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REED SMITH LLP
A limited liability partnership formed in the State of Delaware

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MERSCORP HOLDINGS, INC., a Delaware corporation, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation,

Plaintiff,

vs.

MERS, INC, a California corporation, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC. (MERS), a California corporation,

Defendants.

No.: 16-cv-04380-BLF

~~PROPOSED~~ AMENDED TEMPORARY RESTRAINING ORDER, ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, AND ORDER RE SERVICE

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TO ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

ORDER TO SHOW CAUSE

YOU (AND EACH OF YOU) ARE HEREBY ORDERED TO SHOW CAUSE at 2:00 p.m. on September 20, 2016, or as soon thereafter as counsel may be heard in the courtroom of the Honorable Beth Labson Freeman, located at: 280 South 1st Street, San Jose, CA 95113, Courtroom 3 - 5th Floor:

A. Why you, your officers, agents, servants, employees and attorneys and those in active concert or participation with you or them should not be restrained and enjoined pending trial of this action from:

1. Using the MERS® Mark, MERSCORP trade name, or MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. trade name, or any confusingly similar versions thereof, in commerce in the United States;
2. Maintaining an active corporation with the name MERS, INC or MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC. (MERS) or any confusingly similar name; and
3. Assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) and (ii) above;

B. Why the Court should not further inform the California Secretary of State, via issuance of the Order, that the state incorporation records for MERS, INC, entity no. C3851651, and MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC. (MERS), entity no. C3851652, have been found to infringe upon the trademarks and trade names of the Plaintiffs and are causing actual confusion and continuing irreparable harm to the Plaintiffs by their existence, which harm may be remedied by cancellation of those corporate registrations and by posting the correct address

1 for Plaintiffs, as follows: 1818 Library Street, Suite 300, Reston, Virginia 201910 to the public
2 records for Defendants, including but not limited to its online registry of business entities; and

3
4 C. Why the Court should not further order the California Secretary of State to:

5 1. Cancel the incorporation for MERS, INC, entity no. C3851651, and
6 MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC. (MERS), entity no. C3851652;
7 and

8 2. Post an order and notice of the correct address for Plaintiffs, as follows: 1818
9 Library Street, Suite 300, Reston, Virginia 20190 to its public records for Defendants, including but
10 not limited to its online registry of business entities.

11
12 **TEMPORARY RESTRAINING ORDER**

13 PENDING HEARING on the above Order to Show Cause, you, your officers, agents,
14 servants, employees and attorneys and all those in active concert or participation with you or them
15 ARE HEREBY RESTRAINED AND ENJOINED from:

16 1. Using the MERS® Mark, MERSCORP trade name, or MORTGAGE ELECTRONIC
17 REGISTRATION SYSTEMS, INC. trade name, or any confusingly similar versions thereof, in
18 commerce in the United States;

19 2. Maintaining an active corporation with the name MERS, INC or MORTGAGE
20 ELECTRONIC REGISTRATION SYSTEM, INC. (MERS) or any confusingly similar name; and

21 3. Assisting, aiding, or abetting any other person or entity in engaging in or performing
22 any of the activities referred to in subparagraphs (i) and (ii) above;

23 PENDING HEARING on the above Order to Show Cause, the California Secretary of State
24 is hereby notified and informed that this Court finds that Plaintiffs have demonstrated the likelihood
25 that:

1 1. The incorporation for MERS, INC, entity no. C3851651, and MORTGAGE
2 ELECTRONIC REGISTRATION SYSTEM, INC. (MERS), entity no. C3851652 infringe Plaintiffs'
3 federal trademarks and trade names, causing irreparable harm to Plaintiffs; and that

4 2. The addresses on file for MERS, INC, entity no. C3851651, and MORTGAGE
5 ELECTRONIC REGISTRATION SYSTEM, INC. (MERS), entity no. C3851652, are false and do
6 not correspond to the corporate defendants or their officers; and that

7 3. Despite diligent efforts, the officers listed in the corporate registration documents
8 cannot be located and appear to be false.

9
10 The undertaking requirement for the above Temporary Restraining Order is hereby waived,
11 and this Temporary Restraining Order takes effect upon issuance.

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13 **ORDER RE SERVICE OF PROCESS**

14
15 This Order and the Order to Show Cause and Temporary Restraining Order and supporting
16 papers shall be served by First Class Mail on: (1) the California Secretary of State; and (2) the
17 Defendants at the addresses listed in their corporate records on file with the California Secretary of
18 State, as soon as practicable after issuance of this Order and no later than 22 days before the date set
19 for hearing, with the proof of service on the Secretary to be filed no later than five (5) court days
20 before the hearing. Any response or opposition to this Order to Show Cause must be filed and
21 served on Plaintiff's' counsel no later than two (2) court day before the date set for hearing, and
22 proof of service shall be filed no later than one (1) court day before the hearing.

23 Pursuant to Federal Rule of Civil Procedure 4, California Code of Civil Procedure Section
24 415.50, and California Corporations Code Section 6064, the Court further finds that:

25 (1) Plaintiffs have established good cause also to serve the Summons and Complaint, this
26 Order and the Court's order of the same date by publication on the basis that despite diligent efforts
27 to locate the Defendant corporations and their officers, Plaintiffs have been unable to do so. The
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1 Court is thus satisfied that Defendants to be served cannot with reasonable diligence be served in a
2 manner other than by publication.

3 (2) The Court is also satisfied that a cause of action is pending against the Defendants, and
4 that the Defendants are necessary and proper parties to the action.

5 Accordingly, IT IS HEREBY ORDERED THAT the Summons and Complaint, this Order
6 and the Court's order of the same date shall be published in the Oakland Tribune once a week for
7 four successive weeks, with at least five days intervening between the respective publication dates
8 not counting such publication dates. The period of notice commences with the first day of
9 publication and terminates at the end of the twenty-eighth day, including therein the first day.

10 In addition, IT IS HEREBY ORDERED THAT a copy of the summons, the Complaint, the
11 supporting papers, this Order, and the Court's Order of the same date shall be mailed forthwith to the
12 Defendants if their addresses, or the address of one of them, or of one or more of their officers, is
13 ascertained before expiration of the time prescribed for publication of the summons.

14
15 **IT IS SO ORDERED.**

16 DATED: _____

17 
United States District Judge