

7. Defendant, Brian W. Thompson (hereinafter referred to as "Mr. Thompson") is an individual residing at 288 Iduna Lane, Amherst, Hampshire County, Massachusetts, is President of Commerce and is a director and CEO of 1-800-East West.
8. Defendant, Samuel R. Desimone (hereinafter referred to as "Mr. Desimone") is an individual residing at 62 Viele Avenue, Worcester, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
9. Defendant, William F. Sullivan (hereinafter referred to as "Mr. Sullivan") is an individual residing at 74 Monadnock Road, Worcester, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
10. Defendant, Michael P. Angelini (hereinafter referred to as "Mr. Angelini") is an individual residing at 16 Military Road, Worcester, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
11. Defendant, R. Norman Peters (hereinafter referred to as "Mr. Peters") is an individual residing at 8 Old Lantern Circle, Paxton, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
12. Defendant, George J. Isaac (hereinafter referred to as "Mr. Isaac") is an individual residing at 36 Whisper Drive, Worcester, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
13. Defendant, Herbert G. Ingram (hereinafter referred to as "Mr. Ingram") is an individual residing at 74 Monadnock Road, Worcester, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
14. Defendant, Pamela Massad (hereinafter referred to as "Ms. Massad") is an individual residing at 9 Jefferson Road, Westboro, Worcester County, Massachusetts and is a director of both Commerce and 1-800-East West.
15. Defendant, William F. Burke (hereinafter referred to as "Mr. Burke") is an individual residing at 81 Hughs Lane, Worcester, Worcester County, Massachusetts and is a director of Commerce. (the Directors and Officers of Commerce and 1-800 East West named herein are hereinafter collectively referred to as "the Directors")
16. Mr. Gallagher and Ms. Gilmore were founders and owners of a mortgage company commonly known as East West Mortgage Company.
17. On or around November of 2000, Commerce Bank and 1-800-East West (hereinafter collectively referred to as "the Banks") entered into an agreements with Ms. Gilmore, Mr. Gallagher (Ms. Gilmore's husband) and the Gilmore Family Trust for the purchase of East West Mortgage Company (hereafter referred to as the "Purchase Agreements").

18. On or about November of 2000, Commerce and its newly formed and wholly owned subsidiary, 1-800-East West (hereinafter collectively referred to as "the Banks"), purchased certain assets of East West Mortgage Company.
19. As part of the purchase of East West Mortgage Company assets, the Banks entered into certain agreements regarding, in part, Ms. Gilmore's and Mr. Gallagher's employment with and interests in, Commerce Bank and 1-800 East West Mortgage Company, Inc (hereinafter referred to as "the Bank Agreements").
20. Pursuant to the Bank Agreements the Banks owed Mr. Gallagher and Ms. Gilmore a fiduciary duty of utmost good faith and loyalty.
21. The Bank agreements contained provisions restricting Ms. Gilmore's and Mr. Gallagher's ability to engage in the banking, lending or mortgage business. Those "non compete" provisions were overly broad, unreasonable in scope and time and had the sole effect of protecting the Banks from ordinary competition.
22. Subsequent to entering into the Bank Agreements, the Banks and the Directors willfully conspired together and with others to further their own gain by unlawfully depriving Ms. Gilmore and Mr. Gallagher of their contractual rights, benefits and advantageous business relations.
23. Subsequent to entering into the Bank Agreements, the Banks and certain Directors willfully conspired together and with others to further their own gain by unlawfully directing East West business to Mr. Peters, Ms. Massad and Mr. Sullivan and thereby depriving Ms. Gilmore and Mr. Gallagher of their contractual rights, benefits and advantageous business relations.
24. Subsequent to entering into the Bank Agreements, the Banks and the Directors intentionally and wrongfully breached the Purchase Agreements and Bank Agreements and deprived Ms. Gilmore and Mr. Gallagher of their contractual rights, benefits and advantageous business relations.
25. Subsequent to entering to the Bank Agreements, the Banks entered into an agreement with East West Title Company Inc. whereby the Banks agreed to supply business to East West Title if East West Title opened offices at the Banks' locations. (hereinafter referred to as the "the Title Company Agreements").
26. East West Title incurred substantial expenses in fulfilling their obligations under the Title Company Agreement and opening offices at Bank locations.
27. The Banks breached their obligations under the Title Company Agreement and wrongfully discontinued doing business with East West Title.
28. On or about November of 2003, Ms. Gilmore notified the Board of Directors of Commerce Bank and 1-800 East West that 1-800 East West's tax returns incorrectly stated profits and losses and therefor were in violation of both federal and state tax laws and regulations.

29. Consequently, Ms. Gilmore refused to execute the tax returns on behalf of Commerce and 1-800-East West.
30. On several occasions in 2003, Ms. Gilmore notified the Board of Directors of Commerce Bank and 1-800 East West that the Banks' lending practices were in violation of Federal and State laws and regulations.
31. On several occasions in 2003, Ms. Gilmore notified the Board of Directors of Commerce and 1-800 East West that the Banks were in willful violation of their Bank Agreements with Ms. Gilmore. Ms. Gilmore also notified Commerce and 1-800 East West that the Banks were in willful violation of their Bank Agreements with Mr. Gallagher.
32. On or about January of 2004, the Banks and the Directors intentionally and wrongfully discharged Ms. Gilmore and Mr. Gallagher from the Banks' employment and willfully violated the Purchase Agreements and the Bank Agreements.
33. On or about January of 2004, the Banks and the Directors, in retaliation for Ms. Gilmore's disclosure of the Banks' unlawful tax and lending practices (hereinafter referred to as "whistle blowing"), intentionally and wrongfully discharged Ms. Gilmore from the Banks' employment and willfully violated the Purchase Agreements and the Bank Agreements.
34. On several occasions and ongoing since November of 2000, the Banks and the Directors, in violation of M.G.L. 93a, willfully breached the Bank Agreements and the Purchase Agreement.
35. On or about January of 2004, the Banks and the Directors, in violation of the "Wage Act", wrongfully withheld amounts due and owing to Ms. Gilmore and Mr. Gallagher.
36. Following Ms. Gilmore's discharge from the Banks' employ, Ms. Gilmore and Mr. Gallagher entered into a Settlement Agreement with the Banks (hereinafter referred to as the "Settlement Agreement").
37. Shortly thereafter, the Banks and the Directors willfully breached and refuse to honor the Settlement Agreement.
38. On or about May of 2005, the Banks, Mr. Gallagher and Ms. Gilmore entered into a "Standstill Agreement". The Standstill Agreement required the Banks to provide an accounting and to make certain payments to Mr. Gallagher and Ms. Gilmore pursuant to that accounting.
39. The Banks and the Directors willfully and wrongfully breached the Standstill Agreement.

40. At all times relevant to this counterclaim, the representatives of Commerce Bank exercised active, direct and pervasive control of all of the activities of 1-800-East West including but not limited to the activity commonly known as regulatory "compliance".
41. At all times relevant to this counterclaim, Commerce Bank and 1-800-East West engaged in a confused intermingling of activity between the two corporations while engaged in a common enterprise.
42. At all times relevant to this counterclaim Commerce Bank completely disregarded the separate nature of the corporate entities and caused 1-800 East West to at all times, act as its agent.
43. On or about November of 2004, Commerce Bank, in disregard of 1-800 East West's separate corporate identity, began to loot the profits and assets of 1-800-East West to the detriment 1-800 East West and 1-800-East West's creditors.
44. On or about 2005, Commerce Bank caused 1-800-East West to convey a substantial asset, "I Sold My House.Com" to a corporate insider, Mr. Massad, for substantially less than fair market value.
45. Ms. Gilmore, Mr. Gallagher, and East West Title have been unjustly damaged by Commerce Bank's disregard of and control of 1-800-East West.

Count I

Breach of Contract (Gallagher and Gilmore)

46. Plaintiffs, Ms. Gilmore and Mr. Gallagher reallege and incorporate herein the allegations contained in paragraphs 1 through 45.
47. The Banks breached their obligations pursuant to the Purchase Agreement, the Settlement Agreement, the Standstill Agreement and the Bank Agreements.
48. Ms. Gilmore and Mr. Gallagher have been damaged by the Banks' breach of the Purchase Agreements and the Bank Agreements.
49. The Banks are jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages for their breach of contract, plus interest from the date of breach, attorney's fees and costs.

Count II

Breach of Fiduciary Duty Owed by Banks to Gallagher and Gilmore

50. Plaintiffs, Ms. Gilmore and Mr. Gallagher reallege and incorporate herein the allegations contained in paragraphs 1 through 49.
51. The Banks breached the fiduciary duty that they owed to Mr. Gallagher and Ms. Gilmore.

52. Ms. Gilmore and Mr. Gallagher have been damaged by the Banks' breach of their fiduciary duty.
53. The Banks are jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages for their breach fiduciary duty, plus interest from the date of breach, attorney's fees and costs.

Count III
Quantum Meruit (Gallagher and Gilmore)

54. Plaintiffs, Ms. Gilmore and Mr. Gallagher, reallege and incorporate herein the allegations contained in paragraphs 1 through 53.
55. The Banks breached their obligations pursuant to the Purchase Agreement and the Agreements.
56. The Banks have been unjustly enriched by the Banks' breach of the Purchase Agreements and Agreements.
57. The Banks are jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages in quantum meruit for their breach of contract, plus interest from the date of breach, attorney's fees and costs.

Count IV
Breach of Contract (East West Title)

58. Plaintiff, East West Title, realleges and incorporates herein the allegations contained in paragraphs 1 through 57.
59. The Banks breached their obligations under the Title Company Agreement and wrongfully discontinued doing business with East West Title.
60. East West Title was damaged by the Banks' breach of contract.
61. The Banks are jointly and severally liable to East West Title for damages, costs, interest from the date of breach and attorney's fees.

Count V
Unfair and Deceptive Trade Practices (East West Title)

62. Plaintiff, East West Title, realleges and incorporates herein the allegations contained in paragraphs 1 through 61.
63. The Banks' intentional breach of the Title Company Agreement was an unfair and deceptive trade practice pursuant to M.G.L. c. 93A, sec. 11.
64. East West Title was damaged by the Banks' unfair and deceptive trade practice.

65. The Banks are jointly and severally liable to East West Title for multiple damages, costs, interest from the date of the harm and attorney's fees.

**Count VI
Wrongful Discharge**

66. Plaintiffs, Ms. Gilmore and Mr. Gallagher reallege and incorporate herein the allegations contained in paragraphs 1 through 65.
67. The Banks wrongfully discharged Ms. Gilmore and Mr. Gallagher from their employment
68. Ms. Gilmore and Mr. Gallagher have been damaged by the Banks' wrongful discharge.
69. The Banks are jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages resulting from their wrongful discharge, plus interest from the date of the wrongful discharge, attorney's fees and costs.

**Count VII
Whistleblower
(Wrongful discharge against public policy)**

70. Plaintiff, Ms. Gilmore, realleges and incorporates herein the allegations contained in paragraphs 1 through 69.
71. The Banks wrongfully discharged Ms. Gilmore from their employment in retaliation for Ms. Gilmore's disclosure of a practice, which she reasonably believed, was in violation of laws, rules and/or regulations promulgated pursuant to law.
72. Ms. Gilmore was damaged by the Banks' retaliatory discharge.
73. The Banks are individually, jointly and severally liable to Ms. Gilmore for multiple damages, attorney's fees and costs resulting from their retaliatory discharge.

**Count VIII
Wage Act, M.G.L. c. 149 sec. 148**

74. Plaintiffs, Ms. Gilmore and Mr. Gallagher, reallege and incorporate herein the allegations contained in paragraphs 1 through 73.
75. The Banks, in violation of M.G.L. c. 149 sec. 148 willfully failed to pay Ms. Gilmore and Mr. Gallagher amounts due upon discharge.
76. Ms. Gilmore and Mr. Gallagher were damaged by the Banks' willful violation of M.G.L. c. 149 sec 148.

77. The Banks are individually jointly and severally liable to Ms. Gilmore and Mr. Gallagher for multiple damages, attorney's fees and costs pursuant to M.G.L. c. 149 sec 148.

Count IX

Unfair and Deceptive Trade Practice (Gilmore & Gallagher)

78. Plaintiffs, Ms. Gilmore and Mr. Gallagher, reallege and incorporate herein the allegations contained in paragraphs 1 through 77.
79. The Banks willful violations of the Agreements and Purchase Agreements are an unfair and deceptive trade practice pursuant to M.G.L. 93a.
80. Ms. Gilmore and Mr. Gallagher have been damaged by the Banks' violations of M.G.L. c. 93a.
81. The Banks are individually jointly and severally liable to Ms. Gilmore and Mr. Gallagher for multiple damages, attorney's fees and costs pursuant to M.G.L. c. 93a.

Count X

Sham Corporation

82. Plaintiffs, Ms. Gilmore, Mr. Gallagher and East West Title, reallege and incorporate herein the allegations contained in paragraphs 1 through 81.
83. At all times relevant to this counterclaim, Commerce Bank, as 1-800-East West's sole shareholder, exercised pervasive control over 1-800 East West, engaged in a confused intermingling of activity and finance between the two corporations while engaged in a common enterprise and completely disregarded the separate nature of the corporate entities.
84. Ms. Gilmore and Mr. Gallagher have been unjustly damaged by Commerce Bank's disregard of 1-800 East West's separate corporate identity.
85. Commerce Bank is liable to Ms. Gilmore, Mr. Gallagher and East West Title for any amounts due to Ms. Gilmore and Mr. Gallagher from 1-800 East West.

Count XI

Tortious Interference with Contractual Relations

86. Plaintiffs, Ms. Gilmore and Mr. Gallagher reallege and incorporate herein the allegations contained in paragraphs 1 through 85.
87. Commerce Bank, 1-800 East West and the Directors intentionally and wrongfully interfered with Ms. Gilmore's and Mr. Gallagher's contractual rights.

88. Ms. Gilmore and Mr. Gallagher were damaged by the Banks' and the Directors' wrongful interference.
89. The Banks and the Directors are individually, jointly and severally liable to Ms. Gilmore for damages, costs and attorney's fees arising from the Banks' wrongful interference with Ms. Gilmore's and Mr. Gallagher's contractual rights.

Count XII

Tortious Interference with Advantageous Business Relationships

90. Plaintiffs, Ms. Gilmore and Mr. Gallagher, reallege and incorporate herein the allegations contained in paragraphs 1 through 89.
91. Commerce Bank, 1-800 East West and the Directors intentionally and wrongfully interfered with Ms. Gilmore's and Mr. Gallagher's advantageous business relationships.
92. Ms. Gilmore and Mr. Gallagher were damaged by the Banks' wrongful interference.
93. The Banks and Directors are individually, jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages, costs and attorney's fees arising from the Banks' wrongful interference with Ms. Gilmore's and Mr. Gallagher's advantageous business relationships.

Count XIII

Civil Conspiracy

94. Plaintiffs, Ms. Gilmore and Mr. Gallagher, reallege and incorporate herein the allegations contained in paragraphs 1 through 93.
95. Commerce Bank, 1-800 East West and the Directors conspired to interfere with and deprive Ms. Gilmore of her contractual rights and advantageous business relationships.
96. Ms. Gilmore and Mr. Gallagher were damaged by the Banks' conspiracy.
97. The Banks and the Directors are individually, jointly and severally liable to Ms. Gilmore and Mr. Gallagher for damages, costs and attorney's fees arising from the Banks' conspiracy against Ms. Gilmore.

Count XIV

Declaratory Judgment

(Non Compete Agreement Void)

98. Plaintiffs, Ms. Gilmore and Mr. Gallagher, Plaintiff-in-Counterclaim, realleges and incorporates herein the allegations contained in paragraphs 1 through 98.

99. The Bank Agreements contain provisions that limit Ms. Gilmore's and Mr. Gallagher's ability to engage in the banking, lending or mortgage business. Those "non compete" provisions are void as being overly broad, unreasonable in scope and time, unlawful in purpose and an undue hardship on Ms. Gilmore and Mr. Gallagher.
100. The enforceability of the non-compete provisions of the Bank Agreements is an appropriate issue for declaratory judgment.
101. A declaratory judgment should issue declaring that the non-compete provisions of the Bank Agreements are unenforceable as to Ms. Gilmore and Mr. Gallagher.

Wherefore, Plaintiffs, Ms. Gilmore, Mr. Gallagher and East West Title respectfully demand that this Court:

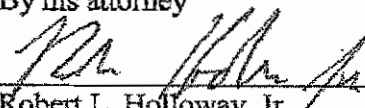
1. Award Ms. Gilmore and Mr. Gallagher damages against the Banks individually, jointly and severally for the Banks' breach or several breaches of contract, including interest from the date of breach, attorney's fees and costs.
2. Award Ms. Gilmore and Mr. Gallagher damages against the Banks individually, jointly and severally for the Banks' breach of fiduciary duty, including interest from the date of breach, attorney's fees and costs.
3. Award Ms. Gilmore and Mr. Gallagher damages against the Banks individually, jointly and severally for the Banks' unjust enrichment, including interest from the date of unjust enrichment, attorney's fees and costs.
4. Award East West Title damages against the Banks individually, jointly and severally for the Banks' breach of contract, including interest from the date of breach, attorney's fees and costs.
5. Award East West Title multiple damages against the Banks individually jointly and severally for their violations of the M.G.L. c. 93a, including interest from the date of breach, attorney's fees and costs.
6. Award Ms. Gilmore and Mr. Gallagher damages against the Banks and Directors individually, jointly and severally for the Banks' wrongful discharge of Ms. Gilmore, including interest from the date of wrongful discharge, attorney's fees and costs.
7. Award Ms. Gilmore damages against the Banks and the Directors individually, jointly and severally for the Banks' retaliatory discharge of Ms. Gilmore, including interest from the date of the retaliatory discharge, attorney's fees and costs.

8. Award Ms. Gilmore and Mr. Gallagher multiple damages against the Banks individually jointly and severally for their violations of the Wage Act, M.G.L. c. 149, including interest from the date of the harm, attorney's fees and costs.
9. Award Ms. Gilmore and Mr. Gallagher multiple damages against the Banks individually jointly and severally for their violations of M.G.L. c. 93a, including interest from the date of the harm, attorney's fees and costs.
10. "Pierce" 1-800 East West's corporate identity and hold Commerce Bank liable for any and all damages due Plaintiffs from 1-800 East West.
11. Award Ms. Gilmore and Mr. Gallagher damages against the Banks and the Directors individually, jointly and severally for their tortious interference with Ms. Gilmore's and Mr. Gallagher's contractual rights including interest, attorney's fees and costs.
12. Award Ms. Gilmore and Mr. Gallagher damages against the Banks and the Directors individually, jointly and severally for their tortious interference with Ms. Gilmore's and Mr. Gallagher's advantageous business relationships including interest, attorney's fees and costs.
13. Award Ms. Gilmore and Mr. Gallagher damages against the Banks and the Directors individually, jointly and severally for their conspiracy against Ms. Gilmore's and Mr. Gallagher's contractual rights including interest from the date of the harm, attorney's fees and costs.
14. Issue a declaratory judgment declaring that the "non-compete" provisions of the Bank Agreements are void and unenforceable as to Ms. Gilmore and Mr. Gallagher.
15. Award such other relief as this Court deems mete and just.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL COUNTS

Respectfully submitted,

John F. Gallagher
By his attorney



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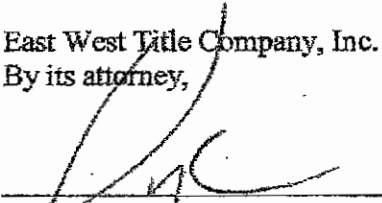
Susan J. Gilmore
By her attorney



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East West Title Company, Inc.
By its attorney,

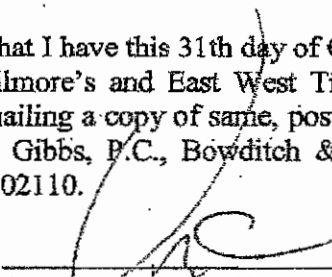


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10/31/06

CERTIFICATE OF SERVICE

I, Orestes G. Brown, hereby certify that I have this 31th day of October 2006, served Plaintiffs John F. Gallagher's, Susan J. Gilmore's and East West Title Company, Inc.'s Amended Complaint upon Defendants by mailing a copy of same, postage prepaid, to their attorney, David H. Gibbs, Esq., David H. Gibbs, P.C., Bowditch & Dewey, LLP, One International Place, 44th Floor, Boston, MA 02110.



Orestes G. Brown, Esq.