

Respectfully submitted,

By: /s/ Nicholas M. Frame

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, a true and correct copy of the foregoing was served via ECF notification on the following counsel:

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EXHIBIT A

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2. The allegations in the Petition relate to a deed of trust and foreclosure proceedings on the real property and improvements located at located at 15686 Barkers Landing Road, Houston, Texas 77079 (the “Property”). (*See Pl’s Pet.* at ¶16.) In the Petition, Plaintiff alleges that it never received notice of intent to accelerate, notice of acceleration, or a 21-day notice of Trustee/Substitute Trustee Sale (*Id.* at ¶24.) For these alleged wrongs, Plaintiff asserts causes of action for violation of 51.002 of the Texas Property Code and violation of the DTPA. *Id.* at ¶¶25-37. Plaintiff seeks declaratory relief, injunctive relief, economic damages, actual damages, exemplary damages, attorney’s fees, and costs of court.. *Id.* at Prayer.

3. This Notice of Removal is timely in accordance with 28 U.S.C. Section 1446(b). Defendant has not been served or appeared in the State Court Action, and less than thirty (30) days have passed since Plaintiff filed its Original Petition, making the action removeable.

4. Consent to removal is not required from Defendant One Reverse Mortgage, LLC and Mortgage Electronic Registration Systems, Inc. because they are improperly jointed. *See Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 785 F.3d 1182, 1187 (8th Cir. 2015) (signed consent to removal is required from each properly joined and served defendant); *see also* 28 U.S.C. § 1446(b)(2)(A).

5. This action is removable to federal court pursuant to 28 U.S.C. Section 1441 because it could have been filed originally in this Court pursuant to diversity jurisdiction conferred by 28 U.S.C. Section 1332.

BASIS FOR REMOVAL – DIVERSITY

A. There is complete diversity.

1. The properly-joined parties are diverse.

6. There is diversity jurisdiction in this Court because there is complete diversity of citizenship between the proper parties and more than \$75,000 is in controversy, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

7. Plaintiff is a citizen of Texas. (*See Pl's Pet* at ¶2.)

8. PHH is a corporation whose citizenship is determined by where it was incorporated and its principal place of business. 28 U.S.C. § 1332(c)(1). PHH was incorporated in New Jersey and its principal place of business is in Mount Laurel, New Jersey. Therefore, PHH is a citizen of New Jersey for diversity purposes.

2. One Reverse Mortgage LLC and MERS are improperly joined.

9. One Reverse Mortgage LLC (“ORM”) and Mortgage Electronic Registration Systems, Inc. (“MERS”) are improperly joined, and their citizenship is not rightly considered.

10. The doctrine of improper joinder entitles a defendant to remove to federal court if an in-state defendant is improperly joined. *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004). Improper joinder occurs when the plaintiff is unable to establish a cause of action against the non-diverse defendant. *Id.* There are two ways to establish improper joinder: “(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” *Id.* at 573 (internal citations omitted). The removing party bears the burden of proving that there is “no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.” *Id.* “This possibility [of recovery], however, must be reasonable, not merely

theoretical.” *Great Plains Trust Co. v. Morgan Stanley Deen Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002).

11. In determining whether there is a reasonable basis to predict whether the plaintiff might recover against an in-state defendant, courts often utilize a Rule 12(b)(6) analysis. Rule 12(b)(6) provides for the dismissal of a complaint when a defendant shows that the plaintiff has failed to state a claim for which relief can be granted. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal v. Ashcroft*, 556 U.S. 662 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The factual matter contained in the complaint must allege actual facts, not legal conclusions masquerading as facts. *Id.* at 1949–50. A complaint states a “plausible claim for relief when the factual allegations contained therein infer actual misconduct on the part of the defendant, not a mere possibility of misconduct.” *Id.*; see also *Jacquez v. Procnier*, 801 F.2d 789, 791-92 (5th Cir. 1986).

12. While Plaintiff throws ORM, MERS, and PHH into the same basket, Plaintiff’s claims are only against PHH. Plaintiff’s own pleading does not even allege that MERS or ORM currently hold an interest in the Note or Deed of Trust. (See, generally, *Pl’s Pet.*) Plaintiff further acknowledges that PHH is the current loan servicer. (See *id.* at ¶20.)

13. Moreover, the allegations in the Complaint do not support an independent cause of action against MERS or ORM, and they have been improperly joined. MERS and ORM are not alleged to be current beneficiaries or servicers of the loan. If Plaintiff were to prevail, the Court could enter a final judgment against PHH, the current mortgage servicer, giving Plaintiff the full relief requested. Nor does Plaintiff’s request for injunctive relief require ORM or MERS as a party. ORM and MERS are not pursuing foreclosure because they no longer have an interest

in the loan. In the event Plaintiff succeeds, the court would enjoin current servicer PHH from proceeding with foreclosure.

14. Plaintiff fails to state a claim against ORM or MERS and they are not properly joined parties in this action. *See Schmelzer v. Nationstar Mortgage, LLC*, No. 4:16-cv-389, 2016 U.S. Dist. LEXIS 108139, *12-13 (E.D. Tex. Aug. 16, 2016) (mortgage servicer is improperly joined in suit to declare mortgage lender's lien invalid); *see also Pittman v. Seterus, Inc.*, Civil Action No. 3:18-CV-3076-M-BH, 2019 U.S. Dist. LEXIS 97795, at *5 (N.D. Tex. May 13, 2019) (same); *Melgarejo v. Bank of Am., N.A.*, No. 4:18-CV-87, 2019 U.S. Dist. LEXIS 50121, at *12 n.3 (E.D. Tex. Mar. 26, 2019) (“The Court additionally notes that because Defendant BANA is the mortgagee and Plaintiff only seeks injunctive relief to halt foreclosure proceedings against the Property, RMS, as mortgage servicer for BANA, is not a necessary or required party to the action”). Accordingly, Plaintiff has no reasonable possibility of recovery against ORM or MERS. *See Hosey v. Network Funding*, Civ. Action H-13-2573, 2013 WL 5971061, 2013 U.S. Dist. LEXIS 159973, at *8 (S.D. Tex. Nov. 8, 2013).

B. The amount in controversy exceeds \$75,000.00.

15. “In actions seeking declaratory relief of injunction relief the amount in controversy is measured by the value of the object of the litigation.” *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983). The court makes the amount in controversy determination from the perspective of the plaintiff; the proper measure is the benefit or value to the plaintiff, not the cost to the defendant. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 257 n.1 (5th Cir. 1996). Put another way, “[t]he amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1252-1253 (5th Cir. 1998). In addition, when

the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in controversy. *Nationstar Mortgage, LLC v. Knox*, No. 08-60887, 351 F. App. 844, 848 (5th Cir. Aug. 25, 2009) (quoting *Waller v. Profl Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961)). Therefore, the amount in controversy with respect to Plaintiffs' claims is the fair market value of the property.

16. Moreover, Plaintiff seeks injunctive relief to bar any foreclosure proceedings or any transfer of an interest in real property, the property is the object of the present litigation. *Farkas v. GMAC Mortgage, L.L.C.*, 737 F.3d. 338 (5th Cir. 2013). (“The purpose of the injunctive and declaratory relief, to stop the foreclosure sale of the properties by GMAC and Deutsche Bank, establishes the properties as the object of the present litigation”). “In actions enjoining a lender from transferring property and preserving an individual’s ownership interest, it is the property itself that is the object of the litigation; the value of that property represents the amount in controversy.” *Id.* at *5 (citing *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir. 1973)).

17. According to the records of Harris County Appraisal District, the property at issue has an approximate value of \$409,977.00. A true and correct copy of the Property Search Results from the Harris County Appraisal District is attached hereto as Exhibit C-1. and is incorporated herein, and the Court may take judicial notice of the appraised value of the Property from the Dallas County Central Appraisal District’s public website at head.org by searching using the Property address or Property Account 1055600010027. *See* FED. R. EVID. 201; *Kew v. Bank of Am., N.A.*, No. H-11-2824, 2012 WL 1414978, at 3 n.4 (S.D. Tex. Apr. 23, 2012) (taking judicial notice of appraised value of property published on Harris County Appraisal District’s website to satisfy amount in controversy requirement in removed mortgage foreclosure litigation).

18. Accordingly, the amount in controversy meets and exceeds the federal jurisdictional minimum of \$75,000.00.

VENUE

19. Venue for removal is proper in this district and division, the United States District Court for the Southern District of Texas, Houston Division, under 28 U.S.C. Section 1441(a) because this district and division embrace the 133rd Judicial District Court for Harris County, Texas, the forum in which the removed action was pending.

NOTICE

20. Pursuant to 28 U.S.C. Section 1446(d), a copy of this Notice is being filed with the Clerk of Court for 220th Judicial District Court for Harris County, Texas.

21. The contents of Exhibit B constitute the entire file of Cause No. 2025-00937 in the 133rd Judicial District Court for Harris County, Texas.

CONCLUSION

For the reasons described above, Defendant PHH respectfully requests that this Court take jurisdiction over this matter and proceed as if it had been originally filed herein.

Respectfully submitted,

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INDEX OF DOCUMENTS ATTACHED

- Exhibit A Copy of the Docket Sheet for Cause No. 2025-00937 in the 133rd Judicial District Court for Harris County, Texas;
- Exhibit B Pleadings in Cause No. 2025-00937 in the 133rd Judicial District Court for Harris County, Texas;
- B-1 Plaintiff's Original Petition and Application for Emergency Ex Parte Temporary Restraining Order and Temporary Injunction, January 7, 2025;
- B-2 Exhibit 1, January 7, 2025;
- B-3 Proposed Temporary Restraining Order and Order Setting Hearing for Temporary Injunction, January 7, 2025;
- B-4 Order Setting Bond, Granting Temporary Restraining Order and Setting Injunction Hearing; and
- B-5 Clerk's Certificate of Cash Deposit in Lieu of Injunction Bond per Order of the Court, January 7, 2025;
- Exhibit C Declaration of Nicholas M. Frame
- C-1 Data Sheet from the Harris County, Texas Appraisal District web-site on January 15, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, a true and correct copy of the foregoing was served via regular U.S. mail on the following counsel:

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