESERVED IN DEED EXECUTED BY LAWRENCE ROCCHI, ET AL. RECORDED APRIL 5, 1972, BOOK 9972, PAGE 289 OF OFFICIAL RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF A WATER PIPELINE 10 FEET IN WIDTH, THE WESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY COMMON CORNERS OF SAID PARCELS 1 AND 2 OF SAID PARCEL MAP; THENCE NORTH 18 DEG. 09 MIN. 20 SEC. WEST ALONG THE WESTERLY LINE OF SAID PARCEL 2, A DISTANCE OF 269.70 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF THE EASEMENT FIRSTLY ABOVE RESERVED AND THE TERMINATION OF SAID WESTERLY EASEMENT LINE, AS RESERVED IN DEED EXECUTED BY LAWRENCE ROCCHI, ET AL; RECORDED APRIL 5, 1972, BOOK 9973, PAGE 289 OF OFFICIAL RECORDS.

PARCEL FOUR: (WE NOTE BUT DO NOT INSURE)

TOGETHER WITH THOSE CERTAIN RIGHTS AND EASEMENTS PROVIDED FOR IN THAT CERTAIN WATER AGREEMENT EXECUTED BY AND BETWEEN LAWRENCE ROCCHI ET AL AND JAMES E. GRAN, DATED MARCH 31ST, 1972 AND RECORDED APRIL 5, 1972 UNDER RECORDER'S SER. NO. 4226874, SANTA CLARA COUNTY RECORDS.

835-13-012

EXHIBIT 1