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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TIFFANY SMITH, on behalf of herself and  
others similarly situated,

Plaintiff,

v.

SUN TRUST MORTGAGE, INC.,

Defendant.

No. 14-2-08964-3 SEA

COMPLAINT FOR BREACH OF  
CONTRACT, VIOLATION OF THE  
CONSUMER PROTECTION ACT AND  
INJUNCTIVE RELIEF

CLASS ACTION PURSUANT TO CR  
23(b)(2) OR 23(b)(3)

**I. INTRODUCTION**

1. Plaintiff, Tiffany Smith, on behalf of herself and the class of all those similarly situated, as identified below, brings this action for breach of contract, violation of Washington’s Consumer Protection Act, statutory penalties and injunctive relief under Washington State law against defendant SunTrust Mortgage, Inc. (“SunTrust”), and in support thereof states the following upon information and belief:

**II. JURISDICTION AND VENUE**

2. Plaintiff Tiffany Smith is a resident of Selah, Washington.



1 person or persons legally entitled to it. Such person or persons shall pay any  
2 recordation costs and the Trustee's fee for preparing the reconveyance.

3 12. On or about September 9, 2010, Plaintiff refinanced her home and paid off the  
4 loan secured by the Deed of Trust referred to in Paragraph 10 above. In order to pay off her  
5 home loan, plaintiff needed to know the amount owed thereon.

6 13. On September 1, 2010, SunTrust provided Plaintiff a Payoff Statement for the  
7 loan. In that Payoff Statement, SunTrust demanded that Plaintiff pay it a \$101 Recording Fee  
8 as part of the "Total Amount to Pay Loan in Full."

9 14. The September 1, 2010 Payoff Statement warned Plaintiff that "short payoffs  
10 will be returned."  
11

12 15. Plaintiff paid the \$101 Recording Fee required by the Payoff Statement. The  
13 actual cost to record the Deed of Reconveyance, which Defendant was permitted to charge  
14 under the Deed of Trust, was \$62. Of the remaining \$39 charged by Defendant, \$14 was the  
15 fee to record a Substitution of Trustee form, a fee that was not secured by the Deed of Trust  
16 and that SunTrust was not authorized or permitted to charge Plaintiff under the Deed of  
17 Trust. No other documents were recorded that would account for the remaining \$25 of the  
18 Recording Fee charged by Defendant, and that portion of the fee also was not secured or  
19 authorized by the Deed of Trust.  
20

21 16. On the same date as the Deed of Reconveyance was recorded, Mortgage  
22 Electronic Registration Systems, Inc. ("MERS") as the alleged successor beneficiary of  
23 SunTrust, recorded the Substitution of Trustee form appointing Nationwide Title Clearing,  
24 Inc. as the successor trustee for Plaintiff's Deed of Trust. MERS is not a valid beneficiary of  
25 Deeds of Trust under Washington law and is without power or authority to appoint a  
26 successor trustee. Any fees associated with recording the Substitution of Trustee or charged

1 by the successor trustee for reconveyance services were invalid, not secured by the Deed of  
2 Trust, and could not be charged to Plaintiff.

3 17. SunTrust engaged in and continues to engage in similar practices and  
4 transactions with members of the class, as described herein.

5 18. Plaintiff's Deed of Trust contains a provision requiring her to give written  
6 notice of, and the opportunity to resolve, any complaints she has concerning SunTrust's  
7 actions under the Deed of Trust or alleging that SunTrust breached any provision of, or any  
8 duty owed by reason of, the Deed of Trust. Such provision is invalid as being against public  
9 policy and is both procedurally and substantively unconscionable. However, without  
10 acknowledging the validity of the provision, Plaintiff provided SunTrust the required written  
11 notice of the complaints asserted herein and the opportunity to take corrective action.  
12 SunTrust did not take any corrective action and did not resolve Plaintiff's complaints.  
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#### 15 IV. CLASS ALLEGATIONS

16 19. Plaintiff seeks to represent a class consisting of all persons who, within the  
17 applicable statute of limitations, paid off loans to Defendant and were charged and paid  
18 Recording Fees or similarly denominated fees other than the actual cost to record the Deeds  
19 of Reconveyance, in connection with paying off a loan secured by a Deed of Trust on real  
20 property in the state of Washington, where the Deed of Trust contained the following or  
21 substantially similar language:  
22

23 Upon payment of all sums secured by this Security Instrument, Lender shall  
24 request Trustee to reconvey the Property and shall surrender this Security  
25 Instrument and all notes evidencing debt secured by this Security Instrument  
26 to Trustee. Trustee shall reconvey the Property without warranty to the  
person or persons legally entitled to it. Such person or persons shall pay any  
recordation costs and the Trustee's fee for preparing the reconveyance.

1           20.     Plaintiff brings this action on behalf of herself and all other persons similarly  
2 situated pursuant to Superior Court Civil Rule 23(b)(2) or, alternatively, Civil Rule 23(b)(3).  
3 The class that Plaintiff seeks to represent is composed of potentially thousands of individuals.

4           21.     Joinder of all members of the class as defined herein is impractical.

5           22.     There are common issues of law and fact affecting the class with respect to the  
6 application of the law pertaining to Plaintiff's breach of contract and Consumer Protection  
7 Act claims, and the determination of restitution and damages, because of Defendant's  
8 conduct.

9           23.     Plaintiff's claims alleging breach of contract and violation of the Consumer  
10 Protection Act, RCW 19.86, are typical of the claims of the class since Plaintiff and all class  
11 members sustained damages arising from Defendant's wrongful conduct in violation of law  
12 as stated in this Complaint.

13           24.     Plaintiff will fairly and adequately protect the interests of the class. Plaintiff  
14 has no interests that are antagonistic to or in conflict with those of the members of the class  
15 that plaintiff seeks to represent.

16           25.     The interests of the class are adequately represented by Plaintiff and her  
17 counsel. Plaintiff has retained counsel competent and experienced in class and consumer  
18 litigation.

19           26.     This action seeks to enjoin the practices at issue and provide for equitable  
20 restitution of fees illegally collected and incidental damages.

21           27.     This action also is maintainable as a class action because the questions of law  
22 and fact common to the members of the class predominate over any questions affecting only  
23 individual members and because a class action is superior to other available methods for the  
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1 fair and efficient adjudication of the controversy.. Specifically, all four of the criteria set  
2 forth in CR 23(b)(3) have been satisfied in this case. First, the members of the class have  
3 little, if any, interest in individually controlling the prosecution of separate actions. Second,  
4 plaintiff's counsel is not aware of any other litigation concerning the controversy already  
5 commenced by members of the class. Third, it is desirable to concentrate the litigation of  
6 these claims in this forum given their relationship to the State of Washington. Fourth, few  
7 difficulties likely will be encountered in the management of the class action.  
8

9  
10 **V. FIRST CAUSE OF ACTION:  
BREACH OF DEED OF TRUST CONTRACT**

11 28. Plaintiff's and class members' Deeds of Trust are contracts, which define the  
12 rights of the parties including what charges, if any, Defendant may assess upon payoff of the  
13 loans. The Deeds of Trust did not permit Defendant to assess the fees identified hereinwith  
14 the exception of actual fees to record Deeds of Reconveyance.

15 29. Defendant breached its contracts with Plaintiff and the class by requiring  
16 Plaintiff and members of the class to pay these fees at the time the loans of the Plaintiff and  
17 the class members were paid off.  
18

19 30. As a proximate result of the breaches of contract by Defendant, Plaintiff and  
20 the class members have been wronged in that Plaintiff and the class paid the fees referenced  
21 herein. Plaintiff and the class are entitled to restitution of fees illegally collected pursuant to  
22 said Deeds of Trust and other documents. Plaintiff and the class are also entitled to  
23 incidental damages in an amount to be proven at trial.  
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1 class also seek an award of exemplary damages in the amount of three times the amount of  
2 restitution paid.

3 **RELIEF SOUGHT**

4 WHEREFORE, Plaintiff requests relief as follows:

5 A. That the Court certify the identified class pursuant to Civil Rule 23(b)(2) or  
6 23(b)(3) with Plaintiff as the class representative and the undersigned as class counsel;

7 B. That the Court enter a judgment in favor of Plaintiff and the class against  
8 Defendant on her class claims, directing equitable restitution of fees illegally collected and  
9 awarding damages, including exemplary damages pursuant to RCW 19.86.090;

10 C. That the Court enter an injunction permanently forbidding Defendant from  
11 committing the practices alleged herein in the future or declare the same unlawful and award  
12 incidental damages;

13 D. That the Court award Plaintiff and the class their costs, including reasonable  
14 attorneys' fees pursuant to RCW 19.86.090 and applicable contracts;

15 E. For pre-judgment interest at the highest allowable rate on all liquidated sums,  
16 and post-judgment interest on the entire judgment amount awarded at the highest allowable  
17 rate; and

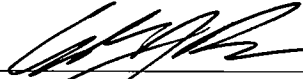
18 F. That the Court award such other and further relief that the Court deems just  
19 and equitable.  
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DATED this 28<sup>th</sup> day of March, 2014.

SCHROETER, GOLDMARK & BENDER

  
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