

NO. 10-5523-JCC

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**SUPREME COURT FOR THE STATE OF WASHINGTON**

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KRISTIN BAIN,

Petitioner,

v.

METROPOLITAN MORTGAGE GROUP INC. et al.,

Respondents.

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**MOTION OF ATTORNEY GENERAL OF WASHINGTON FOR  
PERMISSION TO FILE AN *AMICUS CURIAE* BRIEF IN  
SUPPORT OF PETITION**

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**I. IDENTITY OF MOVING PARTY**

The Attorney General of Washington is the moving party.

**II. RELIEF SOUGHT**

The Attorney General of Washington moves this Court for permission to file the accompanying *amicus curiae* brief.

**III. GROUNDS FOR RELIEF AND ARGUMENT**

The Attorney General submits this Motion pursuant to RAP 10.1(e), 10.6, and 17.1(a).

**A. Interest of Amicus Curiae**

The Attorney General is interested in this appeal because it raises matters that affect the public interest. This appeal concerns the extent to which Washington's Consumer Protection Act (CPA) protects borrowers from unfair and deceptive practices on the part of loan beneficiaries seeking to foreclose on borrowers; specifically, it raises certified questions of whether defendant Mortgage Electronic Registration Systems, Inc. [MERS] is a lawful beneficiary under the Deed of Trust Act (DTA), and whether MERS acting as a beneficiary violates the CPA. As the state agency charged with enforcing the DTA, RCW 61.24.172(2) and the CPA, RCW 19.86.080, the Attorney General is interested in matters that will influence the extent to which these acts protect consumers facing foreclosure.

**B. Familiarity with the Issues and the Scope of the Arguments Presented.**

The Attorney General is familiar with the issues raised in this appeal and with the scope of the arguments presented. The Attorney General received notice of the certified questions. The Attorney General has reviewed the briefs filed by the parties, and is familiar with the arguments that are raised. The Attorney General has expertise in the DTA and the CPA through its statutory enforcement authority.

**C. Issue of Concern to *Amicus Curiae*.**

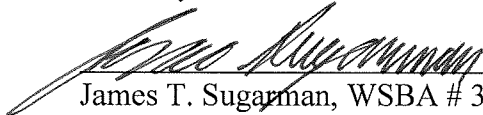
This matter consists of three certified questions concerning foreclosures in the State of Washington: whether defendant MERS, a party that does not hold the promissory note, can be a beneficiary under the Deed of Trust Act, RCW 61.24; if not, what affect does this finding have for acts taken by MERS under the Deed of Trust Act; and, may a homeowner use the CPA for relief stemming from MERS unlawful act under the DTA? The Attorney General asks this Court to hold that MERS is not a lawful beneficiary and that homeowners may possess a claim under the CPA. We do not address the affect that MERS' unlawful status may have on acts taken under the DTA because that question is too fact specific to be answered generically.

**D. Additional Briefing Is Necessary to Address the Issue of *Amicus Curiae*.**

The Attorney General believes that additional argument on this issue is necessary because the Court's decision in this case could have a significant impact on the public interest and the on-going effectiveness of the DTA and the CPA as a means to foster a fair and honest market place. As the state agency charged with enforcement of the DTA and the CPA, the Attorney General is in a position to more fully analyze this issue for the Court's benefit.

RESPECTFULLY SUBMITTED this 14th day of February, 2012.

ROBERT M. MCKENNA  
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