

FILED

2010 JUN -3 AM 8:31

KELLY G. HELLON
COUNTY CLERK
BY SHELLIE HOOTEN DEPUTY

1 Robert R. Hager, NV State Bar No. 1482
2 Treva J. Hearne, NV State Bar No. 4450
3 **HAGER & HEARNE**
4 245 E. Liberty - Suite 110
5 Reno, Nevada 89501
6 Tel: (775) 329-5800
7 Fax: (775) 329-5819
8 Email: rhager@hagerhearnelaw.com
9 thearne@hagerhearnelaw.com

6 Mark Mausert SBN#2398
7 930 Evans Avenue
8 Reno, Nevada 89512
9 (775) 786 5477
10 (775) 786 9658- fax

11 *Attorneys for Plaintiffs*

12 **IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF CHURCHILL**

14 STATE OF NEVADA ex rel. ROBERT
15 EDWARD HAGER and ANDREW J.
16 LUDEL, qui tam plaintiffs, on behalf of
17 real parties in interest, WASHOE
18 COUNTY, CLARK COUNTY,
19 HUMBOLDT COUNTY, STOREY
20 COUNTY, PERSHING COUNTY,
21 CHURCHILL COUNTY, CITY AND
22 COUNTY OF CARSON CITY,
23 ESMERALDA COUNTY, WHITE PINE
24 COUNTY, LYON COUNTY, ELKO
25 COUNTY, NYE COUNTY, MINERAL
26 COUNTY, LANDER COUNTY, EUREKA
27 COUNTY, LINCOLN COUNTY,
28 DOUGLAS COUNTY and STATE OF
NEVADA,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS
SERVICING, LP; EXECUTIVE
TRUSTEE SERVICES, LLC;
RECONTRUST COMPANY, N.A.;

CASE NO.: 35179

**THIRD AMENDED COMPLAINT
PURSUANT TO CHAPTER 357 OF
THE NEVADA REVISED STATUTES**

HAGER & HEARNE
245 E. Liberty St., Ste 110
Reno, NV 89501
(775) 329-5800, FAX (775) 329-5819

1 SAXON MORTGAGE, INC.; T.D.
2 SERVICE COMPANY; DEUTSCHE
3 BANK NATIONAL TRUST COMPANY;
4 DEUTSCHE BANK TRUST COMPANY
5 AMERICAS; QUALITY LOAN SERVICE
6 CORPORATION; NATIONAL DEFAULT
7 SERVICING CORPORATION; AZTEC
8 FORECLOSURE CORPORATION; BANK
9 OF NEW YORK; BANK OF NEW YORK
10 MELLON; BANK OF NEW YORK
11 TRUST COMPANY, N.A.; OLD
12 REPUBLIC DEFAULT MANAGEMENT
13 SERVICES, a division of OLD REPUBLIC
14 NATIONAL TITLE INSURANCE
15 COMPANY; LITTON LOAN
16 SERVICING, L.P.; FEDERAL
17 NATIONAL MORTGAGE
18 ASSOCIATION; GMAC MORTGAGE,
19 L.L.C., f/k/a GMAC MORTGAGE
20 CORPORATION; NATIONAL CITY
21 MORTGAGE COMPANY; NATIONAL
22 CITY BANK; PNC BANK, N.A.; J.P.
23 MORGAN MORTGAGE; CHASE HOME
24 FINANCE L.L.C.; HSBC BANK USA,
25 N.A.; WELLS FARGO BANK, N.A.;
26 WELLS FARGO HOME MORTGAGE,
27 INC.; U.S. BANK, N.A.; WACHOVIA
28 MORTGAGE, FSB; BANK OF AMERICA,
N.A.; ING BANK, FSB; CITIBANK, N.A.;
AURORA LOAN SERVICES L.L.C; T.D.
SERVICE COMPANY; CAL WESTERN
RECONVEYANCE CORPORATION;
THE COOPER CASTLE LAW FIRM,
L.L.P.; CALIFORNIA RECONVEYANCE
COMPANY; MTC FINANCIAL, INC. dba
TRUSTEE CORPS; AHMSI DEFAULT
SERVICING, INC.; AMERICAN HOME
MORTGAGE SERVICING, INC.;
WESTERN PROGRESSIVE L.L.C.;
FIDELITY NATIONAL FORECLOSURE
SOLUTIONS; FIRST AMERICAN
LOANSTAR TRUSTEE SERVICES;
WMC MORTGAGE CORP.; IB
PROPERTY HOLDINGS, L.L.C.;
METLIFE HOME LOANS, a division of
METLIFE BANK, N.A.; UTLS DEFAULT
SERVICES, LLC; ONE WEST BANK,
FSB; and FIRST HORIZON HOME
LOANS, a division of FIRST
TENNESSEE BANK N.A.; and DOES I-
MMM,

Defendants.

1 COMES NOW the State of Nevada ex rel. ROBERT EDWARD HAGER and
2 ANDREW LUDEL, on behalf of real parties in interest, the State of Nevada (“the State”)
3 and the Counties of Nevada, above-named, by and through counsel Robert R. Hager,
4 Treva J. Hearne and Mark Mausert, and hereby complains of defendants as follows:

5 **Statement of the Case**

6 Plaintiffs Robert Edward Hager and Andrew Ludel seek recovery pursuant to
7 Chapter 357 of Nevada Revised Statutes, the False Claims Act because each of the
8 Defendants made, used and/or caused to be made or used false records or statements in
9 order to conceal, avoid or decrease obligations to pay in full of all required documentary
10 transfer taxes and/or fees for the transfer of title and/or interests in real property in the
11 State and its Counties, and further failed to pay all required taxes and/or fees for the
12 transfer of title and/or interests in real property in the State, and, thereby, concealed,
13 avoided, decreased and/or diminished their obligation to pay transfer taxes to the
14 Counties and the State, the above-named real parties in interest.

15 **Parties**

16
17
18 1. Qui tam plaintiffs Robert Edward Hager, a law student, and Andrew Ludel, who
19 has worked in the mortgage business, are residents of the State of Nevada who, by
20 researching whether the Defendants were and are making, using and causing to be made
21 and used false statements to defraud the State and its Counties of required transfer taxes,
22 jointly discovered the manner in which the defendants have defrauded, and continue to
23 defraud, the State and its Counties, and the qui tam plaintiffs hereby bring this action on
24 behalf of the real parties in interest.

25 2. The qui tam plaintiffs have direct and independent knowledge of the
26 allegations on which this action is based, and that information was not obtained by the
27 qui tam plaintiffs from the public disclosure of allegations or transactions in a criminal,
28 civil or administrative hearing, in an investigation, report, hearing or audit conducted by

1 or at the request of a house of the Legislature, an auditor or the governing body of a
2 political subdivision, or from the news media.

3 3. The State of Nevada is a sovereign State and is one of the United States of
4 America, and is a real party in interest entitled to a portion of the proceeds of this action.

5 4. The above-named Counties are political subdivisions of the State, and are real
6 parties in interest which will ultimately be entitled to a portion of the proceeds of this
7 action.

8 5. Defendants COUNTRYWIDE HOME LOANS SERVICING, LP; EXECUTIVE
9 TRUSTEE SERVICES, LLC; RECONTRUST COMPANY, N.A.; SAXON MORTGAGE,
10 INC.; T.D. SERVICE COMPANY; DEUTSCHE BANK NATIONAL TRUST COMPANY;
11 DEUTSCHE BANK TRUST COMPANY AMERICAS; QUALITY LOAN SERVICE
12 CORPORATION; NATIONAL DEFAULT SERVICING CORPORATION; AZTEC
13 FORECLOSURE CORPORATION; BANK OF NEW YORK; BANK OF NEW YORK
14 MELLON; BANK OF NEW YORK TRUST COMPANY, N.A.; OLD REPUBLIC DEFAULT
15 MANAGEMENT SERVICES, a division of OLD REPUBLIC NATIONAL TITLE
16 INSURANCE COMPANY; LITTON LOAN SERVICING, L.P.; FEDERAL NATIONAL
17 MORTGAGE ASSOCIATION ("Fannie Mae"); GMAC MORTGAGE, L.L.C., f/k/a GMAC
18 MORTGAGE CORPORATION; NATIONAL CITY MORTGAGE COMPANY; NATIONAL
19 CITY BANK; PNC BANK, N.A.; J.P. MORGAN MORTGAGE; CHASE HOME FINANCE
20 L.L.C.; HSBC BANK USA, N.A.; WELLS FARGO BANK, N.A.; WELLS FARGO HOME
21 MORTGAGE, INC.; U.S. BANK, N.A.; WACHOVIA MORTGAGE, FSB; BANK OF
22 AMERICA, N.A.; ING BANK, FSB; CITIBANK, N.A.; AURORA LOAN SERVICES L.L.C.;
23 T.D. SERVICE COMPANY; CAL WESTERN RECONVEYANCE CORPORATION;
24 CALIFORNIA RECONVEYANCE COMPANY; MTC FINANCIAL, INC. dba TRUSTEE
25 CORPS; AHMSI DEFAULT SERVICING, INC.; AMERICAN HOME MORTGAGE
26 SERVICING, INC.; WESTERN PROGRESSIVE L.L.C.; FIDELITY NATIONAL
27 FORECLOSURE SOLUTIONS; FIRST AMERICAN LOANSTAR TRUSTEE SERVICES;
28 WMC MORTGAGE CORP.; IB PROPERTY HOLDINGS, L.L.C.; METLIFE HOME

1 LOANS, a division of METLIFE BANK, N.A.; UTLS DEFAULT SERVICES, LLC; ONE
2 WEST BANK, FSB; and FIRST HORIZON HOME LOANS, a division of FIRST
3 TENESSEE BANK N.A are foreign corporations, partnerships, limited liability
4 companies or some other entities which have done business in the State of Nevada and in
5 each of the above-named Counties, and defendant THE COOPER CASTLE LAW FIRM,
6 L.L.P. is a domestic Limited Liability Partnership which has done business in the State
7 of Nevada and each of the above-named Counties. Defendants were obligated, pursuant
8 to Chapter 375 of the Nevada Revised Statutes to pay transfer taxes. Defendants
9 were obligated to pay transfer taxes, in full, notwithstanding the fact that in some
10 transactions the subject of this action Defendants were both the beneficiary of deeds of
11 trust and the grantees pursuant to sales. Defendants were jointly and severally liable in
12 their capacities as buyer and seller, pursuant to NRS 375.030(2). No exemption, listed
13 by NRS 375.090 (or any other statute) insulated defendants from liability for payment of
14 said transfer taxes. Each of the defendants repeatedly filed fraudulent forms indicating
15 no transfer tax was owing, or alternatively, filed forms which resulted in the
16 underpayment of the transfer tax. Defendants failed to pay transfer taxes and thereby
17 defrauded the above-named Counties and the State of Nevada.

18 6. Doe Defendants I-MMM are corporations, partnerships, limited liability
19 companies, or some other entities which are in some way responsible for concealing,
20 avoiding or decreasing fees or monies which were owed to the above-named Counties
21 and the State for transfer taxes as alleged herein. When plaintiffs determine the
22 identities of said Doe Defendants they will seek leave of Court to amend this action, so as
23 to hold doe defendants liable.

24 7. Plaintiffs bring this action under NRS 357.080 against defendants for
25 violations of NRS 357.040(1)(g) & (h), and other provisions of Chapter 357, as well as
26 Chapter 375. Plaintiffs allege defendants have collectively and individually, knowingly,
27 intentionally or with reckless disregard, or otherwise, with the *scienter* required by
28 Chapter 357, made, used and caused to be made or used, and continue to make, use and

1 cause to be made or used, false records and statements to conceal, avoid and/or decrease
2 their obligations to pay transfer taxes, or other monies, to the above-named Counties of
3 the State of Nevada and the State of Nevada. Those false statements by each of the
4 defendants include without limitation the false statement in the "State of Nevada
5 Declaration of Value" form in the record of the various County Recorders that Freddie
6 Mac and/or defendant Fannie Mae were and are a tax-exempt "Government Entity" or
7 "Government Agency."

8 General Allegations

9 8. Defendants were jointly and severally obligated to pay conveyance and/or
10 transfer taxes, and were also required to not make false representations in order to avoid
11 payment in full of all required conveyance and/or transfer taxes pursuant to NRS
12 Chapter 357, notwithstanding that with regard to certain transfers they were both the
13 beneficiary of deeds of trust and the grantees pursuant to sales.

14 9. Defendants have engaged in thousands of sales and transfers of title of real
15 property in the State including in each County of the State in which defendants were
16 obligated to pay transfer taxes as transferor/seller and/or transferee/buyer, but
17 defendants either completely or partially avoided payment of those taxes.

18 10. Defendants have collectively and/or individually, knowingly, intentionally or
19 with reckless disregard, or otherwise, with the *scienter* required by the False Claims Act
20 caused to be made, made and used, and continue to cause to be made, make and use
21 false records and statements to the State and its Counties in order to conceal, avoid
22 and/or decrease their obligations to pay transfer or conveyance taxes, or other monies, to
23 the State and its Counties.

24 11. Defendants Executive Trustee Services L.L.C., ReconTrust Company, T.D.
25 Service Company, Quality Loan Service Corporation, National Default Servicing
26 Corporation, Aztec Foreclosure Corporation, Old Republic Default Management
27 Services, T.D. Service Company, Cal Western Reconveyance Corporation, The Cooper
28

1 Castle Law Firm, L.L.P., California Reconveyance Company, MTC Financial, Inc., dba
2 Trustee Corps, AHMSI Default Servicing, Inc., Western Progressive L.L.C., Fidelity
3 national Foreclosure Solutions, First American Loanstar Trustee Services, and UTLS
4 Default Services, L.L.C., identified themselves as the “foreclosing beneficiary” on the
5 Trustee’s Deeds Upon Sale which are the subject of this action and as the “SELLER
6 (GRANTOR)” on the “STATE OF NEVADA DECLARATION OF VALUE” form. The
7 defendants named in the above portion of this Paragraph were not the “beneficiary” nor
8 the “seller/grantor” of the subject properties, but instead were acting as agents for
9 defendants Countrywide Home Loans Servicing, LP, Saxon Mortgage, Inc., Deutsche
10 Bank National Trust Company, Deutsche Bank Trust Company Americas, Bank of New
11 York, Bank of New York Mellon, Bank of New York Trust Company, N.A., Litton Loan
12 Servicing, L.P., Federal National Mortgage Association (“Fannie Mae”), GMAC
13 Mortgage, L.L.C., f/k/a GMAC Mortgage Corporation, National City Mortgage Company,
14 National City Bank, PNC Bank, N.A., J.P. Morgan Mortgage, Chase Home Financing
15 L.L.C., HSBC Bank USA, N.A., Wells Fargo Bank, N.A., Wells Fargo Home Mortgage ,
16 Inc., U.S. Bank, N.A., Wachovia Mortgage, FSB, Bank of America, N.A., ING Bank, FSB,
17 Citibank, N.A., Aurora Loan Services, L.L.C., American Home Mortgage Servicing, Inc.,
18 WMC Mortgage Corp., MetLife Home Loans, a division of MetLife Bank, N.A., and/or
19 First Horizon Home Loans, a division of First Tennessee Bank, N.A. in making, causing
20 to be made and/or using the false statements to avoid or decrease transfer taxes as
21 alleged herein. Both the agents who made, caused to be made or used those false
22 statements to avoid payment in full of transfer taxes owed, and the principals on whose
23 behalf the agents were acting at the time those false statements were made, caused to be
24 made or used to avoid payment in full of transfer taxes owed are jointly and severally
25 liable for penalties and taxes that were avoided or underpaid as a result of those false
26 statements.

27 12. The State and its Counties are entitled to receive a portion of the conveyance
28 or transfer taxes which the defendants have wrongfully withheld.

1 13. During the five years immediately preceding the filing of the original
2 complaint herein, and since that time, each of the defendants did not pay the required
3 transfer or conveyance taxes, and knowingly made, used and/or caused to be made or
4 used false representations in order to avoid paying in full those required taxes as alleged
5 herein.

6 14. During the five years immediately preceding the filing of the original
7 complaint herein, and since that time, each of the defendants have intentionally deprived
8 the State and its counties of extensive revenue, and interest thereon, to which the State
9 and its Counties are entitled.

10 15. Each of the defendants is liable for interest on transfer and/or conveyance
11 taxes not paid to the State and its Counties.

12 16. Each of the defendants is liable for having knowingly made, caused to be
13 made and/or used false records and/or statements to conceal, avoid or decrease
14 obligations to pay or transmit money owed to the State for payment of taxes upon the
15 conveyance or transfer of title to real estate in the State.

16 17. Defendant Fannie Mae made, caused to be made or used a false statement in
17 Declaration of Value Forms related to the transfer of property to Fannie Mae by way of
18 Trustee's Deed upon Sale to avoid payment of transfer taxes in each instance, and Fannie
19 Mae used those false records and/or statements to conceal and/or avoid its obligations to
20 pay or transmit money owed to the State for payment of taxes upon the conveyance or
21 transfer of title to real estate in the State by intentionally misrepresenting to the State
22 that defendant Fannie Mae was a government agency exempt from conveyance or
23 transfer taxes.

24 18. Each of the defendants who was the transferor to Fannie Mae and Freddie
25 Mac made, caused to be made or used a false statement in Declaration of Value Forms
26 related to the transfer of property to Fannie Mae by way of Trustee's Deed upon Sale,
27 Corporation Grant Deed or other Deed to avoid payment of transfer taxes in each
28 instance, and Fannie Mae used those false records and/or statements to conceal and/or

1 avoid its obligations to pay or transmit money owed to the State for payment of taxes
2 upon the conveyance or transfer of title to real estate in the State by intentionally
3 misrepresenting to the State that defendant Fannie Mae or Freddie Mac was a
4 government agency exempt from conveyance or transfer taxes.

5 19. The statements and/or records in the Declaration of Value Forms that
6 Fannie Mae and Freddie Mac ("these entities") were exempt from transfer taxes under
7 NRS 375.090 because those entities were government agencies or government entities
8 were false for reason including without limitation as follows:

9 (1) Fannie and Freddie were and are private, for-profit corporations;

10 (2) in foreclosure activities, these entities are not fulfilling a governmental
11 objective;

12 (3) the Government has not retained for itself the permanent right to appoint a
13 majority of the directors of these entities;

14 (4) a majority of the directors of these entities were and are elected by the
15 shareholders;

16 (5) these entities are not instrumentalities for purpose of sovereign immunity;

17 (6) these entities are not instrumentalities for purposes of federal tort claims;

18 and

19 (7) real property of these entities is subject to State and local taxation by federal
20 law.

21 20. Defendants are liable for all acts or omissions of all other defendants.

22 21. Defendants are jointly and severally liable for treble damages for all transfer
23 or conveyance taxes that defendants did not pay in full.

24 22. Defendants are liable for (1) liquidated penalties of between \$5,000 and
25 \$10,000 for each false statement **made or caused to be made** for the purpose of
26 avoiding or decreasing a transfer tax owed upon the recording of a Trustee's Deed Upon
27 Sale, **and** (2) liquidated penalties of between \$5,000 and \$10,000 for each false
28 statement **used** for the purpose of avoiding or decreasing a transfer tax owed upon the

1 recording of a Trustee's Deed Upon Sale. The false statements made and used by each of
2 the defendants to avoid or decrease and obligation owed was either a false statement that
3 the transferee, Fannie Mae or Freddie Mac, was a government agency exempt from
4 taxation or a false statement regarding the amount of transfer tax due.

5 23. On July 1, 2006, the Governor of Nevada certified the population of Washoe
6 County, Nevada, as being 409,085, which pursuant to NRS 375.020 required the transfer
7 tax on each Trustee's Deed Upon Sale, Corporation Grant Deed or other Deed to be paid
8 at the rate of \$1.25 on each \$500 of value instead of the rate of 65 cents on each \$500 of
9 value.

10 24. In Washoe County, since July 1, 2006, each and every defendant that was a
11 transferor/seller or a transferee/buyer of a property by way of Trustee's Deed Upon Sale
12 made, caused to be made or used a false statement regarding the amount of transfer tax
13 due to conceal, avoid or decrease an obligation to pay in full transfer taxes at the rate on
14 which those taxes are owed as described in Paragraph 24 above.

15 25. Defendants are liable for payment of all reasonable attorneys' fees and
16 costs of the State and relators.

17 26. Relators are entitled to recover a percentage of any recovery of the State.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff State of Nevada ex rel. Robert Edward Hager and
20 Andrew J. Ludel respectfully requests that the Court enter judgment in favor of relators,
21 the State and its Counties as follows:

22 1. For treble damages for all transfer or conveyance taxes which were not
23 paid in full as required by State law on any and all conveyances during the five years
24 immediately preceding the filing of the original Complaint herein and after the filing of
25 the original Complaint herein;

26 2. For liquidated penalties of between \$5,000 and \$10,000 for each unpaid
27 and/or underpaid conveyance and or transfer tax on any such conveyances in the five
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

years immediately preceding the filing of the original Complaint herein and after the filing of the original Complaint herein;

3. For liquidated penalties of between \$5,000 and \$10,000 for each act of having knowingly made, used and caused to be made or used, false records and/or statements to conceal, avoid or decrease obligations to pay or transmit money owed to the State for payment of taxes upon the conveyance or transfer of title to real estate in the State, for any such misrepresentation in the five years immediately preceding the filing of the original Complaint herein and after the filing of the original Complaint herein;

4. For pre-judgment interest on all damages awarded;


5. For reasonable costs and attorneys' fees;


6. For an award to relators Robert Edward Hager and Andrew J. Ludel in an amount consistent with the False Claims Act of Nevada; and

7. For such other relief that the Court or jury deems just and equitable including, but not limited to injunctive relief to compel Defendants to cease defrauding the State, or otherwise avoiding and or concealing their obligation to pay conveyance or transfer taxes pursuant to NRS Chapter 375.

Dated this 2nd day of June, 2010.


Robert R. Hager SBN 1482


Treva Hearne SBN 4450


Mark Mausert SBN 2398