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9 Attorneys for Plaintiffs

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF MARICOPA

12 JOSEPH MORONES and ELVIRA
13 HERNANDEZ,

14 Plaintiffs,

15 v.

16 TOM HORNE, in his capacity as Attorney
17 General; and DOUG DUCEY, in his
18 capacity as
Arizona Treasurer,

19 Defendants.
20

COPY

MAY 24 2012



MICHAEL K. JEANES, CLERK
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No. CV2012 008573

**VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

21 **PRELIMINARY STATEMENT**

22 1. This case is brought on behalf of Arizona residents who are or will be
23 subject to a mortgage foreclosure process on their homes and need assistance to be able
24 to stay in their homes. The assistance needed includes, but is not limited to, credit
25 counseling, advocacy with creditors and legal representation.

26 2. Arizonans have been hit hard by the mortgage foreclosure crisis and
27 Arizona has one of the highest rates of foreclosure in the county.

28 3. Arizona joined forty-eight other states and the federal government to sue

1 five major loan servicers and financial institutions for misconduct related to their
2 origination and servicing of single family residential mortgages. The litigation settled
3 and according to the terms of the Consent Judgments, Arizona Attorney General Horne
4 will receive Arizona's share of the direct state payments ("Settlement Funds").

5 Pursuant to the agreement memorialized in the Consent Judgments, the Attorney General
6 shall deposit the Settlement Funds into a Court Ordered Trust Fund and the principal and
7 interest from that fund can only be used for designated purposes.

8 4. On May 1, 2012, the Arizona Legislature passed a general appropriations
9 bill, SB 1523 Governor Brewer signed SB 1523 on May 7, 2012. In SB 1523 the
10 legislature directed the Attorney General to place \$50 million of the Settlement Funds,
11 more than half of the funds that are to be deposited into Court Ordered Trust Fund, into
12 the state's general fund.

13 5. If this transfer occurs, the Settlement Funds in the Court Ordered Trust
14 Fund will not be used for the designated purposes and distressed Arizona homeowners
15 will be not receive the assistance they need to be able to stay in their homes and avoid
16 foreclosure.

17 6. Plaintiffs seek declaratory and injunctive relief to enjoin Defendants from
18 taking any action to transfer the Settlement Funds from the Court Ordered Trust Fund
19 into the state's general fund and from using the Court Ordered Trust Funds for purposes
20 not designated in the Consent Judgments.

21 **VENUE AND JURISDICTION**

22 7. This action arises under state law and the Arizona Constitution. This Court
23 has jurisdiction pursuant to A.R.S. § 12-123 and A.R.S. § 35-213.

24 8. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

25 9. Declaratory relief is sought pursuant to A.R.S. § 12-1831 *et seq.*

26 10. Injunctive relief is sought pursuant to A.R.S. §§ 12-1801 and 35-212.

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PARTIES

1 17. A national settlement was successfully negotiated by the parties and on
2 April 4, 2012, Consent Judgments were entered by the district court for each of the five
3 Defendant Banks. The terms of the Consent Judgments were identical, except for the
4 amount to be paid by each Defendant Bank. The intention of the parties in effecting the
5 settlement was, "to remediate harms allegedly resulting from the alleged unlawful conduct
6 of the Defendant[s]." Page 2 of Consent Judgments. One part of the settlement was
7 called the "Direct Payment Settlement Amount." Paragraph 3 of the Consent Judgments;
8 Exhibit B to Consent Judgments. Part of the direct payment settlement amount went to
9 each plaintiff-state and is to be sent to the attorney general for each state. Arizona's
10 direct payment settlement amount is to be sent to the Arizona Attorney General.

11 18. Section I(b)(1) in Exhibit B to the Consent Judgments provides:

12 i. Each State Attorney General shall designate the uses
13 of the funds set forth in the attached Exhibit B-1. To the
14 extent practicable, such funds shall be used for purposes
15 intended to avoid preventable foreclosures, to ameliorate the
16 effects of the foreclosure crisis, to enhance law enforcement
17 efforts to prevent and prosecute financial fraud, or unfair or
18 deceptive acts or practices and to compensate the States for
19 costs resulting from the alleged unlawful conduct of the
20 Defendants. Such permissible purposes for allocation of the
21 funds include, but are not limited to, supplementing the
22 amounts paid to state homeowners under the Borrower
23 Payment Fund, funding for housing counselors, state and
24 local foreclosure assistance hotlines, state and local
25 foreclosure mediation programs, legal assistance, housing
26 remediation and anti-blight projects, funding for training and
27 staffing of financial fraud or consumer protection
28 enforcement efforts, and civil penalties. Accordingly, each
Attorney General has set forth general instructions for the
funds in the attached Exhibit B-2.

19. Pursuant to Exhibit B1 of the Consent Judgments, the Arizona Attorney
General will receive \$97,784,204.

20. Exhibit B2 of the Consent Judgments sets forth the agreed upon uses of the
state payment settlement amounts for Arizona and provides in relevant part:

1 1. State Payment Settlement Amounts, Consent
2 Judgments Ex. B, Paragraph 1(b)(i)

3 Arizona's share of the State Payment Settlement Amounts
4 ('Funds') provided under this Consent Judgments, and any
5 interest thereon, shall be made payable to the Office of the
6 Arizona Attorney General. The Attorney General shall direct
7 the use of the Funds in Arizona. The Funds shall be used for
8 purposes intended to avoid preventable foreclosures, to
9 ameliorate the effects of the foreclosure crisis, to enhance law
10 enforcement efforts to prevent and prosecute financial fraud,
11 or unfair or deceptive acts or practices and to compensate the
12 State for costs resulting from the alleged unlawful conduct of
13 Defendants. Such permissible purposes for allocation of the
14 funds include, but are not limited to, supplementing the
15 amounts paid to state homeowners under the Borrower
16 Payment Fund, funding for housing counselors, state and
17 local foreclosure assistance hotlines, state and local
18 foreclosure mediation programs, legal assistance, housing
19 remediation and anti-blight projects, funding for training and
20 staffing of financial fraud or consumer protection
21 enforcement efforts, and civil penalties.

22 **The Attorney General shall deposit the Funds with the**
23 **State Treasurer and the Funds shall be held in a separate**
24 **Court Ordered Trust Fund account and all interest**
25 **thereon deposited into that account and used only for the**
26 **purposes set forth herein. (emphasis added).**

27 21. Exhibit B to the Consent Judgments sets forth the allowable uses of the
28 funds and requires that the Attorney General as trustee "shall" deposit the funds with the
29 State Treasurer and the funds shall be held in a "separate Court Ordered Trust Fund."

30 22. The settlement documented by the Consent Judgments is referred to as the
31 "National Mortgage Settlement" by the State of Arizona.

32 23. On May 1, 2012, the Arizona Legislature passed the general appropriation
33 bill for fiscal year 2012, SB 1523. Governor Brewer signed SB 1523 on May 7, 2012.

34 24. Section 128 of SB 1523 provides:

35 Sec. 128. Fund transfer; mortgage settlement; fiscal year
36 2012-2013; intent

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A. Notwithstanding any other law, on or before June 30, 2013, the attorney general shall direct a total of \$50,000,000 received pursuant to the Consent Judgments in the National Mortgage Settlement to the state general fund to compensate the state for costs resulting from the alleged unlawful conduct of the defendants.

B. It is the intent of the legislature that the monies deposited into the state general fund pursuant to subsection A of this section be used in current state general fund efforts in areas covered by the National Mortgage Settlement, including agencies such as the state real estate department, department of insurance and attorney general – department of law, and for other areas impacted by the alleged unlawful conduct of the defendants in the National Mortgage Settlement.

25. On information and belief, the federal government is expected to send the settlement payment to the Attorney General on or after May 11, 2012, and any directive from the Attorney General made pursuant to SB 1523 directing the State Treasurer to transfer funds from the Court Ordered Trust Fund to the state general fund will not occur until on or after July 1, 2012.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(SB 1523 Violates Article IV, Part 2, §20 of the Arizona Constitution)

26. Plaintiffs restate and reincorporate by reference the allegations contained in paragraphs 1 through 25 above.

27. Article 4, Part 2, Section 13 of the Arizona Constitution provides that “[e]very act shall embrace but one subject and matters properly connected therewith...”


28. Article 4, Part 2, Section 20 of the Arizona Constitution creates an exception for the general appropriations bill and provides that “[t]he general appropriation bill shall embrace nothing but appropriations for the different departments of the state, for state institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing but one subject.”

29. Any attempt at legislation other than the appropriation of money in a general appropriations bill is void.

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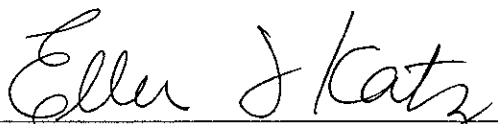
Respectfully submitted this 24th day of May 2012.

ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST

By 

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WILLIAM E. MORRIS INSTITUTE FOR JUSTICE


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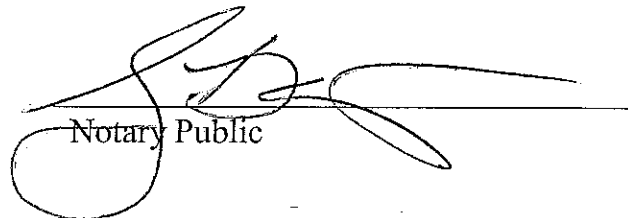
VERIFICATION

I, Timothy M. Hogan, do hereby depose and swear that I am the attorney for the plaintiffs in the above action and that I have read the above Complaint and that the facts alleged in it are true and correct to the best of my knowledge.



Timothy M. Hogan

SUBSCRIBED AND SWORN TO me this 24th day of May 2012, by Timothy M. Hogan.



Notary Public

My Commission Expires:



1/26/16