

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-03565-STV

ROBERT REED REICHERT as Trustee of the Robert Reed Reichert Trust,

Plaintiff,

v.

**THOMAS M. SMITH, a/k/a THOMAS MATTHEW SMITH,  
a/k/a THOMAS MATTHEW SMITH III, an individual;  
SILVER LEAF MORTGAGE, INC., a Colorado corporation;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation;  
AMERICAN ADVISORS GROUP, a California Corporation;  
UNITED STATES OF AMERICA;  
DEBBY MORGAN, AS PUBLIC TRUSTEE FOR LARIMER COUNTY, COLORADO;**  
and

All unknown persons who claim any interest in the subject matter of this action.

Defendants.

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**PLAINTIFF'S SECOND AMENDED COMPLAINT**

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PLAINTIFF, Robert Reed Reichert, as Trustee of the Robert Reed Reichert Trust, by and through his undersigned counsel, Coan, Payton & Payne, LLC, hereby states for his *Second Amended Complaint* against the above-captioned Defendants as follows:

**I.  
PARTIES, VENUE AND JURISDICTION**

1. Plaintiff Robert Reed Reichert ("Reichert" or "Plaintiff") is an individual serving as Trustee of the Robert Reed Reichert Trust, dated January 18, 2012, with an address of 6315 Chipper Lane, Loveland, Larimer County, Colorado 80537.
2. Defendant Thomas M. Smith a/k/a Thomas Matthew Smith a/k/a Thomas Matthew Smith III ("Smith") is an individual residing at P.O. Box 7685, Loveland, Larimer County, Colorado 80537.

**EXHIBIT 1**

3. Defendant Silver Leaf Mortgage, Inc. (“Silver Leaf”) is a Colorado corporation with a principal place of business at 6972 S. Vine Street, Suite 366, Centennial, Arapahoe County, Colorado 80122.
4. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware corporation with an address of P.O. Box 2026, Flint, Michigan 48501-2026. MERS is named as a Defendant by interest through operation of deed(s) of trust.
5. Defendant American Advisors Group (“American”) is a California corporation with a principal place of business at 3800 W. Chapman Avenue, 3<sup>rd</sup> Floor, Orange, California 92868. American is named as a Defendant by interest through operation of deed(s) of trust.
6. Defendant United States of America (“United States”) is named as a Defendant by interest through operation of deed(s) of trust, specifically the deed of trust that was recorded for the benefit of the Federal Housing Commissioner for the U.S. Department of Housing and Urban Development (the “Federal Housing Commissioner”). A proceeding against property in which a federal agency has an interest is a suit against the United States. Here, sovereign immunity is waived for the United States pursuant to 28 U.S.C. § 2409a and 28 U.S.C. § 2410.
7. Defendant Debby Morgan, in her capacity as Public Trustee of Larimer County, Colorado, the county in which the Property is located, is named as a Defendant by interest through operation of deed(s) of trust, with an address of 125 S. Howes Street, Suite 501, Fort Collins, Colorado 80522.
8. When Plaintiff initiated this matter, venue was proper in the Larimer County District Court pursuant to C.R.C.P. 98(a) and (c).
9. When Plaintiff initiated this matter, subject matter and personal jurisdiction was proper in the Larimer County District Court pursuant to C.R.S. § 13-1-124(1)(a), (b) and (d).
10. Venue and jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1444.

## II. GENERAL ALLEGATIONS

11. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 10, inclusive, as if set forth fully herein.
12. Smith is the fee-simple owner of the following described real property:

**THAT PORTION OF THE WEST 1/2 OF SECTION 19, TOWNSHIP  
5 NORTH, RANGE 69 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF  
LARIMER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF SAID SECTION 19 SOUTH 1322.30 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE ALONG SAID NORTH LINE SOUTH 88°45'26" EAST 2917.14 FEET, MORE OF LESS, TO THE EAST LINE OF SAID WEST HALF OF SAID SECTION; THENCE ALONG SAID EAST LINE SOUTH 01°22'39" WEST 614.32 FEET TO THE TRUE POINT OF BEGINNING;**

**THENCE NORTH 88°45'26" WEST 930.61 FEET THENCE NORTH 03°01'10" EAST 614.61 FEET, MORE OR LESS, TO SAID NORTH LINE OF SAID SOUTH HALF OF THE NORTHWEST QUARTER; THENCE ALONG SAID NORTH LINE SOUTH 88°45'26" EAST 528.65 FEET, MORE OR LESS, TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED RECORDED MAY 7, 1969 IN BOOK 1408 PAGE 554, RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY AND SOUTHERLY LINE OF SAID LAND RECORDED IN SAID BOOK SOUTH 01°22'39" WEST 340.00 FEET; THENCE SOUTH 88°45'26" EAST 384.35 FEET, MORE OR LESS, TO SAID EAST LINE OF SAID WEST HALF; THENCE ALONG SAID EAST LINE SOUTH 01°22'39" WEST 274.32 FEET TO THE TRUE POINT OF BEGINNING.**

(Hereinafter, the "Property.")

13. Smith and Nicole A. Hicks ("Hicks") executed that certain Contract to Buy and Sell Real Estate dated June 29, 2018 (the "Contract").
14. Hicks is Plaintiff's daughter.
15. Plaintiff's residence is adjacent to the Property.
16. Smith has been acquainted with Hicks and Plaintiff for a number of years due to their relationship as neighbors.
17. Smith's wife, Shirley J. Smith, is deceased.
18. Smith is elderly.
19. Prior to executing the Contract, Smith expressed to Hicks that he was having financial difficulties and was considering a reverse mortgage for the Property.

20. Hicks suggested instead that she purchase the Property from Smith for a below-market value, with the added consideration that he may continue to reside rent-free at the Property for the remainder of his life.
21. Smith agreed with Hicks's suggestion, and they proceeded with negotiations, resulting in the Contract.
22. The Contract was an agreement for Smith to sell the Property to Hicks, and for Hicks to purchase the Property from Smith.
23. The purchase price for the Property under the Contract is \$220,000.00 (the "Purchase Price").
24. By Contract Assignment dated December 3, 2018 (the "Assignment"), Hicks assigned her interest in the Contract to Plaintiff.
25. By Residential Lease dated December 3, 2018 (the "Lease"), Plaintiff agreed to lease the Property to Smith free of charge until Smith's death or vacation of the Property.
26. The Lease was a term negotiated by the parties as additional consideration for the transaction, in addition to the Purchase Price.
27. The deadline for closing under the Contract was January 1, 2019.
28. Closing was scheduled for December 28, 2018.
29. On December 17, 2018, at approximately 7:30 p.m., Hicks went to the Property to speak with Smith to confirm closing.
30. Hicks instead found Jim Doyle ("Doyle"), who represented himself to be an agent and employee of Silver Leaf.
31. Silver Leaf is a company engaged in reverse mortgage brokerage services.
32. That evening, after Hicks reminded Doyle that the Property was under Contract, Doyle informed Hicks that "[her] contract doesn't mean shit."
33. On or about December 17, 2018, Doyle told Smith that (Smith) he had no obligation to close under the Contract.
34. Doyle and Silver Leaf knew about the existence of the Contract and its terms.
35. Plaintiff and Hicks appeared at closing on December 28, but Smith did not. Smith would not return Hicks's calls either shortly before or after closing.

36. Plaintiff complied with all terms of the Contract, and was ready, willing, and able to purchase the Property from Smith at Closing.
37. On December 26, 2018, Smith executed an Adjustable Rate Home Equity Conversion Deed of Trust in favor of American in the amount of \$675,000 (the “First Reverse Mortgage”).
38. MERS is named as the beneficiary under the First Reverse Mortgage.
39. The First Reverse Mortgage was recorded in the records of the Larimer County, Colorado, Clerk and Recorder on January 3, 2019, at Reception No. 20190000432.
40. The Public Trustee for Larimer County, Colorado, is named as Trustee in the First Reverse Mortgage.
41. Upon information and belief, American loaned money to Smith by way of a brokerage agreement with Silver Leaf.
42. Silver Leaf benefitted financially from the loan from American to Smith, which loan was secured by the First Reverse Mortgage.
43. On December 26, 2018, Smith also executed an Adjustable Rate Home Equity Conversion Second Deed of Trust in favor of the Federal Housing Commissioner in the amount of \$675,000 (the “Second Reverse Mortgage”).
44. The Second Reverse Mortgage was recorded in the records of the Larimer County, Colorado, Clerk and Recorder on January 3, 2019, at Reception No. 20190000433.
45. The Public Trustee for Larimer County, Colorado, is named as Trustee in the Second Reverse Mortgage.
46. Upon information and belief, the Federal Housing Commissioner loaned money to Smith by way of a brokerage agreement with Silver Leaf.
47. Upon information and belief, Silver Leaf benefitted financially from the loan from the Federal Housing Commissioner to Smith, which loan was secured by the Second Reverse Mortgage.

**III.**  
**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract against Defendant Smith)**

48. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 47 inclusive, as if set forth fully herein.
49. The Contract is a binding and enforceable contract by and between Plaintiff and Smith.

50. On December 26, 2018, Smith materially breached the Contract by executing the First Reverse Mortgage and the Second Reverse Mortgage.
51. On December 28, 2018, Smith materially breached the Contract by failing to close the transaction as scheduled.
52. Prior to Smith's material breaches of the Contract, Plaintiff and his successor, Hicks, fully performed all duties and obligations under the Contract.
53. Smith is in default of the Contract.
54. Section 21.1.1 of the Contract states that, upon Smith's default, Plaintiff has the right to specific performance of the Contract, or damages, or both.
55. Plaintiff has demanded that Smith participate in mediation. Plaintiff received no response from Smith to his demand.
56. As a direct and proximate result of Smith's breaches of the Contract, Plaintiff has suffered damages in an amount that will be proven at trial.
57. Plaintiff is therefore entitled to the remedy of specific performance of the Contract, plus all damages and losses sustained as a result of Smith's breaches of the Contract, plus pre- and post-judgment interest, attorney fees, and costs as allowed by law and the Contract. Plaintiff is also entitled to rescission of the First Reverse Mortgage and the Second Reverse Mortgage attendant to specific performance.

**IV.**  
**SECOND CLAIM FOR RELIEF**  
**(Intentional Interference with Contract against Defendant Silver Leaf)**

58. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 57, inclusive, as if set forth fully herein.
59. The Contract is a binding and enforceable contract by and between Plaintiff and Smith.
60. Silver Leaf, through its agent Doyle, had knowledge of the Contract, and also had knowledge of facts which would lead Silver Leaf to inquire as to the existence of the Contract.
61. Silver Leaf intended to and actually did induce a breach of the Contract with Smith by telling Smith that Smith did not have to close the Contract and, upon information and belief, by telling Smith he would receive more money from Silver Leaf than from Plaintiff.
62. Silver Leaf's actions constitute material and gross misrepresentations.

63. Silver Leaf's actions are particularly egregious because Smith is elderly and in dire financial status.
64. As a direct and proximate result of Silver Leaf's intentional and tortious interference with the Contract, Plaintiff has suffered damages in an amount that will be proven at trial.
65. Plaintiff is therefore entitled to all damages and losses sustained as a result of Silver Leaf's intentional and tortious interference with the Contract, plus pre- and post-judgment interest, attorney fees, and costs as allowed by law. Plaintiff is also entitled to rescission of the First Reverse Mortgage and the Second Reverse Mortgage.
66. Plaintiff reserves the right to seek exemplary and punitive damages against Silver Leaf pursuant to C.R.S. § 13-21-102.

**V.**  
**THIRD CLAIM FOR RELIEF**  
**(Civil Conspiracy against Defendants Smith and Silver Leaf)**

67. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 66, inclusive, as if set forth fully herein.
68. Defendants Smith and Silver Leaf agreed on a course of action to breach the Contract by failing to close the transaction contemplated by the Contract, and by executing the First Reverse Mortgage and the Second Reverse Mortgage prior to the scheduled closing.
69. The acts described above by Defendants Smith and Silver Leaf were carried out to accomplish an unlawful goal of breaching the Contract.
70. Defendant Silver Leaf is not a party to the Contract.
71. As a direct and proximate result of the civil conspiracy of Defendants Smith and Silver Leaf, Plaintiff has suffered damages in an amount that will be proven at trial.
72. Plaintiff is therefore entitled to all damages and losses sustained as a result of the civil conspiracy of Silver Leaf and Smith, jointly and severally, plus pre- and post-judgment interest, attorney fees, and costs as allowed by law. Plaintiff is also entitled to rescission of the First Reverse Mortgage and the Second Reverse Mortgage.
73. Plaintiff reserves the right to seek exemplary and punitive damages against Silver Leaf pursuant to C.R.S. § 13-21-102.

**VI.**  
**FOURTH CLAIM FOR RELIEF**  
**(Quiet Title Pursuant to C.R.C.P. 105 against All Defendants)**

74. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 73, inclusive, as if set forth fully herein.
75. Plaintiff is the owner of the Property.
76. Defendants may claim an interest in the Property by reason of documents recorded in the office of the Larimer County Clerk and Recorded.
77. Defendants MERS, American, and the United States may claim an interest in the Property, as detailed below, by reason of the following recorded instruments:

<u>Name</u>	<u>Instrument</u>	<u>Date Recorded</u>	<u>Instrument No.</u>
Mortgage Electronic Registration Systems, Inc.	Deed of Trust	January 3, 2019	20190000432
American Advisors Group	Deed of Trust	January 3, 2019	20190000432
Federal Housing Commissioner	Deed of Trust	January 3, 2019	20190000433

78. Any claim by Defendants for some right, title, or interest in and to the Property is without foundation or right.
79. There may be persons interested in the subject matter of this action whose names cannot be inserted into this Complaint because their names are unknown to Plaintiff, although diligent efforts have been made to ascertain the names of such persons; so far as Plaintiff's knowledge extends, the interests of such unknown persons are derived through one or more of the named Defendants; and the unknown persons have been made Defendants and designated as "all heirs, assigns and descendants" of the last known descendant or as "all persons claiming any interest in the subject matter of this action."
80. Pursuant to C.R.C.P. 105, Plaintiff respectfully requests a complete adjudication of the rights of all parties to this action with respect to the Property; quieting the title of Plaintiff in and to the Property and adjudging that Plaintiff is the owner of the Property; and for such other and further relief as the Court may deem just and proper.

**WHEREFORE**, Plaintiff Robert Reed Reichert as Trustee of the Robert Reed Reichert Trust prays for entry of judgment against Defendants on all claims as set forth herein, plus pre- and post-judgment interest, attorney fees, and costs as allowed by law.



Respectfully submitted this 14<sup>th</sup> day of April, 2020.

/s/Brett Payton  
Brett Payton, #37127  
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*Attorney for Plaintiff*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 14<sup>th</sup> day of April 2020, a true and correct copy of the foregoing **Plaintiff's Second Amended Complaint** was served upon the following:

Mr. Thomas Matthew Smith  
P.O. Box 7685  
Loveland, Colorado 80537  
*Pro Se Defendant*  
**By First-Class U.S. Mail**

Joseph M. Elio, #14066 – [jelio@elawone.net](mailto:jelio@elawone.net)  
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By: Sandy Hartman, Senior Paralegal